

CHAPTER 34

INDUSTRIAL BUILDING AUTHORITY

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42-34-1. CREATION OF RHODE ISLAND INDUSTRIAL BUILDING AUTHORITY.

--There is hereby created the Rhode Island Industrial Building Authority.

42-34-2. PURPOSE. -- It is declared that a state-wide need exists for new industrial buildings, and the expansion, rehabilitation, renovation and reconstruction of existing industrial buildings and new additional machinery and equipment to provide enlarged opportunities for gainful employment by the people of Rhode Island and to thus insure the preservation and betterment of the economy of the state and its inhabitants. It is also declared that it is in the interest of the public welfare and purpose to promote the expansion and diversification of industry, to increase employment, prevent or reduce unemployment, and to provide a larger taxable base for the economy of the state of Rhode Island, and to generally promote economic development in Rhode Island. Therefore, the Rhode Island Industrial Building Authority is created to encourage the making of mortgage loans for the purpose of furthering industrial expansion in the state, and, thus, improve the welfare of the public for the foregoing reasons and, by the stimulation of a larger flow of private investment funds from banks, building and loan associations, credit unions, savings and loan associations, insurance companies and other financial institutions, including pension, retirement and profit-sharing funds, meet the need of new industrial plant expansion, the expansion, rehabilitation and renovation of existing industrial plants, and the acquisition of new machinery and equipment.

It is further declared that there is a need for the abatement or control of pollution of the environment of the state which is necessary to protect the health and welfare of the inhabitants of the state, and in particular the abatement or control of pollution by industries now operating in the state or which may in the future operate in the state. The Rhode Island Industrial Building Authority shall also exist to encourage the making of mortgage loans to enable such industries to abate or control pollution.

42-34-3. CREDIT OF STATE PLEDGED. -- The Rhode Island Industrial Building Authority is authorized to insure the payment of mortgage loans secured by industrial projects, and to this end the faith and credit of the state is hereby pledged, consistent with the terms and limitations of the terms of this chapter.

42-34-4. ORGANIZATION OF AUTHORITY. -- The Rhode Island Industrial Building Authority, hereinafter in this chapter called the Authority, hereby created and established a body corporate and politic, is constituted a public instrumentality of the state, and the exercise by the Authority of the powers conferred by the provisions of this chapter shall be deemed and held to be the performance of essential governmental functions. The Authority shall consist of five (5) members, appointed by the governor for a period of five (5) years, as herein provided.

During the month of January, 1959, the governor shall appoint one (1) member to serve until the first day of February, 1960, and until his successor is appointed and qualified, one (1) member to serve until the first day of February, 1961, and until his successor is appointed and qualified, one (1) member to serve until the first day of February, 1962, and until his successor is appointed and qualified, one (1) member to serve until the first day of February, 1963, and until his successor is appointed and qualified, and one (1) member to serve until the first day of February, 1964, and until his successor is appointed and qualified.

During the month of January, 1960, and during the month of January, annually thereafter the governor shall appoint a member to succeed the member whose term will then next expire, to serve for a term of five (5) years commencing on the first day of February then next following and until his successor is appointed and qualified. A member shall be eligible to succeed himself.

A vacancy in the office of a member, other than by expiration, shall be filled in like manner as an original appointment, but only for the remainder of the term of the retiring member. Members may be removed by the governor for cause.

The Authority may elect such officers, who need not be members of the Authority, as may be required to conduct the Authority's business. The director of the Department of Economic Development shall serve as executive director and chief executive officer, ex officio, of the Authority. Three (3) members of the Authority shall constitute a quorum and the affirmative vote of a majority of the members, present and voting, shall be necessary for any action taken by the Authority; except that, in no case shall any action taken by the Authority be taken by an affirmative vote of less than three (3) members. No vacancy in the membership of the Authority or disqualification of a member under 42-34-16 shall impair the right of the quorum to exercise all rights and perform all the duties of the Authority. All of the members of the Authority shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties.

42-34-5. MANAGER. -- The manager shall be appointed by the Authority and his tenure of office shall be at the pleasure of the Authority. He shall be in the unclassified service.

The manager shall be the chief administrative officer for the Authority and as such shall direct and supervise the administrative affairs and technical activities of the Authority in accordance with rules, regulations, and policies as set forth by the Authority. It shall be the duty of the manager among other things:

1. To attend all meetings of the Authority, and to act as its secretary and keep minutes of all its proceedings.
2. To approve all accounts for salaries, per diems, allowable expenses of the Authority or of any employee or consultant thereof, and expenses incidental to the operation of the Authority.
3. To maintain a close liaison with the Department of Economic Development and provide assistance to the various divisions of the department to facilitate the planning and financing of industrial projects.
4. To make recommendations and reports in cooperation with the Department of Economic Development to the Authority on the merits of any proposed industrial project, on the status of local industrial development corporations, and on meritorious industrial locations.
5. To perform such other duties as may be directed by the Authority in the carrying out of the purposes of this chapter.

42-34-6. DEFINITIONS. -- As used in this chapter, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

1. "Cost of project" shall mean, in the case of an industrial project described in 3.(a), the cost of acquisition, construction, alteration, reconstruction, expansion or rehabilitation of an industrial project by a local industrial development corporation, and in the case of an industrial project described in 3.(b), the cost of acquisition by a local development corporation. There may be included in cost of project the costs of all financing charges, existing encumbrances, interest during construction period, engineering, architectural and legal services, plans, specifications, surveys, cost estimates, studies and other expenses as may be necessary or incident to the development, construction, financing and placing in operation of an industrial project.
2. "Federal agency" shall mean and include the United States of America, the president of the United States of America, and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated or established by the United States of America.
- 3.(a) "Industrial project" shall mean lands or buildings or other real estate improvements in Rhode Island, or any interest therein, acquired and constructed, reconstructed, improved, expanded, renovated, or rehabilitated by a local development corporation, together with all easements and other interests in such property, provided that such

industrial projects is to be used (i) by any industry for the manufacturing, processing or assembling of raw materials or manufactured products, or (ii) for the providing of research or warehousing facilities for the benefit of any such industry, and provided further that the Authority has determined that such industrial project or other real estate improvement will tend to provide gainful employment for the people of Rhode Island, or to prevent, eliminate or reduce unemployment in Rhode Island, increase the tax base of the economy, diversify and expand industry so that periods of large scale unemployment and distressed times may be avoided, and generally benefit economic development in Rhode Island. An industrial project as defined herein may be located on leased land provided the term of the lease extends at least until the maturity date, as defined in this section.

- 3.(b) "Industrial project" shall also mean any new machinery and equipment provided (i) such machinery and equipment has been acquired for use in connection with any buildings; new or otherwise, or other real estate improvement in Rhode Island, used for the manufacturing, processing or assembling of raw materials or manufactured products or for the providing of research facilities in connection therewith; (ii) the Authority has determined that such machinery and equipment will tend to provide gainful employment for the people of Rhode Island, or to prevent, eliminate or reduce unemployment in Rhode Island, increase the tax base of the economy and diversify and expand industry so that periods of large scale unemployment and distressed times may be avoided, and generally benefit economic development in Rhode Island; (iii) the owner therefore has agreed not to remove such machinery and equipment from such building or real estate improvement until the principal obligation of any mortgage on such machinery and equipment, the mortgage payments under which are insured by the Authority pursuant to Sec. 42-34-10, has been paid in full, except that such machinery and equipment may be removed from such building or real estate improvement with the prior written consent of the Authority if such owner has agreed to substitute in place thereof other new machinery and equipment approved by the Authority and the mortgage within such reasonable period of time as the Authority shall prescribe.
- 3.(c). An industrial project as defined herein, shall cost more than one hundred thousand dollars (\$100,000.); provided, however, where the Authority commences to insure mortgage payments on an industrial project defined in 3.(b) at the same time as it commences to insure mortgage payments on an industrial project defined in 3.(a), it shall have the power to commence insuring mortgage payments on such industrial project defined in 3.(b) without limitation as to the minimum amount of one hundred thousand dollars (\$100,000.) provided for herein.
- 3.(d) An industrial project under the provisions of 3(a) and 3(b) may include a real estate improvement or machinery and equipment suitable for the abatement or control of industrial pollution to be used in connection with any buildings, real estate improvement, or new

machinery and equipment, provided, however, that the determinations under the provisions of 3(a) and 3(b) need not be made by the Authority.

4. "Industrial pollution" shall mean any gaseous, liquid or solid waste substance, or combination thereof, resulting from the operations of an industry referred to in 3(a) hereof, which pollute the land, water, or air of Rhode Island.
5. "Local development corporation" shall mean any corporation or foundation organized and operated primarily for the purposes of fostering, encouraging and assisting the physical location, settlement and resettlement of industrial and manufacturing enterprises within the state or promoting the industry of the state, no part of the net earnings of which insures to the benefit of any private shareholder or individual.
6. "Maturity date" shall mean the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.
7. "Mortgage" shall mean a first mortgage or security agreement on an industrial project creating and constituting a first lien of record, together with bonds, notes, evidences of indebtedness, or other credit instruments issued by a mortgagor to finance such project and secured thereby; provided, however, a "first mortgage" shall include a second or subsequent mortgage or security agreement on an industrial project if the holder of such second or subsequent mortgage or security agreement is also the holder of a prior mortgage or security agreement on such industrial project under which prior mortgage or security agreement the Authority is already insuring mortgage payments and (ii) no other person or legal entity holds an intervening mortgage, security interest or lien on such industrial project prior to such second or subsequent mortgage or security interest. Industrial projects described in subparagraphs (a), (b), and (d) of Sec. 42-34-6(3) may be financed and secured together if the requirements of Sec. 42-34-10 are met.
8. "Mortgagee" shall mean the original lender approved by the Authority under a mortgage, and its successors and assigns and may include all insurance companies, trust companies, banks, building and loan associations, credit unions, savings and loan associations, investment companies, savings banks, individuals, executors, administrators, guardians, conservators, trustees and other fiduciaries; including pension, retirement and profit-sharing funds; provided, however, that where there has been appointed a trustee under an indenture of trust or other similar document for the benefit of the holders of bonds or notes issued to finance an industrial project secured by a mortgage, "mortgagee" shall mean such trustee.
9. "Mortgagor" shall mean a local development corporation as defined herein.

10. "Mortgage payments" shall mean periodic payments by the mortgagor to the mortgagee required by the mortgage, and may include interest, installments of principal, taxes and assessments, land lease rentals, mortgage insurance premiums and hazard insurance premiums, or any of them as the Authority may prescribe.

42-34-7. POWERS. -- The Authority is authorized and empowered:

1. To adopt by-laws for the regulation of its affairs and the conduct of its business;
2. To adopt an official seal and alter the same at pleasure;
3. To maintain an office at such place or places within the state as it may designate;
4. To sue and be sued in its own name, plead and be impleaded; service of process in any action shall be made by service upon the manager of said Authority either in hand or by leaving a copy of the process at the office of the manager with some person having charge thereof;
5. To employ such assistants, agents and other employees as may be necessary or desirable for its purposes, all of whom shall be in the classified service of the state; to contract for and engage consultants; and to utilize the services of other governmental agencies;
6. To accept from a federal agency, loans or grants for use in carrying out its purposes, and to enter into agreements with such agency respecting any such loans or grants;
7. In connection with the insuring of payments of any mortgage, to request for its guidance a finding of the planning board of the municipality, or if there is no planning board, a finding of the municipal officers of the municipality, in which the industrial project is proposed to be located, or of the regional planning board of which such municipality is a member, as to the expediency and advisability of such project;
8. To enter into agreements with prospective mortgagees and mortgagors, for the purpose of planning, designing, constructing, acquiring, altering and financing industrial projects;
9. To acquire, purchase, manage and operate, and hold and dispose of real and personal property, to take assignments of rentals and leases, and make and enter into all contracts, leases, agreements and arrangements necessary or incidental to the performance of its duties;
10. To enter into agreements with a mortgagee as to the manner of pursuing remedies in the event of a default and the application of any proceeds derived from such remedies against the Authority's

obligations to insure incurred under 42-34-10, after determining that such agreements will, in the opinion of the Authority, further the purposes of this chapter or protect the mortgage insurance fund. Any such agreement shall not operate so as to make any insurance issued under 42-34-10 void or voidable.

11. When in the opinion of the Authority it is necessary or advisable, in order to further the purposes of this chapter or to safeguard the mortgage insurance fund, to purchase, acquire, take assignments of notes, mortgages and other forms of security and evidences of indebtedness, to purchase, acquire, attach, seize, accept or take title of any industrial project by conveyance or when an insured mortgage thereon is clearly in default, by foreclosure, and to sell, lease or rent an industrial project for a use specified in 42-34-6, or for any other use;
12. To exercise all of the powers which a private insurance company engaged in the business of insuring mortgages would have, to the extent that such powers are not inconsistent with the provisions or purposes of this chapter.
13. To report annually to the governor and the general assembly as to the activities of the Authority for the previous fiscal year;
14. To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter; provided, however, that in all matters concerning the internal administrative functions of the Authority the purchasing procedures of the state relating to office space, supplies, facilities, materials, equipment and professional services, shall be followed.

42-34-8. DEFAULT BY LOCAL DEVELOPMENT CORPORATIONS. -- When a local development corporation does not meet mortgage payments insured by the Authority by reason of vacancy of its industrial project, the Authority, for the purpose of maintaining income from industrial projects on which mortgage payments have been insured by the Authority and for the purpose of safeguarding the mortgage insurance fund, may grant the local development corporation permission to lease or rent the property to a tenant for a use other than that specified in subsection 3 of 42-34-6, such lease or rental to be subject to such conditions as the Authority may prescribe. The foregoing provisions shall be in addition to any other provisions contained in this chapter empowering the Authority to act in the event of a default.

42-34-9. MORTGAGE INSURANCE FUND: SUBROGATION. --

1. There is hereby created an industrial building mortgage insurance fund, hereinafter in this chapter referred to as the "fund" which shall be used by the Authority as a nonlapsing, revolving fund for carrying out the provisions of this chapter. To this fund shall be charged any and all expenses of the Authority, including mortgage payments required by loan defaults and to the fund shall be credited all receipts of the Authority, including mortgage insurance premiums and

proceeds from the sale, disposal, lease or rental of personal property which the Authority may receive under the provisions of this chapter.

2. Moneys in the fund not needed currently to meet the expenses and obligations of the Authority shall be deposited with the general treasurer to the credit of the fund, or may be invested in such manner as is provided for by statute.
3. The Authority shall become subrogated to the extent that mortgage payments have been paid by the Authority to the mortgagee of an insured mortgage notwithstanding that the Authority has not paid all of the mortgage payments under the mortgage, and the Authority shall have the right to bring a separate cause of action by way of subrogation with respect to each mortgage payment which it has paid to the mortgagee. All recoveries by way of subrogation shall be credited to the fund as provided in subsection 1.

42-34-10. INSURANCE OF MORTGAGES. -- The Authority is authorized, upon application of the proposed mortgagee, to insure mortgage payments required by a mortgage on any industrial project, upon such terms and conditions as the Authority may prescribe, provided the aggregate amount of the unpaid principal balance of all obligations of all mortgages so insured outstanding at any one time shall not exceed eighty million dollars (\$80,000,000.). To be eligible for insurance under the provisions of this chapter a mortgage shall:

1. Be one which is made to and held by a mortgagee approved by the Authority;
2. Involve a principal obligation, including initial service charges and appraisal, inspection and other fees approved by the Authority, not to exceed five million dollars (\$5,000,000.) for any one project and not to exceed ninety per cent (90%) of the cost of any project described in 42-34-6 (3) (a) and not to exceed eighty per cent (80%) of the cost of any project described in 42-34-6 (3) (b);
3. Have a maturity date satisfactory to the Authority but in no case later than twenty-five (25) years from the date of the mortgage for any project described in 42-34-6 (3) (a) and ten (10) years from the date of the mortgage for any project described in 42-34-6 (3) (b);
4. Contain complete amortization provisions satisfactory to the Authority requiring periodic payments, costs of local property taxes and assessments, land lease rentals, if any, and hazard insurance on the property and such mortgage insurance premiums as are required under 42-34-11, all as the Authority shall from time to time prescribe or approve;
5. Be in such form and contain such terms and provisions, with respect to property, insurance, repairs, alterations, payment of taxes and assessments, restrictions as to location of machinery and equipment, default reserves, delinquency charges, default remedies, anticipation of maturity, additional and secondary liens,

and other matters as the Authority may prescribe.

42-34-11. MORTGAGE INSURANCE PREMIUMS. -- The Authority is authorized to fix mortgage insurance premiums for the insurance of mortgage payments under the provisions of this chapter, such premiums to be computed as a percentage, which shall not exceed three per cent (3%) per annum, of the principal obligation of the mortgage in such manner in each case as the Authority shall determine on the basis of all pertinent available data. Such premiums shall be payable by the mortgagors or the mortgagees in such manner as shall be prescribed by the Authority. The amount of premium need not be uniform among the various loans insured.

42-34-12. AUTHORITY'S EXPENSES. -- The Authority may in its discretion expend out of the fund such moneys as may be necessary for any expenses of the Authority, including administrative, legal, actuarial and other services.

42-34-13. MORTGAGES ELIGIBLE FOR INVESTMENT. -- Mortgages insured by the Authority under this chapter and participations therein are hereby made legal investments for all public officers and bodies of this state and all municipalities and municipal subdivisions, all insurance companies and associations, and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all credit unions, all administrators, guardians, executors, trustees, conservators and other fiduciaries, pension, profit-sharing and retirement funds and all other persons whatsoever who are now or may hereafter be authorized to invest in obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

42-34-14. RECORD OF ACCOUNTS. -- The Authority shall keep proper records of accounts and shall make an annual report of its condition to the state banking commissioner.

42-34-15. ADDITIONS TO MORTGAGE INSURANCE FUND. -- If from time to time in the opinion of the Authority the addition of moneys to the mortgage insurance fund is required to meet obligations, the Authority shall in writing request the governor to provide sufficient moneys by a day specified for said purpose. The governor shall request the general assembly, if in session, to appropriate moneys, in the treasury, not otherwise appropriated, for said purpose. If the general assembly is not in session or will not be in session within sixty (60) days of the date specified in the request of the Authority, or, if the general assembly has not provided the moneys requested within thirty (30) days of said date, the governor shall direct the general treasurer to issue bonds in an amount at least equal to the amount requested by the Authority and as shall be necessary to carry out the purposes of this chapter in serial form in the name and behalf of the state to be signed by the general treasurer and counter-signed by the secretary of state under the seal of the state to be designated "the Rhode Island Industrial Building Authority loan." Said bonds shall be of the denomination of one thousand dollars (\$1,000.) or any multiple thereof, shall be in coupon or registered form, shall bear interest at such rate or rates of interest as may be fixed in accordance with the provisions of this section, payable semi-annually, and the principal thereof and interest thereon shall be payable in any coin or currency of the United States which

at the time of payment shall be legal tender for public and private debts. The date of maturity of said bonds shall be fixed by the general treasurer but shall not in any case be later than twenty-five (25) years, from the date of issue.

The bonds so issued shall be deemed a pledge of the faith and credit of the state and shall be exempt from taxation in this state. Whenever the governor shall approve the issuance of said bonds, he shall certify such approval to the secretary of state and such approval shall also be endorsed on each bond so approved with a facsimile of the signature of the governor.

Said bonds shall be sold from time to time at not less than par, at public auction, or in such other mode and at such times, in such amounts at such rate or rates of interest as the general treasurer, with the advice of the governor, shall deem for the best interests of the state; provided, however, that the general treasurer with the approval of the governor may from time to time sell any of said bonds to the sinking fund commission as provided by law instead of selling them at public auction or in some other mode as above provided; provided, further, however, that in the solicitation of bids, the general treasurer shall require all bidders to state the lowest interest rate, expressed in multiples of one tenth of one per cent (.1%), at which the bidders will purchase said bonds for not less than par.

42-34-15.1. AGREEMENT OF STATE. -- The state of Rhode Island does hereby pledge to and agree with the mortgagees holding mortgage insurance issued by the Authority under this chapter that the state of Rhode Island will not limit or alter the rights hereby vested in the Authority to fulfill the terms of any agreements made with such mortgagees relating to such mortgage insurance until such agreements have been performed in full.

42-34-16. INTEREST OF MEMBERS OF AUTHORITY. -- No member of the Authority shall participate in any decision on any contract of insurance in which he has any interests, direct or indirect, in any firm, partnership, corporation or association which would be the mortgagee, whose loan to a local development corporation is insured by the Authority, or if he has any interest, direct or indirect, in any firm, partnership, corporation or association which would rent, lease or otherwise occupy the premises constructed by the local development corporation where said corporation's mortgage is insured by the Authority, or if he is a director or officer or otherwise associated with the local development corporation whose mortgage is insured by the Authority.

42-34-17. SEVERABILITY OF PROVISIONS. -- The provisions of this chapter are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

42-34-18. APPROPRIATIONS. -- For the purpose of establishing the mortgage insurance fund and carrying out the intent of this chapter and the provisions thereof, the general assembly annually shall appropriate out of any money in the treasury not otherwise appropriated, such sums as it may deem necessary not to exceed the sum of one hundred thousand dollars (\$100,000.) each year. Any unexpended balance of any or all such appropriations shall be carried forward to succeeding fiscal years for the purposes aforesaid. The state controller is hereby authorized and directed to draw his orders upon the general treasurer for the payment of said sums or so much thereof as shall be required from time to time upon receipt by him of vouchers approved by the Authority.