



# Authority for Municipal Resilient Road Infrastructure Funding Strategies in Rhode Island

April 2020

*This guide is a product of the Marine Affairs Institute at Roger Williams University School of Law and the Rhode Island Sea Grant Legal Program. Jimmy Smith, Rhode Island Sea Grant Law Fellow, conducted research for this project under the guidance of Read Porter, Senior Staff Attorney. All errors and omissions are the responsibility of the Marine Affairs Institute. This study is provided only for informational and educational purposes and is not legal advice.*

Road and utility infrastructure present a thorny problem for municipalities in an era of climate change. Many roads and associated utilities are located in low-lying areas, where they are subject to erosion and nuisance or storm-related flooding.<sup>1</sup> Municipalities are under a duty to maintain this infrastructure,<sup>2</sup> but the expanding costs of maintenance and repair demand reconsideration of how to address this vulnerability and increase resiliency over the long term.

Rhode Island law may limit whether and how municipalities can use specific mechanisms to fund infrastructure improvements. This study provides insight into authorization for the use of specific funding strategies, building on prior work to establish liability related to coastal highway flooding<sup>3</sup> and to identify funding mechanisms that municipalities may be able to deploy to increase road system resiliency.<sup>4</sup> Specifically, this study clarifies municipal authority to use selected funding mechanisms under Rhode Island law, providing a strong basis for informed decision-making by cities and towns facing flooding of coastal highways. The funding strategies considered in this study include:

- Business Improvement Districts;
- Special Assessment Districts;
- Fire or water districts;
- Impact fees on building permits;
- Property tax abatement;
- Real estate conveyance or transfer taxes;
- Insurance and reinsurance incentives;
- Earmarks from other municipal income; and
- Bond issuance.

---

<sup>1</sup> OLIVIA THOMPSON, MARINE AFFAIRS INSTITUTE, MUNICIPAL OPTIONS TO ADDRESS NUISANCE FLOODING OF COASTAL HIGHWAYS IN RHODE ISLAND 1-2 (2019).

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *See generally id.*

<sup>4</sup> SARAH BRYAN, MECHANISMS FOR FUNDING INFRASTRUCTURE RESILIENCE IMPROVEMENTS (2018).



THE  
UNIVERSITY  
OF RHODE ISLAND

Rhode Island is a “home rule” state in which municipalities have relatively expansive powers of self government, but they must comply with otherwise-applicable state laws, including those governing taxation and spending. Article 13 of the Rhode Island Constitution “grant[s] and confirm[s] to the people of every city and town in this state the right of self government in all local matters.”<sup>5</sup> To implement this intention, the constitution authorizes each municipality “to adopt a charter, amend its charter, enact and amend local laws relating to its property, affairs and government not inconsistent with this Constitution and laws enacted by the general assembly in conformity with the powers reserved to the general assembly.”<sup>6</sup> However, the state General Assembly may “act in relation to the property, affairs and government of any city or town by general laws which shall apply alike to all cities and towns” or to particular towns under certain conditions.<sup>7</sup> In addition, the Assembly retains exclusive power over local taxation, such that municipalities must comply with state legislation in levying taxes and borrowing money.<sup>8</sup> The Assembly has provided a range of legislation governing how municipalities can conduct their business.

This study assesses each of the funding mechanisms listed above to determine whether Rhode Island municipalities are authorized to use them as a function of their home rule authority or state legislation, as well as relevant restrictions on their use for municipal resilient infrastructure projects.

## 1 District Authorities

Municipalities may wish to create taxing districts within their boundaries to serve particular purposes. Districts can be used for a variety of purposes, ranging from economic development to sewage management, and they can be administered by variety of quasi-governmental authorities with specific powers and duties. This section considers authority for two types of districts in Rhode Island: Business Improvement Districts and Special Assessment Districts.

District authority would allow municipalities to levy taxes or charges on properties within defined boundaries. This taxing authority expands on general taxing authority available by legislation to all towns in the state. Towns and cities are authorized to tax real or personal property in order to pay municipal debts or expenses.<sup>9</sup> These taxes must be voted by municipal electors pursuant to state law and must comply with other restrictions, such as apportionment on the basis of assessed valuation.<sup>10</sup> Taxes can only be used “for the ordinary expenses and charges of the city or town, for the payment of interest and indebtedness, including sinking funds, and for other purposes authorized by law.”<sup>11</sup> These general authorities do not authorize taxation of only a subset of properties in a municipality

---

<sup>5</sup> R.I. CONST. art. XIII, § 1.

<sup>6</sup> R.I. CONST. Art. XIII, § 2.

<sup>7</sup> *Id.* art. XIII, § 4.

<sup>8</sup> *Id.* at XIII, § 5; *Warwick Mall Trust v. State*, 684 A.2d 252 (R.I. 1996); *Cabana v. Littler*, 612 A.2d 678, 682 (R.I. 1992) (“A municipality’s ability to tax is limited to the extent that such power is delegated by the State Legislature.”).

<sup>9</sup> R.I. GEN. LAWS § 45-2-2.

<sup>10</sup> R.I. GEN. LAWS § 44-5-1.

<sup>11</sup> *Id.* § 44-5-4.

or taxation for specific purposes. As a result, additional authorization is needed for municipalities to create special districts or authorize them to tax properties within their boundaries.

### 1.1 Business Improvement Districts

Business Improvement Districts (BIDs) are districts that are specifically oriented towards the needs of commercial and retail areas. BIDs operate by providing “supplemental municipal services that are funded through the assessment of taxes on the properties located within the district.”<sup>12</sup> Rhode Island law explicitly authorizes these districts through the District Management Authorities Act.<sup>13</sup>

The Act authorizes any municipality to create management districts and subdistricts.<sup>14</sup> These management districts may be established by ordinance or resolution “upon the written petition of persons owning real property located within the proposed district.”<sup>15</sup> The petition must be submitted by persons who own at least 60% of the taxable property value within the district or subdistrict, and a majority of the land in the district must be used for commercial and retail purposes.<sup>16</sup> Once approved, a quasi-governmental management authority is created to manage the BID.<sup>17</sup> Rhode Island law thus provides a clear authority for establishment of BIDs, but limits where they can be created and requires strong support from property owners within the district.

The District Management Authorities Act authorizes BID authorities to conduct roadway projects within the district and to provide for their funding. The purposes of the BID are set out in statute and specifically authorize the authority to “install, repair and maintain public streets and sidewalks” unless otherwise limited by the petition.<sup>18</sup> Authorities have the power to contract, borrow, and lend money and to “to apportion [their] annual operating expenses” among owners of taxable property within the district through a special tax assessment.<sup>19</sup> Assessments can be apportioned in a variety of ways, including based on benefit from BID activities, provided that the apportionment method must be spelled out in the petition creating the district.<sup>20</sup> Thus, it appears that BIDs could be established to alter or maintain roadways threatened by coastal flooding and can fund those activities through taxation of specific properties, borrowing, or a combination of methods.

### 1.2 Special Assessment Districts

Special Assessment Districts (SADs) allow cities and towns to authorize assessments of property owners within a particular area to accomplish purposes beneficial to affected property owners. While similar to BIDs, the more general SAD authority would apply to areas not primarily used for commercial or industrial uses, which includes much of the Rhode Island coastline. As described in

---

<sup>12</sup> JON M. RESTIVO, A PRACTICAL GUIDE TO LAND USE LAW IN RHODE ISLAND § 7.3.

<sup>13</sup> R.I. GEN. LAWS §§ 45-59-1 – 45-59-27.

<sup>14</sup> *Id.* § 45-59-4.

<sup>15</sup> *Id.* § 45-59-4.

<sup>16</sup> *Id.* § 45-59-7.

<sup>17</sup> *Id.* §§ 45-59-7, 45-59-8.

<sup>18</sup> *Id.* § 45-59-9.

<sup>19</sup> *Id.* § 45-59-10, 45-59-15.

<sup>20</sup> *Id.* § 45-59-5(a)(7).

this section, Rhode Island law does not contain a general authorization for the creation of such districts.

Rhode Island law only authorizes municipalities to create SADs for specific purposes. For example, authorizes the creation of “special development districts” to develop areas affected by railroad relocation projects.<sup>21</sup> Some such authorizations are specific not only to a single municipality but also to a particular use, such as authorization for special assessments to defray the costs of expanding the town’s stormwater control systems, with assessments levied on abutting landowners on the basis of street frontage.<sup>22</sup> While this authority is limited to properties affected by the improvement, it does not require establishment of a district or prior approval of property owners within those boundaries. State law provides for special assessments for road developments under limited conditions. For example, Burrillville is authorized to make special assessments for the purpose of accepting roads “into the town’s highway system,” to be paid by the properties benefited.<sup>23</sup> Other municipalities are authorized to tax property owners who receive benefits from establishment of a highway or a change in grade. Specifically, certain municipalities can assess benefited property owners for up to 75% of the costs of taking property for roadway improvements,<sup>24</sup> and property owners are responsible for paying the costs of curbing for sidewalks following a change in the grade of a street.<sup>25</sup> While they may be useful in a particular context, these authorities do not authorize municipalities to establish taxing districts for purposes that they may find beneficial. Instead, legislative authorization is needed for any municipality to establish such a district or make special assessments against properties that may benefit from roadway resiliency improvements.

### 1.3 Fire or Water Districts

Rhode Island has established a number of fire and water districts within the state, which are considered municipal corporations similar to other forms of local government.<sup>26</sup> Municipalities are not empowered to independently establish fire districts or to delegate their municipal powers to these entities. Instead, these entities are created and governed pursuant to charters, which are set out by public laws enacted by the General Assembly.<sup>27</sup> These charters, and other provisions of state law, authorize these districts to tax property owners in the district, sell bonds, and otherwise conduct their financial affairs.<sup>28</sup> They are also directed to conduct a range of activities, which may include fire protection, water service, and—in at least one case—managing road, lighting, or recreational

---

<sup>21</sup> R.I. GEN. LAWS § 45-24.4-4.

<sup>22</sup> *Id.* § 45-63-3.

<sup>23</sup> *Id.* § 24-2-8.4.

<sup>24</sup> *Id.* §§ 24-3-3 (towns), 24-3-4 (cities). This authority applies “only to the cities of Newport, Pawtucket, Woonsocket, Central Falls, Cranston, Warwick, and the towns of Lincoln, Johnston, Warren, Bristol, Middletown, East Greenwich, East Providence, New Shoreham, Little Compton, West Warwick, Cumberland, Barrington, Jamestown, North Providence, Westerly, South Kingstown, Narragansett, and Gloucester.” *Id.* § 24-3-17.

<sup>25</sup> *Id.* § 24-3-25.

<sup>26</sup> See generally R.I. DIV. MUNICIPAL FINANCE, DEP’T OF REVENUE, REPORT ON THE RHODE ISLAND FIRE DISTRICTS BASED ON ANNUAL FIRE DISTRICT SURVEY 2013 (2014) (summarizing management of all fire districts in state).

<sup>27</sup> See, e.g., 1980 R.I. Pub. Laws ch. 52 (“An Act Incorporating the Westerly Fire District”).

<sup>28</sup> R.I. GEN. LAWS §§ 44-5-69 (district financial management); 44-9-3 (liens of districts); 44-5.2-1 *et seq.* (rules applicable to fire districts in the town of Coventry).

infrastructure.<sup>29</sup> There is also at least one district in the state—the Winnisimet Farm Road District in Tiverton—established specifically for roadways.<sup>30</sup> As a result, existing districts may be empowered to address roadway and infrastructure resilience in some cases, but establishment of new fire, water, or road districts to address such issues in particular would require action by the state legislature.

## 2 Impact Fees on Building Permits

New development may increase strain on municipal infrastructure, such as sewers and roadways, that can be offset by impact fees. Impact fees allow “local governments to require that those who benefit from new growth and development pay a proportionate fair share of the cost of new and/or upgraded public facilities needed to serve that new growth and development.”<sup>31</sup> The Rhode Island Development Impact Fee Act authorizes municipalities to “assess, impose, levy and collect” impact fees on new developments.<sup>32</sup> However, municipalities must comply with legal standards in order to use this mechanism.

- Impact fees can only be imposed on new developments. Specifically, they must be “assessed upon the issuance of a building permit or other appropriate permission to proceed with development.”<sup>33</sup> They cannot, however, be assessed for building permits for existing structures except for work that will increase the number of dwelling units or “any other measurable unit for which an impact fee is collected.”<sup>34</sup>
- Before adopting an impact fee, the government must “conduct a needs assessment for the type of public facility or public facilities for which impact fees are to be levied.”<sup>35</sup> The needs assessment must contain specific information, including level of service standards and differentiation of existing and future needs, and it must be conducted every five years.<sup>36</sup>
- The fee amount charged to new development must be based on actual or expected costs of improvements set out in the needs assessment, must be reasonably related to the development’s share of cost of infrastructure improvements, and cannot be disproportionate.<sup>37</sup>
- Impact fees must be used for a public facility “reasonably related” to the development. Once collected, the fees must be placed in a “special proprietary fund” and must be “expended or encumbered for the construction of public facilities’ capital improvements” within 8 years.<sup>38</sup> Public facilities are defined to include “roads, streets, and bridges” and related components

---

<sup>29</sup> R.I. DIV. MUNICIPAL FINANCE, DEP’T OF REVENUE, REPORT ON THE RHODE ISLAND FIRE DISTRICTS BASED ON ANNUAL FIRE DISTRICT SURVEY 2013 4, 9 (2014) (noting that, uniquely, “Bonnet Shores fire district primarily provides recreational and road services to the Narragansett community of Bonnet Shores.”).

<sup>30</sup> R.I. GEN. LAWS § 45-57-1.

<sup>31</sup> R.I. GEN. LAWS § 45-22.4-2.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* § 45-22.4-5.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* § 45-22.4-4.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* § 45-22.4-5.

of the road system.<sup>39</sup> Fees can be charged to “recoup costs of excess capacity in existing capital facilities” provided that the need for the excess capacity was documented and demonstrated in a “preconstruction assessment.”<sup>40</sup>

Limitations on the use of impact fees mean that the use of impact fees to offset costs of coastal roadway modifications may provide substantial funding only in certain circumstances. For example, a development that creates coastal residences where none previously existed could require a new or improved vulnerable roadway, which could result in substantial impact fees. Alternatively, infill development in a densely settled area subject to nuisance highway flooding may impose only incremental added costs on the municipality. Thus, the extent to which impact fees are effective funding mechanisms for coastal highway infrastructure modification is likely to be highly contextual.

### 3 Property Tax Abatement

Property tax abatement programs allow municipalities to limit or eliminate the property taxes that are payable on particular parcels. These programs can enable cities and towns to increase support for infrastructure resiliency projects by agreeing not to tax properties based on the increased property value that result from those projects.

Rhode Island law authorizes municipalities to exempt or stabilize taxes on particular properties in certain instances. This authority allows cities and towns to exempt all or part of a tax assessment on any “real and personal property which has undergone environmental remediation, is historically preserved, or is used for affordable housing, manufacturing, commercial, or residential purposes.”<sup>41</sup> Thus, a wide range of properties qualify for abatement. However, to apply abatement to a property, the municipality must first determine that the abatement will increase the willingness of a firm or residents to locate in the area, yield an increase in jobs or expanded operations, improve “the physical plant of the city or town” with long-term economic benefits, or make land developable.<sup>42</sup> Coastal highway modifications may be improvements to physical plant that yields long-term benefits in the form of reduced maintenance costs or other avoided costs. For properties that qualify, tax abatements can last for up to 20 years.<sup>43</sup> In practice, municipalities must establish a tax stabilization ordinance before applying it to specific properties.

Rhode Island also authorizes a second form of cap on property taxes known as Tax Increment Financing (TIF). The Municipal Tax Increment Financing Act<sup>44</sup> originally was intended to support development of affordable housing and employment opportunity.<sup>45</sup> However, a recent amendment broadens the ability of municipalities to use this tool for financing infrastructure in other contexts.<sup>46</sup>

---

<sup>39</sup> *Id.* § 45-22.4-3.

<sup>40</sup> *Id.* § 45-22.4-5.

<sup>41</sup> R.I. GEN. LAWS § 44-3-9.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> R.I. GEN. LAWS §§ 45-33.2-1 – 45-33.2-29.

<sup>45</sup> *Id.* § 5-33.2-2.

<sup>46</sup> *Id.* § 45-33.2-22.

This amendment allows a municipality to establish a TIF district to be developed under a master plan.<sup>47</sup> It may acquire and dispose of property, including roads and other public facilities, issue bonds, and enter into agreements with property owners to fix the real estate assessments for up to 25 years, conditioned on future improvements to the property.<sup>48</sup> However, to establish a TIF district the town or city council is required to comply with certain conditions, including finding it in the economic interests of the town; submitting it to the planning commission for review for consistency with the comprehensive plan; holding a public hearing; and determining eligibility of the district.<sup>49</sup> Specifically, the council must find that the district meets one of the following three conditions:

- Is a “substandard, insanitary, deteriorated, deteriorating, or blighted area;”
- Needs “rehabilitation, redevelopment, or conservation work;” or
- Is “suitable for industrial, commercial, residential, mixed-use or retail uses, downtown development, or transit-oriented development.”<sup>50</sup>

Where one of these broad conditions may be met, the town can use TIF authority to abate property taxes in exchange for improvements that will enhance the value of the district in the future.

## 4 Real Estate Conveyance or Transfer Taxes

Municipalities may seek to fund infrastructure resilience projects in part through new taxes levied on the transfer or conveyance of real estate. As for other taxes and fees, these taxes are not authorized by the general legislative authority for municipalities to levy property taxes.<sup>51</sup> As a result, additional legislative authority is needed for municipalities to levy conveyance taxes.

Rhode Island has established a state real estate conveyance tax. It applies to “each deed, instrument, or writing by which any lands, tenements, or other realty sold is granted, assigned, transferred, or conveyed to, or vested in, the purchaser or purchasers” and to certain other real estate transactions, unless exempted.<sup>52</sup> The tax requires specific portions of conveyance taxes to be allocated to enumerated uses, such as housing resources, with the remaining portions to be retained by the relevant municipality.<sup>53</sup> The law does not place any restrictions on municipal uses of this retained portion of conveyance taxes, nor does it provide authority for municipalities to increase the property conveyance tax rates. As a result, municipalities can use existing tax receipts for infrastructure resilience projects through their appropriations process (see section 6), but cannot establish new conveyance taxes for this specific purpose.

While changes in the taxation of real estate conveyance would require legislative action, municipalities do have the authority to tax property for non-utilization. The non-utilization tax

---

<sup>47</sup> *Id.* § 45-33.2-23.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* § 45-33.2-25.

<sup>50</sup> *Id.*

<sup>51</sup> R.I. GEN. LAWS § 44-5-1.

<sup>52</sup> *Id.* §§ 44-25-1, 44-25-2 (exemptions).

<sup>53</sup> *Id.* §§ 44-25-1.

recognizes that vacant and abandoned properties sometimes result in increased public services, such as police presence.<sup>54</sup> Municipalities therefore are authorized to impose additional property taxes on this class of property.<sup>55</sup> Certain cities and towns are explicitly authorized to use this mechanism, but the taxing authority also applies to any city and town in the state.<sup>56</sup> To apply this authority, a municipality must enact an implementing ordinance meeting conditions set out in the statute,<sup>57</sup> and the tax rate is established by statute.<sup>58</sup> However, the law does not require that taxes collected for non-utilization be used for specific purposes. As a result, municipalities could designate collections for use in roadway resilience projects through provisions in the relevant enabling ordinance.

## 5 Insurance and Reinsurance Incentives

The cost of insuring municipal infrastructure subject to sea level rise and erosion may be substantial. By taking proactive steps to reduce the risk of damage from these sources, municipalities may be able to reduce their insurance and reinsurance<sup>59</sup> costs.

State law does not appear to require municipalities to carry minimum amounts of insurance. However, they may be required to carry adequate insurance as security for bonds they have issued,<sup>60</sup> and they are likely to carry insurance as an effective governance practice. Municipalities may provide for this coverage by establishing a self-insurance fund to cover otherwise-uninsured assets and liabilities, provided that the fund does not exceed 5% of the assessed value of property in the town and satisfies other management requirements.<sup>61</sup> Alternatively, towns may purchase insurance from private entities independently or enter into an agreement with other municipalities and eligible entities (e.g., fire districts) to pool risk through an interlocal agreement.<sup>62</sup> The Rhode Island Interlocal Risk Management Trust is an example of the latter approach.<sup>63</sup> State law explicitly allows an interlocal trust to “have as [a] purpose[] reducing the risk of its members.” Thus, a trust agreement can provide for and implement programs that reduce the risk exposure of its members—a practice already conducted by the Rhode Island Interlocal Risk Management Trust.<sup>64</sup> Given the lack of authority requiring specific levels of insurance coverage, and the authorization for interlocal insurers to work to reduce their members’ risks, Rhode Island law does not appear to hinder the ability of municipalities to invest in activities that reduce risk exposure.

---

<sup>54</sup> *Id.* § 44-5.1-1.

<sup>55</sup> *Id.* § 44-5.1-3.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 44-5.1-4.

<sup>59</sup> See R.I. GEN. LAWS § 27-25-13 (authorizing insurers to reinsure a portion of their risk with another licensed insurer).

<sup>60</sup> *Id.* § 45-12-30.

<sup>61</sup> *Id.* §§ 41-41-1 – 41-41-8.

<sup>62</sup> *Id.* § 45-5-20.1

<sup>63</sup> See R.I. INTERLOCAL RISK MANAGEMENT TRUST, <https://www.ritrust.com/> (last visited Mar. 2, 2020) (explaining insurance and risk management programs).

<sup>64</sup> *Risk Management*, R.I. INTERLOCAL RISK MANAGEMENT TRUST, <https://www.ritrust.com/risk-management-overview/> (last visited Mar. 2, 2020).



## 6 Earmarks from Municipal Income

Earmarks are a form of funding in which a municipality allocates capital to a particular project through its annual appropriation process.<sup>65</sup> Rhode Island law governs how municipalities can appropriate money for projects.

Municipalities are authorized to appropriate funds through a “legal meeting” under state legislation. Specifically, towns or cities may “grant and vote sums of money that they judge necessary” for a variety of purposes set out in statute.<sup>66</sup> These purposes include several specific purposes related to infrastructure: (i) “[f]or the laying out, making, repairing, and amending of highways; and (ii) [f]or the building, repairing, and amending of bridges.”<sup>67</sup> These also include general authorization of appropriations for improvement of unenumerated town property and “all necessary charges and expenses” arising in the municipality.<sup>68</sup> This legislation thus provides broad authority for municipal spending on purposes related to infrastructure resiliency as part of the normal appropriation process. Specific municipalities have additional appropriation authority for specific purposes.<sup>69</sup>

Municipalities may have independent authority to expend funds through means other than the appropriation process described above. Municipal charters authorized by state law may explicitly or implicitly authorize municipalities to expend funds for certain purposes. For example, in *Collier v. Cuculo*, the state Supreme Court upheld purchase of real estate by North Providence based on language in its charter authorizing the town to regulate and control the handling of garbage and protect public health.<sup>70</sup> The court found that the state legislature intended this language to authorize the town to purchase land for a dump. Similar language authorizing municipalities to protect public safety might authorize earmarks or other spending to reduce flood risks on roadways and otherwise to ensure that first responders can reach all areas under municipal jurisdiction.

## 7 Bond Issuance

Municipalities may need to borrow money from time to time for a variety of purposes, which could include infrastructure improvements. Rhode Island law requires municipalities to maintain a balanced budget,<sup>71</sup> which may require borrowing to avoid running a deficit in years where receipts are less than obligations. State law authorizes municipal indebtedness secured on receipts from taxes on “all property,”<sup>72</sup> and municipalities are authorized to issue bonds to implement their borrowing

---

<sup>65</sup> See [Memorandum from Brian R. Bezio](#), Chief Financial Officer, Fed. Highway Admin., to Assoc. Administrators, Division Administrators and Division Directors (Apr. 25, 2019) (“An earmark is defined as funding in a provision of law or report language directing a specific amount of discretionary budget authority, contract authority, or other spending authority for a project or other expenditure with or to an entity, or targeted to a specific State, locality, or congressional district.”).

<sup>66</sup> R.I. GEN. LAWS § 45-2-3.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* ch. 45-2.

<sup>70</sup> 199 A.2d 725 (R.I. 1964).

<sup>71</sup> R.I. GEN. LAWS § 44-35-10.

<sup>72</sup> *Id.* § 45-12-1.

authority.<sup>73</sup> Approval by referendum may be required before a municipality can accept indebtedness.<sup>74</sup> However, the state has imposed certain limitations on municipal borrowing.

The most important limitation on municipal bonding authority is the statutory cap on borrowing. The extent of borrowing is limited to 3% of the taxable value of property in the municipality, absent special approval from the state.<sup>75</sup> Certain borrowing – in anticipation of taxes, where taxes are delayed or refunded, in anticipation of grants, and in anticipation of water and sewer revenues – is authorized and excluded from the 3% cap.<sup>76</sup> State law includes specific provisions for road and bridge and other infrastructure borrowing; however, these provisions are limited to borrowing during 2014-2016.<sup>77</sup> As a result, borrowing for roadway resilience would be subject to the general limitations on and rules for indebtedness.

Municipalities can obtain approval to exceed the 3% cap via special legislation or ministerial approval. Legislative authorization requires a statement from the municipality explaining why the borrowing is needed.<sup>78</sup> The state director of revenue can also authorize excess borrowing via a determination that “the sum appropriated by any city or town or the funds available are insufficient to pay the necessary expenses of the city or town.”<sup>79</sup> The director can request information prior to making this determination, such as information on the financial condition of the town. The Auditor General can also approve indebtedness that meets certain conditions, including an “A” bond rating in the relevant municipality, use of the borrowing for a capital asset, and approval for the borrowing via referendum.<sup>80</sup> Where indebtedness beyond the 3% cap is required for a resilience infrastructure project, a municipality would be required to use one of these methods to obtain authorization for excess borrowing.

Finally, districts within municipalities may have independent bonding authority provided by statute. For example, the West Greenwich Water District “is authorized and empowered to issue bonds and notes in anticipation of bonds” to carry out its authorized activities.<sup>81</sup> Thus, just as the authorization for bonding may vary from town to town, other entities within a municipality may have the ability to issue bonds to cover roadway and infrastructure resilience projects.

## 8 Conclusion

Municipalities facing climate-related hazards to their road infrastructure face a difficult challenge. They are legally required to maintain roads in a safe and passable manner, but the costs of maintaining vulnerable roads can be substantial and increasing. Towns and cities thus have

---

<sup>73</sup> *Id.* § 45-12-5.

<sup>74</sup> *Id.* § 45-12-20.

<sup>75</sup> *Id.* § 45-12-2.

<sup>76</sup> *Id.* §§ 45-12-4.1 – 4.5.

<sup>77</sup> *Id.* § 45-12-33.

<sup>78</sup> *Id.* §§ 45-12-3, 45-12-6 (special legislation in addition to, not a replacement of, general borrowing authority).

<sup>79</sup> *Id.* § 45-12-11.

<sup>80</sup> *Id.* § 45-12-2.1.

<sup>81</sup> R.I. GEN. LAWS § 45-48.1-10.

incentives to identify sources of funding to support capital investments that will increase roadway resilience. This study evaluated the legality of seven types of funding options, including authority to establish BIDs, other special assessment districts, and fire districts; use of impact fees on building permits; property tax abatement provisions; real estate conveyance taxes; insurance and reinsurance incentives; earmarks from municipal budgets; and issuance of bonds. Rhode Island municipalities are authorized to use some of these tools, such as bonding and earmarks. However, they are not authorized to use other tools, such as special assessment districts, and state law limits the use of still others, such as conveyance taxes and impact fees, such that municipalities will be able to use them for resilience projects only in limited circumstances. Careful consideration of which funding strategies are available in particular situations therefore may be needed to effectively plan and fund roadway resilience projects.