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MEMORANDUM

To: The Honorable Marvin L. Abney, Chairman, House Finance Committee
The Honorable Louis P. DiPalma, Chairman, Senate Finance Committee

From: Joseph Codega Jr., Budget Officer 

Date: May 5, 2023

Subject: Amendments to FY 2024 Appropriations Act (23-H-5200)

The Governor requests that a new budget article, Relating to the Department of Housing, be added under FY 2024 Appropriations Act. Appendix 1 attached to this memo is a new article relating to the Department of Housing. Significant items in the new article include the following:

- Low Income Housing Tax Credit Program (LIHTC) – Creates a statewide LIHTC program to provide a tax incentive for developers to expand subsidized housing options for low-income households. The proposed new program would award tax benefits to developers through a competitive process and would be capped at \$30 million annually for five years.
- Municipal Homelessness Support Initiative – Establishes a new initiative to support services such as homeless outreach, day programs, ambulance response, and other activities and municipal services to help emergency shelters succeed in local communities while continuing to expand options for Rhode Islanders experiencing homelessness. This program will be supported by a reallocation of \$1.0 million in general revenues in FY 2024 as included in GBA 12. These funds are no longer required by the Department of Revenue’s Payments in Lieu of Taxes program after a data update.
- Department of Housing Statutory Changes – Amends and clarifies the powers and duties of the Department of Housing to support its mission as the state’s lead agency for housing, homelessness, and community development.
- Proactive Housing Development Subsidiary – Modifies sections of law relating to the Rhode Island Housing and Mortgage Finance Corporation (RI Housing) to better enable the creation of a proactive housing development subsidiary.

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

Page 2
May 5, 2023

JC: 23-Amend-13
Attachments

cc: Sharon Reynolds Ferland, House Fiscal Advisor
Stephen Whitney, Senate Fiscal Advisor
Brian Daniels, Interim Director of Administration; Director of the Office of Management
and Budget

H 5200 RELATING TO MAKING APPROPRIATIONS IN SUPPORT OF FY 2024

Article X – Relating to the Department of Housing

1 SECTION 1. Section 42-55-5.1 of the General Laws in chapter 42-55 entitled “Rhode
2 Island Housing and Mortgage Finance Corporation” is hereby amended to read as follows:

3 **§ 42-55-5.1. Subsidiary corporations.**

4 (a) To further its purposes, the corporation shall have the power to form one or more
5 subsidiary corporations under either § 7-1.2-1 et seq. or § 7-6-1 et seq. in accordance with the
6 procedures therein contained. Each subsidiary corporation shall be governed by the section under
7 which it is formed, provided that each shall be subject to the same restrictions and limitations as
8 to its powers and purposes to which the corporation is subject under this chapter and shall be
9 deemed a state agency only for the purposes of § 42-46-1 et seq. and § 38-2-1 et seq. The
10 corporation may delegate any of its powers, obligations, and duties under this chapter to any
11 subsidiary corporation by inclusion of its powers, obligations and duties in the articles of
12 incorporation of the subsidiary corporation. Subsidiary corporations so formed shall constitute
13 legal entities separate and distinct from each other, the corporation, and the state. The corporation
14 shall not be liable for the debts or obligations or for any actions or inactions of its subsidiary
15 corporations unless the corporation expressly agrees otherwise in writing. The corporation may
16 make loans or grants to a subsidiary corporation from time to time to enable the subsidiary
17 corporation to carry out its purposes. The commissioners of the corporation shall constitute all of
18 the directors of each subsidiary corporation.

19 (b) The state, any municipality or any state commission, public authority, agency, officer,
20 department, board, or division authorized and empowered to enter into agreements with, to grant,
21 convey, lease, or otherwise transfer any property to, or to otherwise transact business with the
22 corporation, shall have the same authorization and power to engage in these activities with each
23 subsidiary corporation of the corporation.

24 (c) Any subsidiary entity of the corporation whose principal purpose is the acquisition or
25 betterment of real property is, subject to the period of limitations set forth in § 9-1-25, liable in
26 actions of tort only to the extent that those actions do not arise from the performance of any
27 functions found or deemed to be essential or discretionary governmental functions. Any recovery
28 in an action or any recovery by any person in one or more of any actions against the subsidiary
29 entity, its directors, employees, or agents, shall not exceed one hundred thousand dollars

1 (\$100,000) per plaintiff in the absence of fraud or willful misconduct. In the absence of fraud or
2 willful misconduct, the directors are not personally liable to any party on account of any action
3 (whether tort or otherwise) arising from or related to the manner or terms of the disposition of the
4 subsidiary's assets, nor shall the manner or terms of the disposition constitute a defense to any
5 obligation owed to the corporation.

6 SECTION 2. Section 42-55- 24 of the General Laws in chapter 42-55 entitled "Tax
7 exemption" is hereby amended to read as follows:

8 **§ 42-55-24. Tax exemption**

9 The exercise of the powers granted by this chapter will be in all respects for the benefit of
10 the people of the state, for their wellbeing and prosperity and for the improvement of their social
11 and economic conditions, and the corporation, or any subsidiary thereof created or authorized
12 pursuant to § 42-55-5.1, shall not be required to pay any tax or assessment on any property owned
13 by the corporation or by any subsidiary thereof under the provisions of this chapter or upon the
14 income from the property; nor shall the corporation or any subsidiary thereof be required to pay
15 any recording fee or transfer tax of any kind on account of instruments recorded by it or on its
16 behalf. Any bonds, notes, or other obligations issued by the corporation or any subsidiary thereof
17 under the provisions of this chapter, their transfer, and the income from them (including any profits
18 made on their sale), shall at all times be free from taxation by the state or any political subdivision
19 or other instrumentality of the state, excepting inheritance, estate, and gift taxes.

20 SECTION 3. Section 42-64.34-2 of the General Laws in chapter 42-64.34 entitled "The
21 Department of Housing" is hereby amended to read as follows:

22 **§ 42-64.34-2. Powers and duties.**

23 ~~The secretary of housing shall have all powers and duties pursuant to § 42-64.19-3(a)(4).~~

24 (a) The department of housing shall be the state's lead agency for housing, homelessness,
25 and community development in the state of Rhode Island.

26 (b) The secretary of housing shall have the following powers and duties:

27 (1) All powers and duties pursuant to § 42-64.19-3(a)(4);

28 (2) To supervise the work of the department of housing and to act as its chief administrative
29 officer;

30 (3) To coordinate the administration and financing of various departments or offices within
31 the department of housing;

1 (4) To serve as the governor’s chief advisor and liaison to federal policymakers on housing,
2 homelessness, and community development as well as the principal point of contact on any such
3 related matters;

4 (5) To coordinate the housing, homelessness, and community development programs of
5 the state of Rhode Island and its departments, agencies, commissions, corporations, and
6 subdivisions;

7 (6) To employ such personnel and contracts for such consulting services as may be required
8 to perform the powers and duties conferred upon the secretary of housing;

9 (7) To oversee and direct the administration of funds that may be appropriated from time
10 to time to the department of housing;

11 (c) In addition to such other powers as may otherwise be delegated elsewhere to the
12 department of housing, the department is hereby expressly authorized, by and through the secretary
13 of housing:

14 (1) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use,
15 and otherwise deal in and with, real or personal property, or any interest in real or personal
16 property, wherever situated.

17 (2) To acquire any land, or any interest therein, by the exercise of the power of eminent
18 domain in accordance with the provisions of Chapter 64.12 of Title 42 whenever it shall be
19 determined by the department of housing.

20 (3) To accept any gifts or grants or loans of funds or property or financial or other aid in
21 any form from the federal government or any agency or instrumentality of the federal government,
22 or from the state or any agency or instrumentality of the state, or from any other source and to
23 comply, subject to the provisions of this chapter, with the terms and conditions of the gifts, grants,
24 or loans.

25 (4) Subject to the provisions of § 37-2-1 et seq., to negotiate and to enter into contracts,
26 agreements, and cooperative agreements with agencies and political subdivisions of the state, not-
27 for-profit corporations, for-profit corporations, and other partnerships, associations, and persons
28 for any lawful purpose necessary and desirable to effectuate the purposes of the department of
29 housing; and

30 (5) To carry out this chapter and perform the duties of the general laws and public laws
31 insofar as those provisions relate to any regulatory areas within the jurisdiction of the

1 department of housing.

2 SECTION 4. Chapter 42-64.34 of the General Laws entitled “The Department of Housing”
3 is hereby amended by adding thereto the following sections:

4 **§ 42-64.34-3. Rules and regulations.**

5 The secretary of housing may promulgate such rules and regulations in accordance with
6 the provisions of chapter 35 of title 42 as are necessary and proper to carry out the duties assigned
7 to him or her or to the department of housing by this title or any other provision of law.

8 **§ 42-64.34-4. Severability.**

9 If any provision of this chapter or the application thereof to any person or circumstance is
10 held invalid, such invalidity shall not affect other provisions or applications of the chapter, which
11 can be given effect without the invalid provision or application, and to this end the provisions of
12 this chapter are declared to be severable.

13 SECTION 5. Title 42 of the General Laws entitled “State Affairs and Government” is
14 hereby amended by adding thereto the following chapter:

15 **CHAPTER 42-64.35**

16 **MUNICIPAL HOMELESSNESS SUPPORT INITIATIVE**

17 **§ 42-64.25-1. Municipal homelessness services initiative established.**

18 The department of housing, established pursuant to R.I. Gen. Laws § 42-64.34-1, et seq.,
19 is authorized, within available appropriations, to award grants for community services (e.g., trash,
20 ambulance, outreach, day programs) or other uses approved by the Department of Housing that
21 assist municipalities in supporting individuals and families experiencing homelessness.

22 **§ 42-64.25-1. Rules and regulations.**

23 The department of housing is hereby authorized to promulgate such rules and regulations
24 as are necessary to fulfill the purposes of this chapter, including the criteria by which grant
25 applications will be judged and awarded.

26 **§ 42-64.25-2. Reporting requirements.**

27 The department of housing shall publish a report on the municipal homelessness services
28 initiative’s activities authorized pursuant to this chapter. The report is due no later than sixty (60)
29 days after the end of the fiscal year, and shall be provided to the governor, the speaker of the house
30 of representatives, and the president of the senate.

1 SECTION 6. Title 44 of the General Laws entitled "Taxation" is hereby amended by
2 adding thereto the following chapter:

3 **CHAPTER 44-71**

4 **LOW-INCOME HOUSING TAX CREDITS**

5 **§ 44-71-1. Short Title.**

6 This chapter shall be known and may be cited as the "Low-Income Housing Tax Credit
7 Act."

8 **§ 44-71-2. Findings and declarations.**

9 It is hereby found and declared that the state is facing significant housing challenges, which
10 must be addressed for the welfare of the State's residents. The purpose of the Rhode Island low-
11 income housing tax credit established pursuant to this chapter is to increase the development and
12 availability of affordable housing in the state.

13 **§ 44-71-3. Definitions.**

14 As used in this chapter:

15 (1) "Applicant" means a developer applying for a Rhode Island low-income housing tax
16 credit.

17 (2) "Compliance period" means the period of fifteen (15) taxable years beginning with the
18 taxable year in which the Rhode Island low-income housing project is completed.

19 (3) "Department" means the Department of Housing established pursuant to § 42-64.34-1
20 et seq.

21 (4) "Developer" means a person, firm, business, partnership, association, political
22 subdivision, or other entity that proposes to build or builds a qualified Rhode Island project.

23 (5) "Eligibility statement" means a statement authorized and issued by the Department
24 certifying that a given project is a qualified Rhode Island project and setting forth the annual
25 amount of the Rhode Island low-income housing tax credit allocated to the project. The eligibility
26 statement shall be on a form promulgated by the Department in consultation with the division of
27 taxation.

28 (6) "Federal low-income housing tax credit" means the federal tax credit as provided in
29 section 42 of the 1986 Internal Revenue Code, as amended and in effect for the taxable year.

1 (7) “Low-income project” means a qualified low-income housing project, as defined in
2 section 42 of the 1986 Internal Revenue Code, as amended and in effect for the taxable year, which
3 has restricted rents.

4 (8) “Qualified Rhode Island project” means a qualified low-income housing project, as
5 defined in section 42 of the 1986 Internal Revenue Code, as amended and in effect for the taxable
6 year, which is located in the state of Rhode Island, which meets the requirements of this chapter,
7 and whose owner enters into a tax credit agreement with the Department.

8 (9) “Rhode Island low-income housing tax credit” means the tax credit established pursuant
9 to § 44-71-4.

10 (10) “Tax credit agreement” means an agreement between the owner of the qualified Rhode
11 Island project and the Department and filed as an affordable housing restriction in the land records
12 of the city or town where the real estate lies that requires the project to be operated in accordance
13 with the requirements of this chapter for not less than thirty (30) years from the expiration date of
14 the compliance period.

15 (11) “Taxpayer” means a person, firm, partnership, trust, estate, limited liability company,
16 corporation (whether for profit or nonprofit) or other entity having an ownership interest in a
17 qualified Rhode Island project, either directly or through one or more pass-through entities, that is
18 subject to the taxes imposed on such person or entity pursuant to chapter 11, 13, 14, 17 or 30 of
19 this title.

20 **§ 44-71-4. Establishment of Rhode Island low-income housing tax credit program.**

21 The Rhode Island low-income housing tax credit program is hereby established as a
22 program under the jurisdiction and administration of the Department. The program may provide
23 tax credits for a period of five (5) years to applicants that are competitively selected and that meet
24 the requirements of this chapter. The Department shall not obligate Rhode Island low-income
25 housing tax credits that cumulatively total in excess of thirty million (\$30 million) in any fiscal
26 year.

27 **§ 44-71-5. Rhode Island low-income housing tax credits.**

28 (1) A taxpayer owning an interest in a qualified Rhode Island project may be allowed a
29 Rhode Island low-income housing tax credit against the taxes imposed pursuant to chapter 11, 13,
30 14, 17 or 30 of this title with respect to that qualified Rhode Island project in an amount authorized,
31 determined, and allocated by the Department based on the qualified Rhode Island project’s need

1 for the credit for economic feasibility, provided that the Department issues an eligibility statement
2 for that qualified Rhode Island project.

3 (2) At the time of application to the Department for an eligibility statement, an applicant
4 shall, through its chief executive officer or equivalent authorized officer, demonstrate to the
5 Department that:

6 (a) The project is a qualified Rhode Island project;

7 (b) The owner of the qualified Rhode Island project has entered into a tax credit agreement
8 with the Department; and

9 (c) The applicant satisfies other additional criteria determined by the Department from time
10 to time.

11 (3) The Rhode Island low-income housing tax credit allocated to a taxpayer with respect
12 to a qualified Rhode Island project shall be taken against the taxpayer's taxes imposed pursuant
13 to chapter 11, 13, 14, 17 or 30 of this title, claimed for five (5) years and subtracted from the
14 amount of state tax otherwise due for each taxable period; provided, however, any amount of the
15 Rhode Island low-income housing tax credit that exceeds the state tax due for a taxable year may
16 be carried forward to any of the five (5) subsequent taxable years.

17 (4) A qualified Rhode Island project that receives other incentives or tax credits available
18 under the general laws of this state is also eligible to receive an allocation of Rhode Island low-
19 income housing tax credits pursuant to this chapter.

20 (5) Upon request of a taxpayer and subject to annual appropriation or available funding,
21 the Department shall redeem any tax credit awarded under this chapter, not otherwise claimed, for
22 up to one hundred percent (100%) of the value of the tax credit pursuant to rules and regulations
23 promulgated by the Department in consultation with the division of taxation.

24 **§ 44-71-6. Administration.**

25 (1) Upon issuance of the eligibility statement the Department shall, on behalf of the State
26 of Rhode Island, award tax credits and issue tax credit certificates in the amount authorized and
27 allocated in accordance with the eligibility statement and the tax credit agreement. The
28 Department shall provide copies of eligibility statements and tax credit certificates to the division
29 of taxation within thirty (30) days of issuance, including copies of all eligibility statements and tax
30 credit certificates that are reissued, transferred, sold, or assigned.

1 (2) The owner of a qualified Rhode Island project eligible for the Rhode Island low-income
2 housing tax credit shall submit, at the time of filing the project owner’s state tax return, the tax
3 credit certificate issued by the Department with respect to such qualified Rhode Island project. In
4 the case of failure to attach the tax credit certificate, a credit under this section shall not be allowed
5 with respect to such qualified Rhode Island project for that year until the original tax credit
6 certificate is provided to the division of taxation.

7 **§ 44-71-7. Recapture.**

8 (1) If under Section 42 of the 1986 Internal Revenue Code, as amended, a portion of any
9 federal low-income housing tax credits taken on a low-income project is required to be recaptured,
10 the Rhode Island low-income housing tax credit authorized with respect to such qualified Rhode
11 Island project shall also be recaptured. The state recapture amount shall be equal to the amount of
12 the Rhode Island low-income housing tax credits previously claimed times a fraction, the
13 numerator of which shall be the amount of recaptured federal low-income housing tax credits and
14 the denominator of which shall be the amount of federal low-income housing tax credits previously
15 claimed.

16 (2) The Department shall provide notification of recapture determinations to the division
17 of taxation within thirty (30) days. Such notifications shall include the proportion of the Rhode
18 Island low-income housing tax credit to be recaptured, the identity of each taxpayer subject to the
19 recapture and the amount of credit previously allocated to such taxpayer.

20 **§ 44-71-8. Transferability.**

21 All or any portion of unused tax credits issued in accordance with the provisions of this
22 chapter may be transferred, sold, or assigned to taxpayers eligible under the provisions of this
23 chapter.

24 **§ 44-71-9. Rules and regulations.**

25 The Department, in consultation with the division of taxation, shall adopt guidelines,
26 directives, criteria, and rules and regulations pursuant to § 42-35-1 et seq. to implement the
27 purposes of the Rhode Island low-income housing tax credit program.

28 **§ 44-71-10. Reporting.**

29 By November 1, 2024, and each year thereafter, the Department shall report to the
30 governor, the chairpersons of the house and senate finance committees, and the house and senate

1 fiscal advisors, the amount of Rhode Island low-income housing tax credits that were approved
2 during the prior fiscal year.

3 A summary of any tax credit agreements entered into under this chapter by the Department
4 and applicants shall be sent to the division of taxation and shall be public and shall be published
5 by the tax administrator on the tax division website.

6 **§ 44-71-11. Low Income Housing Tax Credit Fund.**

7 There is hereby established at the department of housing a restricted account known as the
8 low income housing tax credit fund (the “fund”) in which all amounts appropriated for the program
9 authorized in this chapter shall be deposited. The fund shall be used for the purpose of securing
10 payment for the redemption of tax credits or to reimbursement to the state for tax credits applied
11 against a taxpayer’s liability.

12 **§ 44-71-12. Sunset.**

13 No credits shall be authorized to be reserved pursuant to this chapter after June 30, 2028.

14 SECTION 7. This article shall take effect upon passage.