2016 -- S 3037 SUBSTITUTE A

STATE OF RHODE ISLAND
IN GENERAL ASSEMBLY
JANUARY SESSION, A.D. 2016

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:

SECTION 1. Sections 42-98-5 and 42-98-11 of the General Laws in Chapter 42-98 entitled "Energy Facility Siting Act" are hereby amended to read as follows:

42-98-5, Board established. -- (a) There is established the siting board which shall be a part of state government. The siting board shall consist of three (3) seven (7) members, as follows: the chairperson of the public utilities commission, who shall serve as chairperson of the siting board; the director of the department of environmental management; and the associate director of administration for planning; the general manager of the water resources board; and three (3) public members to be appointed by the governor for a term coterminous with that of the governor, one of whom shall be experienced in environmental issues, one of whom shall be experienced in labor issues and one of whom shall be experienced in energy issues. The board shall not include as a public member any person who receives or who has received during the past two (2) years a significant portion of their income directly or indirectly from the developer of an energy facility or an electric, gas or oil company. Any member of the board who recuses him or herself serving in their capacity as an employee of a state or quasi-state agency who recuses themself shall designate his or her own successor from his or her respective agency. Any public member of the board who resigns or is otherwise unable to fulfill their obligations shall have their successor appointed in a like manner by the governor for the remainder of their term.
(b) Each member of the board shall take an oath to administer the duties of office faithfully and impartially and that oath shall be filed in the office of the secretary of state.

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

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

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

42-98-11. Final hearing -- Standards -- Decisions. -- (a) Within forty-five (45) days after the final date for submission of advisory opinions pursuant to § 42-98-10, the board shall convene the final hearing on the application. The purpose of this hearing shall not be to reheat the evidence which was presented previously in hearings before agencies designated under § 42-98-9, but rather to provide the applicant, intervenors, the public, and all other parties in the proceeding, the opportunity to address in a single forum, and from a consolidated, statewide prospective, the issues reviewed, and the recommendations made in the proceedings before the agencies designated under § 42-98-9. The board at this hearing may, at its discretion, allow the presentation of new evidence by any party as to the issues considered by the agencies designated under § 42-98-9. The board may limit the presentation of repetitive or cumulative evidence. The
hearing shall proceed on not less than thirty (30) days' notice to the parties and the public, shall be
concluded not more than sixty (60) days following its initiation, and shall be conducted
expeditiously.

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

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

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

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

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

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

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

44-3-30. Burrillville -- Property taxation of electricity generating facilities located in
the town. -- (a) Notwithstanding any other provisions of the general laws to the contrary, real and
personal property of any facility for the generation of electricity located in the town of Burrillville is taxable by the town. The town council of the town of Burrillville is authorized to determine, by ordinance or resolution, subject to the approval of the majority of the town electors by referendum, on the amount of taxes to be paid each year on account of real or personal property used in connection with any facility for the generation of electricity located in the town, notwithstanding the valuation of the property or the rate of tax. The determination is for a period not to exceed twenty-five (25) years. The town council of the town of Burrillville is authorized to extend the determination by ordinance or resolution. The extension shall be for a period not to exceed an additional twenty (20) years.

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

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

(2) The referendum shall be scheduled for the next primary or general election, whichever shall occur first. If a primary or general election is not scheduled to occur within six months of the passage of the tax ordinance or tax resolution, a special election shall be ordered to occur within ninety (90) days of the passage of the tax ordinance or tax resolution. The cost of holding the special election shall be borne by the applicant.

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

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

SECTION 3. Section 1 of this act shall take effect upon passage, and shall not apply to any transmission line project that was filed with the energy facility siting board prior to June 1, 2016. The remaining sections of this act shall take effect upon passage.
**EXPLANATION**

BY THE LEGISLATIVE COUNCIL

OF

AN ACT

RELATING TO STATE AFFAIRS AND GOVERNMENT - ENERGY FACILITY SITING ACT

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1 This act would increase the membership of the energy facility siting board from three (3) to seven (7) members, and would require approval by the electors in Burrillville of any tax agreement established by the town council with a power plant located in the town.

2 Section 1 of this act would take effect upon passage, and would not apply to any transmission line project that was filed with the energy facility siting board prior to June 1, 2016.

3 The remaining sections of this act would take effect upon passage.