

2016 -- S 3037

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - ENERGY FACILITY SITING
ACT

Introduced By: Senators P Fogarty, Nesselbush, and Kettle

Date Introduced: May 24, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-98-5 and 42-98-11 of the General Laws in Chapter 42-98
2 entitled "Energy Facility Siting Act" are hereby amended to read as follows:
3 **42-98-5. Board established.** -- (a) There is established the siting board which shall be a
4 part of state government. The siting board shall consist of ~~three (3)~~ nine (9) members, as follows:
5 the chairperson of the public utilities commission, who shall serve as chairperson of the siting
6 board; the director of the department of environmental management; ~~and~~ the associate director of
7 administration for planning; the chairperson of the commerce corporation; the general manager of
8 the water resources board; the director of the of the Rhode Island League of Cities and Towns;
9 and three (3) public members to be appointed by the governor for a term coterminous with that of
10 the governor, one of whom shall be experienced in environmental issues, one of whom shall be
11 experienced in labor issues and one of whom shall be experienced in energy issues. The board
12 shall not include as a public member any person who receives or who has received during the past
13 two (2) years a significant portion of their income directly or indirectly from the developer of an
14 energy facility or an electric, gas or oil company. Any member of the board ~~who recuses him or~~
15 ~~herself~~ servng in their capacity as an employee of a state or quasi-state agency who recuses
16 themselves shall designate ~~his or her~~ their own successor from ~~his or her~~ their respective agency.
17 Any public member of the board who resigns or is otherwise unable to fulfill their obligations
18 shall have their successor appointed in a like manner by the governor for the remainder of their

1 [term.](#)

2 (b) Each member of the board shall take an oath to administer the duties of office
3 faithfully and impartially and that oath shall be filed in the office of the secretary of state.

4 (c) The members of the board shall serve without compensation, but shall be reimbursed
5 for their actual expenses necessarily incurred in the performance of their duties. The board may
6 engage any consultants or expert witnesses that it deems necessary to implement its statutory
7 responsibilities; provided, however, that to the maximum extent possible, board staff be drawn
8 from existing state agencies. The board shall select a coordinator to be responsible for the
9 publication and distribution of all official minutes, reports, and documents and to further serve as
10 director of the board staff, which shall be located at the division of public utilities and common
11 carriers. The coordinator, under the direction of the chairperson, shall coordinate and expedite the
12 work of the various agencies to ensure that decisions are made within the time frame established
13 by this chapter.

14 (d) A quorum shall consist of a majority of the board. A majority vote of the board shall
15 be required for all actions, including licensing decisions; provided, however, one member of the
16 board may conduct any hearings the board is authorized to conduct pursuant to this chapter.

17 (e) The board shall maintain and grant free access to records and reports in its files to
18 members of the public during normal working hours and shall permit copies of those records and
19 reports to be made by interested members of the public at their expense; provided, however, that
20 the board shall not permit disclosure, other than to another government agency for the sole
21 purpose of rendering an advisory opinion, of any information obtained by or submitted to the
22 board pursuant to the provisions of this chapter, upon a showing, satisfactory to the board, that
23 the information is entitled to protection as trade secrets or as privileged, confidential, or
24 proprietary information. No other governmental agency shall disclose any trade secrets or
25 privileged, confidential, or proprietary information.

26 **42-98-11. Final hearing -- Standards -- Decisions.** (a) Within forty-five (45) days
27 after the final date for submission of advisory opinions pursuant to § 42-98-10, the board shall
28 convene the final hearing on the application. The purpose of this hearing shall not be to rehear the
29 evidence which was presented previously in hearings before agencies designated under § 42-98-9,
30 but rather to provide the applicant, intervenors, the public, and all other parties in the proceeding,
31 the opportunity to address in a single forum, and from a consolidated, statewide prospective, the
32 issues reviewed, and the recommendations made in the proceedings before the agencies
33 designated under § 42-98-9. The board at this hearing may, at its discretion, allow the
34 presentation of new evidence by any party as to the issues considered by the agencies designated

1 under § 42-98-9. The board may limit the presentation of repetitive or cumulative evidence. The
2 hearing shall proceed on not less than thirty (30) days' notice to the parties and the public, shall be
3 concluded not more than sixty (60) days following its initiation, and shall be conducted
4 expeditiously.

5 (b) The board shall issue a decision granting a license only upon finding that the
6 applicant has shown that:

7 (1) Construction of the proposed facility is necessary to meet the needs of the state
8 and/or region for energy of the type to be produced by the proposed facility.

9 (2) The proposed facility is cost-justified, and can be expected to produce energy at the
10 lowest reasonable cost to the consumer consistent with the objective of ensuring that the
11 construction and operation of the proposed facility will be accomplished in compliance with all of
12 the requirements of the laws, rules, regulations, and ordinances, under which, absent this chapter,
13 a permit, license, variance, or assent would be required, or that consideration of the public health,
14 safety, welfare, security and need for the proposed facility justifies a waiver of some part of the
15 requirements when compliance cannot be assured.

16 (3) The proposed facility will not cause unacceptable harm to the environment and will
17 enhance the socio-economic fabric of the state.

18 [\(c\) Prior to the making of a decision, the board shall take into consideration any town or](#)
19 [city council resolution regarding the application.](#)

20 ~~(e)~~(d) Within sixty (60) days of the conclusion of the final hearing the board shall issue
21 its final decision on the application. A decision in favor of the application shall constitute a
22 granting of all permits, licenses, variances, or assents, which under any law, rule, regulation, or
23 ordinance of the state or of a political subdivision thereof which would, absent this chapter, be
24 required for the proposed facility. The decision may be issued requiring any modification or
25 alteration of the proposed facility, and may be issued on any condition the board deems warranted
26 by the record, and may be issued conditional upon the applicant's receipt of permits required by
27 federal law. The board's decision shall explicitly address each of the advisory opinions received
28 from agencies, and the board's reasons for accepting, rejecting, or modifying, in whole or in part,
29 any of those advisory opinions. The board shall, within ten (10) days of granting a license, with or
30 without conditions, deliver the decision to the speaker of the Rhode Island house of
31 representatives, and the president of the Rhode Island senate.

32 SECTION 2. Section 44-3-30 of the General Laws in Chapter 44-3 entitled "Property
33 Subject to Taxation" is hereby amended to read as follows:

34 **44-3-30. Burrillville -- Property taxation of electricity generating facilities located in**

1 **the town.** – (a) Notwithstanding any other provisions of the general laws to the contrary, real and
2 personal property of any facility for the generation of electricity located in the town of Burrillville
3 is taxable by the town. ~~the~~ The town council of the town of Burrillville is authorized to determine,
4 by ordinance or resolution, subject to the approval of the majority of the town electors by
5 referendum, ~~an~~ the amount of taxes to be paid each year on account of real or personal property
6 used in connection with any facility for the generation of electricity located in the town,
7 notwithstanding the valuation of the property or the rate of tax. The determination is for a period
8 not to exceed twenty-five (25) years. The town council of the town of Burrillville is authorized to
9 extend the determination by ordinance or resolution. The extension shall be for a period not to
10 exceed an additional twenty (20) years.

11 (b) The tax ordinance or tax resolution of the town council shall be subject to the
12 approval or denial of the majority of the town electors by referendum.

13 (1) The referendum shall list in plain terms the amount and the period of time that those
14 taxes proposed by the town council shall be paid.

15 (2) The referendum shall be scheduled for the next general election.

16 (3) Upon certification by the town board of canvassers, the results of the referendum shall
17 be binding on the town. The rejection of any proposed ordinance or resolution, as provided for in
18 this section, shall not prevent a further resolution or ordinance, subject to a further referendum.

19 (c) Any electric generating facility that fails to negotiate a tax treaty that is approved by
20 referendum shall be taxed to the full extent of this chapter.

21 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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1 This act would increase the membership of the energy facility siting board from three (3)
2 to nine (9) members, and would require approval by the electors in Burrillville of any tax
3 agreement established by the town council with a power plant located in the town.

4 This act would take effect upon passage.

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