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MEMORANDUM

To: The Honorable Marvin L. Abney, Chairman, House Finance Committee
The Honorable Ryan W. Pearson, Chairman, Senate Finance Committee

From: Joseph Codega Jr., Budget Officer 

Date: May 20, 2022

Subject: Amendment to the FY 2023 Appropriations Act (22-H-7123)

The Governor requests that several budget article amendments be made under the FY 2023 Appropriations Act as follows:

- Amend Article 2 – Relating to State Funds to exclude federal Capital Projects Fund and State Fiscal Recovery Funds from an administrative assessment on federal funds.
- Amend Article 4 – Relating to Debt Management Act Joint Resolutions to provide authority to the University of Rhode Island to issue debt worth \$16.0 million that would fund the construction of the Fine Arts Center project.
- Amend Article 6 – Relating to Taxation to increase the available motion picture production company tax credit cap to from \$30.0 million to \$40.0 million.
- Amend Article 7 – Relating to Energy and the Environment to make several technical adjustments related to the proposal for State Energy Efficiency Programs.
- Amend Article 8 – Relating to Small Business to clarify the discretion granted to the Department of Health to define foods eligible for cottage manufacture.
- Amend Article 12 – Relating to Medical Assistance to provide EOHHS with flexibility to pursue extensions of certain policies for a determinate period of time following the termination of the public health emergency.

If you have any questions regarding these amendments, please feel free to call me or my staff at 222-6300.

JC: 22-Amend-19

cc: Sharon Reynolds Ferland, House Fiscal Advisor
Stephen Whitney, Senate Fiscal Advisor
Brian Daniels, Director, Office of Management and Budget
James E. Thorsen, Director of Administration

H 7123, RELATING TO MAKING APPROPRIATIONS IN SUPPORT OF FY 2023

Article 2 – Relating to State Funds

New Section 2, Page 57, after line 12: Insert new Section 2 as included in Appendix 1 attached to this memo and renumber subsequent sections accordingly. This section excepts federal Capital Projects Fund and State Fiscal Recovery Fund funds from the assessments on federal funds outlined in the statute and clarifies that no funds shall be deposited into the relevant restricted receipts account after the federally determined end date.

Article 4 – Relating to Debt Management Act Joint Resolutions

New Section 4 Page 92, after Line 34: Insert new Section 4 as included in Appendix 2 attached to this memo. This amendment would provide authority to the University of Rhode Island to issue debt worth \$16.0 million that would fund the construction of the Fine Arts Center project. This would complement an existing authorization of \$57.3 million of general obligation bonds.

Article 6 – Relating to Taxation

New Section 2, Page 108, after Line 24: Insert new Section 2 as included in Appendix 3 and renumber all subsequent sections accordingly. This amendment would increase the available motion picture production company tax credit cap to from \$30,000,000 to \$40,000,000.

Article 7 – Relating to Energy and the Environment

Section 1, Page 109, line 3: strike Section 1 in its entirety and replace with:

New SECTION 1: Appendix 4 attached to this memo replaces Article 7, Section 1 in its entirety and replaces it with a new Section 1 which includes several technical adjustments and clarifications related to funding allocations, the planned request for proposal related to State Energy Efficiency Programs, and cost recovery eligibility.

Article 8 – Relating to Small Business

Page 124, Line 31: strike “baked”. This amendment would strike the word “baked” from the line, allowing the Department of Health to more precisely define what goods cottage food manufacture shall be limited to.

Article 12 – Relating to Medical Assistance

Page 295, Insert after Line 26: “Public Health Emergency Unwinding. The Executive Office proposes to seek approval from the federal Centers for Medicare and Medicaid Services (“CMS”) for section 1115 demonstration waivers and State Plan Amendments as necessary to (1) continue some of the temporary federal authorities granted during the Public Health Emergency (“PHE”) for a period not to extend 14 months beyond the termination of the PHE , and (2) ensure minimum adverse impact on beneficiaries and state operations at the end of the PHE, including temporary authorities where applicable, provided that such temporary authorities shall not extend beyond 14 months following the termination of the PHE.”

H 7123 RELATING TO MAKING APPROPRIATIONS IN SUPPORT OF FY 2023

ARTICLE 2 – RELATING TO STATE FUNDS

SECTION 2. Chapter 35-1.1-5 of the General Laws entitled “Federal grants management” is hereby amended by to read as follows:

There is hereby created in the general fund and housed within the budget of the department of administration a restricted receipt account entitled "Grants Management Administration." This account shall be used to fund centralized services relating to managing federal grant applications; providing administrative assistance to agencies regarding reporting requirements; providing technical assistance; approving agreements with federal agencies pursuant to § 35-1-1; and, may include costs associated with the development, implementation, and ongoing operation of a grants management information technology system. Every state department and agency, as defined in § 35-1-4, that receives federal assistance funds, excluding awards made directly to Rhode Island College, the Community College of Rhode Island, and the University of Rhode Island, shall set aside an amount of the funds received equal to a percentage as determined annually by the state controller multiplied by federal funds received. The state controller shall determine this rate annually in proportion with budgeted expenditures for uses consistent with the purpose of this subsection within the department of administration.

For federal awards in response to the COVID-19 pandemic and subsequent stimulus awards, there is hereby authorized an additional assessment that shall be deposited into the restricted receipt account established by this subsection and shall be equal to a uniform percentage of the amount of stimulus and other awards received, excluding Medicaid and all awards made directly to Rhode Island College, the Community College of Rhode Island, and the University of Rhode Island, associated with the COVID-19 pandemic and subsequent stimulus acts. The state

controller shall calculate the rate of this additional assessment, not to exceed one percent (1%) of the total awards received during a fiscal year, in proportion with budgeted expenditures necessary to finance the planning, oversight, compliance, and reporting functions within the department of administration related to federal awards issued in response to the pandemic and subsequent stimulus awards in addition to the costs of planning, development, and implementation of a grants management information technology system. The Grants Management Administration account shall not include an allocation of the State Fiscal Recovery Fund or the Coronavirus Capital Projects Fund. For the additional assessment related to federal awards issued in response to the pandemic and subsequent stimulus awards no funds shall be deposited into the restricted receipt account after December 31, 2026 the federally determined end of performance period. All funds set aside and designated to be used for grants management shall be deposited into the restricted receipt account established in this subsection.

Prior to any deposits being made into the restricted receipt account established by this subsection and thereafter prior to the commencement of each fiscal year, the state controller shall provide a report to the director of administration and the chairpersons of the house and senate finance committees that includes the rate and calculation thereof for the following fiscal year.

H 7123 RELATING TO MAKING APPROPRIATIONS IN SUPPORT OF FY 2023

Article 4 – Relating to Debt Management Act Joint Resolutions

SECTION 4. *University of Rhode Island – Fine Arts Center.*

WHEREAS, The University of Rhode Island Board of Trustees and the University of Rhode Island (the “University”) are proposing a project which involves new construction and renovations to the Fine Arts Center; and

WHEREAS, the University has engaged qualified architectural and engineering firms to perform design of this project; and

WHEREAS, this new Fine Arts Center will allow the University to continue to foster and expand the creative arts in Rhode Island; and

WHEREAS, it is in the best interest of the State of Rhode Island (the “State”), the University, and its students and faculty to have this new Fine Arts Center; and

WHEREAS, a portion of the construction associated with this project will be financed through the Rhode Island Health and Educational Building Corporation (RIHEBC) revenue bonds, with an expected term of twenty (20) years; and

WHEREAS, the University’s unrestricted general revenues will need to cover the required 1.0 debt service coverage that the bond indentures will require; and

WHEREAS, the total project cost associated with the proposed financing method is sixteen million dollars (\$16,000,000), including cost of issuance, debt service payments would be supported by revenues derived from the University’s unrestricted general revenues, and total debt service on the bonds is not expected to exceed one million four hundred thousand dollars (\$1,400,000) annually and twenty-eight million dollars (\$28,000,000) in the aggregate based on an average interest rate of six (6%) percent and a term of twenty (20) years; now, therefore be it

RESOLVED, that this General Assembly hereby approves financing in an amount not to exceed sixteen million dollars (\$16,000,000) for the Fine Arts Center project at the University of Rhode Island; and be it further

RESOLVED, That, this joint resolution shall take effect upon passage by this General Assembly.

H 7123 RELATING TO MAKING APPROPRIATIONS IN SUPPORT OF FY 2023

ARTICLE 6 – RELATING TO TAXATION

SECTION 2. Section 44-31.2-5 of the General Laws in Chapter 44-31.2 entitled "Motion Picture Production Tax Credits" is hereby amended to read as follows:

44-31.2-5. Motion picture production company tax credit.

(a) A motion picture production company shall be allowed a credit to be computed as provided in this chapter against a tax imposed by chapters 11, 14, 17, and 30 of this title. The amount of the credit shall be thirty percent (30%) of the state-certified production costs incurred directly attributable to activity within the state, provided:

(1) That the primary locations are within the state of Rhode Island and the total production budget as defined herein is a minimum of one hundred thousand dollars (\$100,000); or

(2) The motion picture production incurs and pays a minimum of ten million dollars (\$10,000,000) in state-certified production costs within a twelve-month (12) period. The credit shall be earned in the taxable year in which production in Rhode Island is completed, as determined by the film office in final certification pursuant to § 44-31.2-6(c).

(b) For the purposes of this section: "total production budget" means and includes the motion picture production company's pre-production, production, and post-production costs incurred for the production activities of the motion picture production company in Rhode Island in connection with the production of a state-certified production. The budget shall not include costs associated with the promotion or marketing of the film, video, or television product.

(c) Notwithstanding subsection (a) of this section, the credit shall not exceed seven million dollars (\$7,000,000) and shall be allowed against the tax for the taxable period in which the credit is earned and can be carried forward for not more than three (3) succeeding tax years. Pursuant to

rules promulgated by the tax administrator, the administrator may issue a waiver of the seven million dollars (\$7,000,000) tax credit cap for any feature-length film or television series up to the remaining funds available pursuant to section (e) of this section.

(d) Credits allowed to a motion picture production company, which is a subchapter S corporation, partnership, or a limited-liability company that is taxed as a partnership, shall be passed through respectively to persons designated as partners, members, or owners on a pro rata basis or pursuant to an executed agreement among such persons designated as subchapter S corporation shareholders, partners, or members documenting an alternate distribution method without regard to their sharing of other tax or economic attributes of such entity.

(e) No more than fifteen million dollars (\$15,000,000) in total may be issued for any tax year beginning after December 31, 2007, for motion picture tax credits pursuant to this chapter and/or musical and theatrical production tax credits pursuant to chapter 31.3 of this title. After December 31, 2019, no more than twenty million dollars (\$20,000,000) in total may be issued for any tax year for motion picture tax credits pursuant to this chapter and/or musical and theater production tax credits pursuant to chapter 31.3 of this title. Said credits shall be equally available to motion picture productions and musical and theatrical productions. No specific amount shall be set aside for either type of production.

(f) Exclusively for tax year 2022, the total amount of motion picture tax credits issued pursuant to this section and/or musical and theatrical production tax credits pursuant to chapter 31.3 of this title shall not exceed thirty million dollars (\$30,000,000).

(g) Beginning in tax year 2023, the total amount of motion picture tax credits issued pursuant to this section and/or musical and theatrical production tax credits pursuant to chapter 31.3 of this title shall not exceed forty million dollars (\$40,000,000).

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ARTICLE 7 - RELATING TO ENERGY AND THE ENVIRONMENT

SECTION 1. Section 39-2-1.2 of the General Laws in Chapter 39-2 entitled "Duties of Utilities and Carriers" is hereby amended to read as follows:

39-2-1.2. Utility base rate — Advertising, demand-side management, and renewables.

(a) In addition to costs prohibited in § 39-1-27.4(b), no public utility distributing or providing heat, electricity, or water to or for the public shall include as part of its base rate any expenses for advertising, either direct or indirect, that promotes the use of its product or service, or is designed to promote the public image of the industry. No public utility may furnish support of any kind, direct or indirect, to any subsidiary, group, association, or individual for advertising and include the expense as part of its base rate. Nothing contained in this section shall be deemed as prohibiting the inclusion in the base rate of expenses incurred for advertising, informational or educational in nature, that is designed to promote public safety conservation of the public utility's product or service. The public utilities commission shall promulgate such rules and regulations as are necessary to require public disclosure of all advertising expenses of any kind, direct or indirect, and to otherwise effectuate the provisions of this section.

(b) Effective as of January 1, 2008, and for a period of twenty (20) years thereafter, each electric distribution company shall include a charge per kilowatt-hour delivered to fund demand-side management programs. The 0.3 mills per kilowatt-hour delivered to fund renewable energy programs shall remain in effect until December 31, 2028. The electric distribution company shall establish and, after July 1, 2007, maintain, two (2) separate accounts, one for demand-side management programs (the "demand-side account"), which shall be

funded by the electric demand-side charge and administered and implemented by the distribution company, subject to the regulatory reviewing authority of the commission, and one for renewable energy programs, which shall be administered by the Rhode Island commerce corporation pursuant to § 42-64-13.2 and shall be held and disbursed by the distribution company as directed by the Rhode Island commerce corporation for the purposes of developing, promoting, and supporting renewable energy programs.

During the time periods established in this subsection, the commission may, in its discretion, after notice and public hearing, increase the sums for demand-side management and renewable resources. In addition, the commission shall, after notice and public hearing, determine the appropriate charge for these programs. The office of energy resources, and/or the administrator of the renewable energy programs, may seek to secure for the state an equitable and reasonable portion of renewable energy credits or certificates created by private projects funded through those programs. As used in this section, "renewable energy resources" shall mean: (1) Power generation technologies, as defined in § 39-26-5, "eligible renewable energy resources," including off-grid and on-grid generating technologies located in Rhode Island, as a priority; (2) Research and development activities in Rhode Island pertaining to eligible renewable energy resources and to other renewable energy technologies for electrical generation; or (3) Projects and activities directly related to implementing eligible renewable energy resources projects in Rhode Island. Technologies for converting solar energy for space heating or generating domestic hot water may also be funded through the renewable energy programs. Fuel cells may be considered an energy efficiency technology to be included in demand-side management programs. Special rates for low-income customers in effect as of August 7, 1996, shall be continued, and the costs of all of these discounts shall be included in

the distribution rates charged to all other customers. Nothing in this section shall be construed as prohibiting an electric distribution company from offering any special rates or programs for low-income customers which are not in effect as of August 7, 1996, subject to the approval by the commission.

(1) The renewable energy investment programs shall be administered pursuant to rules established by the Rhode Island commerce corporation. Said rules shall provide transparent criteria to rank qualified renewable energy projects, giving consideration to:

- (i) The feasibility of project completion;
- (ii) The anticipated amount of renewable energy the project will produce;
- (iii) The potential of the project to mitigate energy costs over the life of the project; and
- (iv) The estimated cost per kilowatt-hour (KWh) of the energy produced from the project.

(c) [Deleted by P.L. 2012, ch. 241, art. 4, § 14.]

(d) The chief executive officer of the commerce corporation is authorized and may enter into a contract with a contractor for the cost-effective administration of the renewable energy programs funded by this section. A competitive bid and contract award for administration of the renewable energy programs may occur every three (3) years and shall include, as a condition, that after July 1, 2008, the account for the renewable energy programs shall be maintained and administered by the commerce corporation as provided for in subsection (b) of this section.

(e) Effective January 1, 2007, and for a period of twenty-one (21) years thereafter, each gas distribution company shall include, with the approval of the commission, a charge per deca therm delivered to fund demand-side management programs (the "gas demand-side charge"),

including, but not limited to, programs for cost-effective energy efficiency, energy conservation, combined heat and power systems, and weatherization services for low-income households.

(f) Each gas company shall establish a separate account for demand-side management programs (the "gas demand-side account") that shall be funded by the gas demand-side charge and administered and implemented by the distribution company, subject to the regulatory reviewing authority of the commission. The commission may establish administrative mechanisms and procedures that are similar to those for electric demand-side management programs administered under the jurisdiction of the commission and that are designed to achieve cost-effectiveness and high, life-time savings of efficiency measures supported by the program.

(g) The commission may, if reasonable and feasible, except from this demand-side management charge:

(1) Gas used for distribution generation; and

(2) Gas used for the manufacturing processes, where the customer has established a self-directed program to invest in and achieve best-effective energy efficiency in accordance with a plan approved by the commission and subject to periodic review and approval by the commission, which plan shall require annual reporting of the amount invested and the return on investments in terms of gas savings.

(h) The commission may provide for the coordinated and/or integrated administration of electric and gas demand-side management programs in order to enhance the effectiveness of the programs. Such coordinated and/or integrated administration may after March 1, 2009, upon the recommendation of the office of energy resources, be through one or

more third-party entities designated by the commission pursuant to a competitive selection process.

(i) Effective January 1, 2007, the commission shall allocate, from demand-side management gas and electric funds authorized pursuant to this section, an amount not to exceed three percent (3%) of such funds on an annual basis for the retention of expert consultants, and reasonable administration costs of the energy efficiency and resources management council associated with planning, management, and evaluation of energy-efficiency programs, renewable energy programs, system reliability least-cost procurement, and with regulatory proceedings, contested cases, and other actions pertaining to the purposes, powers, and duties of the council, which allocation may by mutual agreement, be used in coordination with the office of energy resources to support such activities.

(j) Effective January 1, 2016, the commission shall annually allocate from the administrative funding amount allocated in subsection (i) from the demand-side management program as described in subsection (i) as follows: (1) for the energy efficiency resources management council, no more than forty percent (40%) for the purposes identified in subsection (i) and (2) sixty percent (60%) of three percent (3%) from the demand side management and electric funds annually to the office of energy resources for activities associated with planning, management, and evaluation of energy-efficiency programs, renewable energy programs, system reliability, least-cost procurement, and with regulatory proceedings, contested cases, and other actions pertaining to the purposes, powers, and duties of the office of energy resources. The office of energy resources shall have exclusive authority to direct the use of these funds.

(k) On April 15, of each year, the office and the council shall submit to the governor, the president of the senate, and the speaker of the house of representatives, separate financial and performance reports regarding the demand-side management programs, including the specific level of funds that were contributed by the residential, municipal, and commercial and industrial sectors to the overall programs; the businesses, vendors, and institutions that received funding from demand-side management gas and electric funds used for the purposes in this section; and the businesses, vendors, and institutions that received the administrative funds for the purposes in subsections (i) and (j). These reports shall be posted electronically on the websites of the office of energy resources and the energy efficiency and resources management council.

(l) On or after August 1, 2015, at the request of the Rhode Island infrastructure bank, each electric distribution company, except for the Pascoag Utility District and Block Island Power Company, shall remit two percent (2%) of the amount of the 2014 electric demand-side charge collections to the Rhode Island infrastructure bank.

(m) On or after August 1, 2015, at the request of the Rhode Island infrastructure bank, each gas distribution company shall remit two percent (2%) of the amount of the 2014 gas demand-side charge collections to the Rhode Island infrastructure bank.

(n) Effective January 1, 2022, the commission shall allocate, from demand-side management gas and electric funds authorized pursuant to this section, five million dollars (\$5,000,000) of such funds on an annual basis to the Rhode Island infrastructure bank. Gas and electric demand-side funds transferred to the Rhode Island infrastructure bank pursuant to this section shall be eligible to be used in any energy efficiency, renewable energy, clean transportation, clean heating, energy storage, or demand-side management project financing

program administered by the Rhode Island infrastructure bank notwithstanding any other restrictions on the use of such collections set forth in this chapter. The infrastructure bank shall report annually to the commission within ninety (90) days of the end of each calendar year how collections transferred under this section were utilized.

(o) Effective January 1, 2023, the commission shall allocate from demand-side management gas and electric funds authorized pursuant to this section, six million dollars (\$6,000,000) of such funds on an annual basis to the Rhode Island office of energy resources, on behalf of the executive climate change coordinating council, for climate change-related initiatives. The executive climate change coordinating council shall have exclusive authority to direct the use of these funds. The office of energy resources may act on behalf of the executive climate change coordinating council to disburse these funds.

(i) The gas and electric demand-side funds allocated pursuant to 39-2-1.2(o) shall be used for any energy efficiency, renewable energy, clean transportation, clean heating, energy storage, demand-side management, or other programs and investments that support the reduction of greenhouse gases consistent with the 2021 Act on Climate. Funds may also be used for the purpose of providing the financial means for the council to purchase materials and to employ on a contract or other basis expert consultant services, expert witnesses, and/or other support services necessary to advance the requirements of the act on climate.

(ii) The Rhode Island executive climate change council shall report annually to the governor and general assembly within one hundred and twenty (120) days of the end of each calendar year how the funds were used to achieve the statutory objectives of the 2021 act on climate.

(iii) The office of energy resources is authorized and may enter into contracts with third-party entities for the administration and/or implementation of climate change initiatives funded by this section.

(iv) There is hereby established a restricted receipt account in the general fund of the state and housed in the budget of the department of administration entitled “executive climate change coordinating council projects.” The express purpose of this account is to record receipts and expenditures of the program herein described and established within this subsection.

(p) Effective January 1, 2023, the electric and gas distribution company shall not be eligible for performance based or other incentives related to the administration and implementation of energy efficiency programs approved pursuant to this chapter.

(q) The Rhode Island office of energy resources, in coordination with the energy efficiency resource management council, and following consultation with the public utilities commission and division of public utilities and carriers, shall issue a request for proposals for the cost effective administration and implementation of statewide energy efficiency programs funded by this section no later than June 30, 2024. The draft request for proposals shall be reviewed through at least one technical session at the public utilities commission prior to issuance. Public utilities commission approval shall not be required. The Rhode Island office of energy resources, in coordination with the energy efficiency resource management council, shall evaluate proposals and determine whether energy efficiency administration and implementation by the electric and gas distribution company or a third-party is likely to achieve the most net benefits for electric and gas customers in Rhode Island. After January 1, 2025, the office of energy resources may, periodically, and at its discretion, issue additional requests for proposals for the administration and implementation of statewide energy efficiency programs

funded through this chapter of an electric distribution company as defined in § 39-1-2(a)(12) or gas distribution company included as a public utility in § 39-1-2(a)(20) that has greater than one hundred thousand (100,000) customers.

(i) Nothing in this chapter shall prohibit the electric and/or gas distribution company from submitting a proposal to administer and implement the state energy efficiency programs.

(ii) If the office of energy resources, in coordination with the energy efficiency resource management council, determines that the use of a third-party administrator is likely to achieve the most net benefits for electric and gas customers in Rhode Island, it shall file its recommendation with the public utilities commission, which shall docket and rule on the matter pursuant to its general statutory authorization. If the commission determines that the recommended third-party administrator is in the interest of Rhode Island utility customers, it shall provide for the full cost recovery for the third-party administrator consistent with the terms of the approved contract which may include regulatory performance metrics.

(iii) If the office does not recommend advancement of a third-party administrator, the electric and gas distribution utility shall continue to administer statewide energy efficiency programs.