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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- ENERGY FACILITY SITING
ACT

Introduced By: Senator P Fogarty

Date Introduced: April 12, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-98-1, 42-98-2, 42-98-3, 42-98-5, 42-98-6, 42-98-7, 42-98-8,
2 42-98-9, 42-98-9.1, 42-98-10, 42-98-11, 42-98-12, 42-98-16, 42-98-17 and 42-98-20 of the
3 General Laws in Chapter 42-98 entitled "Energy Facility Siting Act" are hereby amended to read
4 as follows:

5 **42-98-1. Legislative findings.**

6 (a) The general assembly recognizes that reasonably priced, reliable sources of energy are
7 vital to the well-being and prosperity of the people of this state; that there are major issues of
8 public health and safety and impact upon the environment related to the technologies and energy
9 sources used in some facilities; that some energy facilities require a major commitment of funds
10 and resources and require many years to build that the decision to permit or deny their
11 construction will have long term impact on the economy of the state; that these decisions will
12 affect the availability and cost of the energy; and that the evaluation of proposals must recognize
13 and consider the need for these facilities in relation to the overall impact of the facilities upon
14 public health and safety, the environment and the economy of the state;

15 (b) The general assembly further finds that the authority to regulate many aspects of the
16 issues involved in the siting of major energy facilities currently exists in a variety of agencies
17 within the government of the state and the political subdivisions of the state; that there is
18 overlapping jurisdiction among several state agencies in the siting of energy facilities; and that

1 there is the potential for conflicting decisions being issued by the various agencies having
2 authority over the different aspects of the siting of a major energy facility;

3 (c) The jurisdiction of each state agency should be defined, and the role of each agency in
4 energy siting should be delineated, to eliminate overlap and duplication and to insure that
5 expeditious decisions are made within a time frame to be determined by law; and that in addition
6 to the existing regulation, statewide and regional planning for energy resources and the
7 assessment of our state's need for energy should be on-going activities within Rhode Island;

8 (d) The general assembly recognizes that each host community for any proposed or
9 existing energy facility is uniquely affected by the energy facility siting process;

10 ~~(e)~~(e) There is need for a coordinated decision on any major energy facility; the technical
11 expertise for this evaluation is available within existing agencies involved with the siting process;
12 and

13 ~~(f)~~(f) There is a need for coordinating and expediting the review of each state agency and
14 that the authority and responsibility to perform that function should be established.

15 **42-98-2. Declaration of policy.**

16 It shall be the policy of this state to assure that:

17 (1) The facilities required to meet the energy needs of this and succeeding generations of
18 Rhode Islanders are planned for, considered, and built in a timely and orderly fashion;

19 (2) Construction, operation, and/or alteration of major energy facilities shall only be
20 undertaken when those actions are justified by long term state and/or regional energy need
21 forecasts;

22 (3) The energy shall be produced at the least possible cost to the consumer consistent
23 with the objective of ensuring that the construction, operation, and decommissioning of the
24 facility shall produce the fewest possible adverse effects on the quality of the state's environment;
25 most particularly, its land and its wildlife and resources, the health and safety of its citizens, the
26 purity of its air and water, its aquatic and marine life, and its esthetic and recreational value to the
27 public;

28 (4) The licensure and regulatory authority of the state be consolidated in a single body,
29 which will render the final licensing decision concerning the siting, construction, operation and/or
30 alteration of major energy facilities;

31 (5) An energy facility planning process shall be created through which the statewide
32 planning program, in conjunction with the division of public utilities and carriers, will be
33 empowered to undertake evaluations and projections of long and short term energy needs, and
34 any other matters that are necessary to establish the state energy plans, goals, and policies. The

1 state planning council shall be authorized and empowered to adopt a long term plan assessing the
2 state's future energy needs and the best strategy for meeting them, as part of the state guide plan
3 by January 1, 1991.

4 (6) The construction, operation and/or alteration of major energy facilities shall be
5 consistent with the state's established energy plans, goals, and policy.

6 (7) Before approving the construction, operation and/or alteration of major energy
7 facilities, the board shall determine whether cost effective efficiency and conservation
8 opportunities provide an appropriate alternative to the proposed facility.

9 (8) The energy facilities siting board shall give priority to energy generation projects
10 based on the degree to which such projects meet, criteria including, but not limited to:

11 (i) Using renewable fuels, natural gas, or coal processed by "clean coal technology" as
12 their primary fuel;

13 (ii) Maximizing efficiency;

14 (iii) Using low levels of high quality water;

15 (iv) Using existing energy-generation facilities and sites;

16 (v) Producing low levels of potentially harmful air emissions;

17 (vi) Producing low levels of wastewater discharge;

18 (vii) Producing low levels of waste into the solid waste stream; and

19 (viii) Having dual fuel capacity.

20 The board shall, within its rules and regulations, provide guidelines and definitions of
21 appropriate standards for the criteria designated in this subsection ~~by January 1, 1991.~~

22 **42-98-3. Definitions.**

23 (a) "Agency" means any agency, council, board, or commission of the state or political
24 subdivision of the state.

25 (b) "Alteration" means a significant modification to a major energy facility, which, as
26 determined by the board, will result in a significant impact on the environment, or the public
27 health, safety, and welfare. Conversion from one type of fuel to another shall not be considered to
28 be an "alteration."

29 (c) "Board" for purposes of this chapter refers to the siting board.

30 (d) "Major energy facility" means facilities for the extraction, production, conversion,
31 and processing of coal; facilities for the generation of electricity designed or capable of operating
32 at a gross capacity of forty (40) megawatts or more; transmission lines of sixty-nine (69) Kv or
33 over; facilities for the conversion, gasification, treatment, transfer, or storage of liquified natural
34 and liquified petroleum gases; facilities for the processing, enrichment, storage, or disposal of

1 nuclear fuels or nuclear byproducts; facilities for the refining of oil, gas, or other petroleum
2 products; facilities of ten (10) megawatts or greater capacity for the generation of electricity by
3 water power, and facilities associated with the transfer of oil, gas, and coal via pipeline; any
4 energy facility project of the Rhode Island economic development corporation; the board may
5 promulgate regulations to further define "major energy facility" to the extent further definition is
6 required to carry out the purpose of this chapter, provided that any waste to energy facility shall
7 not be deemed a major energy facility for the purposes of this chapter.

8 (e) "Clean coal technology" means one of the technologies developed in the clean coal
9 technology program of the United States Department of Energy, and shown to produce emissions
10 levels substantially equal to those of natural gas fired power plants.

11 (f) "Host community" means any city or town in the state in which all or a portion of a
12 proposed or existing energy facility shall be or is located.

13 **42-98-5. Board established.**

14 (a) There is established the siting board which shall be a part of state government. ~~The~~
15 When the board sits for any purpose related to a proposed or existing facility, the siting board
16 shall consist of ~~three (3)~~ five (5) members, as follows: the chairperson of the public utilities
17 commission, who shall serve as chairperson of the siting board; the director of the department of
18 environmental management; ~~and~~ the associate director of administration for planning; and two (2)
19 members designated by the council of the host community. If there is more than one host
20 community, the council of the two (2) most affected communities shall each designate one
21 member. Any member of the board who recuses him or herself or is otherwise unable to fulfill
22 their obligations shall designate his or her own successor from his or her respective agency or in
23 the case of members designated by a town council, a successor shall be appointed in like manner.

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

26 (c) The members of the board who serve in their capacity as an employee of the state or
27 quasi-state agency or municipality shall serve without compensation, ~~but~~ Members of the board
28 who are not employees of the state or municipality shall receive reasonable compensation for
29 their services, as determined by the board chairperson. All members of the board shall be
30 reimbursed for their actual expenses necessarily incurred in the performance of their duties. Such
31 compensation and expense reimbursement shall be paid monthly by the applicant. The board may
32 engage, at the applicant's expense, any consultants or expert witnesses that it deems necessary to
33 implement its statutory responsibilities; provided, however, that to the maximum extent possible,
34 board staff be drawn from existing state agencies. The board shall select a coordinator to be

1 responsible for the publication and distribution of all official minutes, reports, and documents and
2 to further serve as director of the board staff, which shall be located at the division of public
3 utilities and common carriers. The coordinator, under the direction of the chairperson, shall
4 coordinate and expedite the work of the various agencies to ensure that decisions are made within
5 the time frame established by this chapter.

6 (d) A quorum shall consist of a majority of the board. [A quorum is required to conduct](#)
7 [any meeting of the board held for the purpose of consideration and voting upon an adjudicatory](#)
8 [decision, a proposal to adopt, amend, or rescind regulations, or any other matter requiring a vote](#)
9 [of the board.](#) A majority vote of the board shall be required for all actions, including licensing
10 decisions. ~~;- provided, however~~ [However](#), one member of the board may conduct any hearings the
11 board is authorized to conduct pursuant to this chapter.

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

21 [\(f\) Time periods within this chapter are directory, not mandatory. For good cause shown,](#)
22 [the board may, at its discretion, extend any and all time periods herein.](#)

23 **42-98-6. Holding over in office.**

24 When the term of office of a member of the siting board expires or otherwise terminates,
25 and that person has participated in hearing all or a substantial part of the evidence in a proceeding
26 before the board, that person shall remain a member of the siting board for the sole purpose of
27 completing the hearing and deciding the matter pending and signing the findings, orders, and
28 judgments in the proceeding. For these services, the person shall be paid [reasonable](#)
29 [compensation and](#) necessary expenses as fixed by the siting board as composed following the
30 expiration of that person's term of office. For this purpose, a proceeding shall be deemed
31 completed when the siting board enters its final decision therein regardless of whether that
32 decision is or may be appealed to the supreme court and the case remanded to the siting board for
33 further proceedings.

34 **42-98-7. Powers and duties.**

1 (a) (1) The siting board is the licensing and permitting authority for all licenses, permits,
2 assents, or variances which, under any statute of the state or ordinance of any political
3 subdivision of the state, would be required for siting, construction or alteration of a major energy
4 facility in the state.

5 (2) Any agency, board, council, or commission of the state or political subdivision of the
6 state which, absent this chapter, would be required to issue a permit, license, assent, or variance
7 in order for the siting, construction, or alteration of a major energy facility to proceed, shall sit
8 and function at the direction of the siting board. These agencies shall follow the procedures
9 established by statute, ordinance, and/or regulation provided for determining the permit, license,
10 assent, or variance, but, instead of issuing the permit, license, assent, or variance, shall forward its
11 findings from the proceeding, together with the record supporting the findings and a
12 recommendation for final action, to the siting board.

13 (3) Notwithstanding any provision in this chapter to the contrary, in those instances in
14 which the department of environmental management exercises a permitting or licensing function
15 under the delegated authority of federal law, including, but not limited to, the Federal Clean
16 Water Act (33 U.S.C. § 1251 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §
17 6901 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), and those state laws and regulations
18 which implement those federal laws, the department of environmental management shall be the
19 licensing and permitting authority. Moreover, the authority to issue licenses and permits
20 delegated to the department of environmental management pursuant to chapter 1 of title 2 and to
21 the coastal resources management council pursuant to chapter 23 of title 46, shall remain with
22 those agencies, but in all other respects the department of environmental management and the
23 coastal resources management council shall follow the procedures set forth in this chapter.

24 (4) Each host community shall prepare and submit to the board a report as to the
25 consistency of the proposed facility with all local ordinances, regulations, standards, and criteria
26 that apply to the facility.

27 (b) The siting board is authorized and empowered to summon and examine witnesses and
28 to compel the production and examination of papers, books, accounts, documents, records,
29 certificates, and other legal evidence that may be necessary for the determination of its
30 jurisdiction and decision of any question before, or the discharge of any duty required by law of,
31 the board.

32 (c) The siting board is empowered to issue any orders, rules, or regulations as may be
33 required to effectuate the purposes of this chapter.

34 (d) The siting board shall, by regulation, determine the standards for intervention. Each

1 [host community shall be granted intervenor status as of right.](#)

2 (e) The siting board's proceedings shall in all respects comply with the requirements of
3 the Administrative Procedures Act, chapter 35 of this title, except where otherwise explicitly
4 provided.

5 **42-98-8. Applications -- Contents -- Acceptance for filing.**

6 (a) The rules and regulations promulgated by the board pursuant to § 42-98-7(c) shall
7 prescribe the form and contents of applications under this chapter. [The board shall review EFSB](#)
8 [rules of practice and procedure every two \(2\) years to ensure standards for filing requirements](#)
9 [and application contents are sufficient.](#) The applications shall contain at least the following,
10 where applicable:

11 (1) Identification of the proposed owner(s) of the facility, including identification of all
12 affiliates of the proposed owners, as the term is defined in § 39-3-27.

13 (2) Detailed description of the proposed facility, including its function and operating
14 characteristics, and complete plans as to all structures, including underground construction and
15 transmission facilities, underground or aerial, associated with the proposed facility [and a detailed](#)
16 [description of applicant's access to all necessary utilities, including, but not limited to, water,](#)
17 [sewer, electric, and gas.](#)

18 The complete plans shall be the basis for determining jurisdiction under the energy
19 facility siting act and shall be the plans submitted to all agencies whose permit is required under
20 the law. [The application shall include all information which, absent this chapter, the applicant](#)
21 [would be required to submit to each agency to obtain a permit, license, variance, or assent.](#)

22 (3) A detailed description and analysis of the impact of the proposed facility on its
23 physical and social environment together with a detailed description of all environmental
24 characteristics of the proposed site, and a summary of all studies prepared and relied upon in
25 connection therewith.

26 Where applicable these descriptions and analysis shall include a review of current
27 independent, scientific research pertaining to electric and magnetic fields (EMF). The review
28 shall provide data assessing potential health risks associated with EMF exposure. For the
29 purposes of this chapter "prudent avoidance" shall refer to measures to be implemented in order
30 to protect the public from EMF exposure.

31 (4) All studies and forecasts, complete with the information, data, methodology, and
32 assumptions on which they are based, on which the applicant intends to rely in showing the need
33 for the proposed facility under the statewide master construction plan submitted annually.

34 (5) Complete detail as to the estimated construction cost of the proposed facility, the

1 projected maintenance and operation costs, estimated costs to the community such as safety and
2 public health issues, storm damage and power outages, estimated costs to businesses and
3 homeowners due to power outages, the estimated unit cost of energy to be produced by the
4 proposed facility, and expected methods of financing the facility.

5 (6) A complete life-cycle management plan for the proposed facility, including [a detailed](#)
6 [schedule providing design, material acquisition, construction, testing, and operation dates; and](#)
7 measures for protecting the public health and safety and the environment during the facility's
8 operations, including [but not limited to,](#) plans for the handling and disposal of wastes from the
9 facility, [plans for emergency operations and shutdowns,](#) and plans for the decommissioning of the
10 facility at the end of its useful life.

11 (7) A study of alternatives to the proposed facility, including alternatives as to energy
12 sources, methods of energy production, and sites for the facility, together with reasons for the
13 applicant's rejection of these alternatives. The study shall include estimates of facility cost and
14 unit energy costs of alternatives considered.

15 [\(8\) A detailed and specific statement as to the effects the proposed facility would have on](#)
16 [the ability of the state to meet the carbon-emission-reduction goals set forth in §42-6.2-2\(a\)\(2\)](#)

17 (b) Within thirty (30) days of the filing of an ~~applicant~~ [application](#) under this chapter, [and](#)
18 [prior to docketing the application,](#) the board shall notify the applicant whether the application is
19 in the form and addresses the matters that are required by this section and the rules and
20 regulations as are promulgated pursuant to § 42-98-7. An application meeting these requirements
21 shall then be docketed. Any application deemed to be deficient shall be returned to the applicant,
22 together with a concise and explicit statement of the application's deficiencies. ~~Within fifteen (15)~~
23 ~~days of the resubmission of an application following a rejection for deficiency, the board shall~~
24 ~~docket the application together with specification of continuing deficiencies noted by the board, if~~
25 ~~any.~~ [The application may be resubmitted once all identified deficiencies have been remedied.](#)

26 **42-98-9. Applications -- Procedures for review -- Preliminary hearing.**

27 (a) Within sixty (60) days following the board's docketing of an application the board
28 shall, on not less than forty-five (45) days' notice to all agencies, subdivisions of the state, and the
29 public, convene a preliminary hearing on the application to determine the issues to be considered
30 by the board in evaluating the application, and to designate those agencies of state government
31 and of political subdivisions of the state which shall act at the direction of the board for the
32 purpose of rendering advisory opinions on these issues, and to determine petitions for
33 intervention.

34 (b) The board shall consider as issues in every proceeding the ability of the proposed

1 facility to meet the requirements of the laws, rules, regulations, and ordinances under which,
2 absent this chapter, the applicant would be required to obtain a permit, license, variance, or
3 assent. The agency of state government or of a political subdivision of the state which, absent this
4 chapter, would have statutory authority to grant or deny the permit, license, variance, or assent,
5 shall function at the direction of the board for hearing the issue and rendering an advisory opinion
6 thereon.

7 (c) The board shall limit the scope of any agency's investigation where it finds that more
8 than one agency has jurisdiction over a matter at issue in the licensing process. In these instances,
9 the board shall determine which agency shall make the necessary findings on the issue after
10 giving proper consideration to the expertise and resources available to each of the agencies
11 involved.

12 (d) The public utilities commission shall conduct an investigation in which the division of
13 planning of the department of administration, the ~~governor's~~ office of energy ~~assistance~~ [resources](#)
14 and the division of public utilities and carriers shall participate and render an advisory opinion as
15 to the need for the proposed facility.

16 (e) The statewide planning program within the department of administration shall
17 conduct an investigation and render an advisory opinion as to the socio-economic impact of the
18 proposed facility and its construction and consistency with the state guide plan. [This investigation](#)
19 [shall include review of municipal comprehensive plans for all host communities to ensure the](#)
20 [proposed project conforms to each municipal comprehensive plan.](#)

21 [\(f\) The board shall seek advisory opinions from the zoning, planning, and building](#)
22 [departments for each host community. The board shall seek advisory opinions from all public](#)
23 [utilities serving the facility, including, but not limited to, water, sewer, electric and gas. Advisory](#)
24 [opinions from municipal entities shall include a study of the financial impact of the proposed](#)
25 [facility on local services, infrastructure, and all public and private property located within three](#)
26 [\(3\) miles of the proposed site boundaries.](#)

27 ~~(g)~~ A decision of the board under this section shall be issued within thirty (30) days
28 following the conclusion of the preliminary hearing and in any event within forty-five (45) days
29 of the commencement of the hearing.

30 **42-98-9.1. Public notice and hearings on construction projects in cities and towns**
31 **affected.**

32 [\(a\) The applicant shall notify the host community no less than thirty \(30\) days prior to](#)
33 [filing its application with the board.](#)

34 ~~(b)~~ Upon receiving a utility company application the board shall immediately notify, in

1 writing, the councils of the towns and cities affected by the construction. This includes, but is not
2 limited to, each host community.

3 ~~(b)~~(c) The board shall have at least ~~one~~ three (3) public ~~hearing~~ hearings in each ~~town or~~
4 ~~city~~ host community affected prior to holding its own hearings and prior to taking final action on
5 the application. All details of acceptance for filing in ~~§ 42-98-8(a)(1) — (a)(6)~~ §42-98-8-(a)(1)
6 through (a)(8) shall be presented at town or city hearings for public comment. No public hearing
7 shall occur until the application is deemed sufficient and docketed by the board as required in
8 §42-98-8(b). Public hearings shall be held within six (6) months of the date the application is
9 docketed by the board. When the subject of the application is a facility for the generation of
10 electricity, or new facilities for the transmission of electricity, ~~the town or city~~ each host
11 community, including quasi-municipal corporations within the host community, where the
12 proposed facility would be located may request funding from the applicant to perform studies of
13 the local environmental effects of the proposed facility. The expense of those studies shall not
14 exceed the ~~lesser~~ greater of ~~one hundred thousand dollars (\$100,000)~~ one hundred fifty thousand
15 dollars (\$150,000) or one-tenth percent (.1%) of the estimated capital cost of the proposed facility
16 located in such city or town. If the applicant contests the relevance of the requested study, or
17 believes it to be redundant with studies already performed, the applicant may request a ruling
18 from the board whether the study is necessary and reasonably expected to produce relevant
19 information. The board's ruling shall be conclusive and final, and shall not be the basis for an
20 interlocutory appeal, injunction or otherwise delay the board's processing of the application. The
21 applicant shall also pay any and all fees and expenses reasonably incurred by each host
22 community, including quasi-municipal corporations within the host community, to fully
23 participate in the facility siting process, and local review, including, but not limited to, fees and
24 expenses for legal counsel, expert evaluations, transcripts and other costs associated with the
25 entire siting process.

26 ~~(c)~~(d) The applicant shall notify the citizens in towns and cities affected thirty (30) days
27 prior to public meetings through local papers. Newspaper notice should be at least one-half (1/2)
28 page in size, and shall include a map depicting the project and all associated corridors. If the
29 board determines that any notice was substantially inaccurate, then the board may order an
30 additional hearing with appropriate notice.

31 ~~(d)~~(e) The applicant shall notify ~~abutting~~ the following land owners individually, in
32 writing, thirty (30) days prior to ~~the~~ any hearings, by certified mail, postage prepaid.

33 (1) For proposed or existing electric generating facilities, applicants shall notify all land
34 owners whose property is located within three (3) miles of the proposed site boundaries;

1 [\(2\) For all other projects, applicants shall notify all land owners whose property is located](#)
2 [within one mile from the proposed project or corridor.](#)

3 ~~(e)~~(f) Public input shall be a part of the ~~decision-making~~ [decision-making](#) process.

4 **42-98-10. Agency procedures -- Advisory opinion.**

5 (a) Each agency of the state or political subdivision of the state designated under § 42-98-
6 9 shall proceed to consider the issue or issues consigned to it for review. Each agency shall
7 conclude its consideration and issue its advisory opinion not more than six (6) months following
8 its designation under § 42-98-9 [and receipt of all details required in §42-98-8\(a\)\(1\) through](#)
9 [\(a\)\(8\)](#), or any lesser time that the board may require, or the right to exercise the function shall be
10 forfeited to the board. [If sufficient details to allow agencies to consider and issue advisory](#)
11 [opinions are unavailable for any reasons, the application proceeding shall be suspended for up to](#)
12 [sixty \(60\) days to allow sufficient details to be submitted by the applicant. If, at the end of sixty](#)
13 [\(60\) days, sufficient details have not been provided in writing, the application shall be denied](#)
14 [with prejudice.](#)

15 (b) Advisory opinions issued by agencies designated under § 42-98-9 shall not be
16 considered as final decisions of the agencies making the opinions, and shall not be subject to
17 judicial review under § 42-35-15, or any other provision of the general laws.

18 (c) Advisory opinions issued by zoning boards of review, building inspectors, or any
19 other agency of a municipality designated under § 42-98-9 shall not be reviewable by the public
20 utilities commission under § 39-1-30.

21 (d) Failure or refusal of the applicant to provide requested information may be considered
22 as grounds for recommending denial.

23 (e) At the request of the siting board, the director of environmental management and the
24 coastal resources management council shall give priority to the review of permits for energy
25 facilities.

26 [\(f\) Any town or city council may submit to the board a resolution setting forth the](#)
27 [council's support or opposition to the project at any time after the application is docketed by the](#)
28 [board and no later than thirty \(30\) days following the submission of advisory opinions, unless an](#)
29 [extension is granted by the board for good cause shown.](#)

30 **42-98-11. Final hearing -- Standards -- Decisions.**

31 (a) Within forty-five (45) days after the final date for submission of advisory opinions
32 pursuant to § 42-98-10, the board shall convene the final hearing on the application. The purpose
33 of this hearing shall not be to rehear the evidence which was presented previously in hearings
34 before agencies designated under § 42-98-9, but rather to provide the applicant, intervenors, the

1 public, and all other parties in the proceeding, the opportunity to address in a single forum, and
2 from a consolidated, statewide prospective, the issues reviewed, and the recommendations made
3 in the proceedings before the agencies designated under § 42-98-9. The board at this hearing may,
4 at its discretion, allow the presentation of new evidence by any party, including intervenors, as to
5 the issues considered by the agencies designated under § 42-98-9. The board may limit the
6 presentation of repetitive or cumulative evidence. The hearing shall proceed on not less than
7 thirty (30) days' notice to the parties and the public, shall be concluded not more than sixty (60)
8 days following its initiation, and shall be conducted expeditiously.

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

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

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

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

22 (c) The board shall not issue a decision granting a license to any applicant unless the
23 board has thoroughly considered whether construction of the proposed facility will adversely
24 impact the ability of the state to achieve the carbon-emissions-reduction goals set forth in §42-
25 6.2-2(a)(2).

26 (d) Prior to the making of a decision, the board shall take into consideration any town or
27 city council resolution regarding the application. Where a host community is already burdened by
28 one or more fossil fuel energy facilities of eighty megawatts (80 MW) or more, the board shall
29 abide by the town or city council's wishes with regard to a proposed new facility, unless the board
30 is presented with clear and convincing evidence to the contrary.

31 (e) Where multiple EFSB applications relate to a single project, the board shall consider
32 the cumulative impacts of the related applications.

33 ~~(e)~~(f) Within sixty (60) days of the conclusion of the final hearing the board shall issue its
34 final decision on the application. A decision in favor of the application shall constitute a granting

1 of all permits, licenses, variances, [approvals](#) or assents, which under any law, rule, regulation, or
2 ordinance of the state or of a political subdivision thereof which would, absent this chapter, be
3 required for the proposed facility. The decision may be issued requiring any modification or
4 alteration of the proposed facility, and may be issued on any condition the board deems warranted
5 by the record, and may be issued conditional upon the applicant's receipt of permits required by
6 federal law. The board's decision shall explicitly address [any resolution from a host community,](#)
7 [and](#) each of the advisory opinions received from agencies, and the board's reasons for accepting,
8 rejecting, or modifying, in whole or in part, any of those advisory opinions. The board shall,
9 within ten (10) days of granting a license, with or without conditions, deliver the decision to the
10 speaker of the Rhode Island house of representatives, and the president of the Rhode Island
11 senate.

12 **42-98-12. Appeals and judicial review.**

13 (a) The licensing decision issued by the siting board shall constitute the sole, final,
14 binding, and determinative regulatory decision within the state for the purposes of siting,
15 building, operating, or altering a major energy facility.

16 (b) Any person aggrieved by a decision of the board may within ~~ten (10)~~ [twenty \(20\)](#) days
17 from the date of ratification of the decision, ~~obtain judicial review of the decision in the manner~~
18 ~~and according to the standards and procedures provided in chapter 5 of title 39~~ [appeal the](#)
19 [decision to the Rhode Island supreme court by filing a notice of appeal with the board and the](#)
20 [Rhode Island supreme court.](#)

21 **42-98-16. Violations.**

22 (a) Failure to comply with any promulgated board rule, regulation, requirement or
23 procedure for the licensing of energy facilities shall constitute grounds for suspension or
24 dismissal, with or without prejudice in its discretion, of licensing proceedings, provided that the
25 applicant shall have a reasonable opportunity to show cause for and remedy the lack of
26 compliance.

27 (b) Failure to comply with any provision, condition or limitation contained in a board
28 license to site, build, or alter a major energy facility and/or failure to comply with a board cease
29 and desist order and/or a board order to remedy a non-complying action shall be grounds for
30 suspension or revocation of the license, and/or shall be punishable by a fine of not more than
31 ~~twenty thousand dollars (\$20,000)~~ [fifty thousand dollars \(\\$50,000\)](#). Each day of continuing
32 noncompliance shall be considered a separate violation and so punished.

33 (c) The board may require the licensee to maintain those records as are reasonable and
34 necessary to monitor compliance with license provisions, and shall have the authority to enter

1 onto the property of licensees to investigate complaints of noncompliance and to perform routine
2 inspections.

3 (d) The board shall take reasonable steps to ensure each facility for which a certificate
4 has been issued is constructed, maintained, and operated in compliance with such certificate and
5 any other standard established pursuant to this chapter. The board may designate officials or staff
6 of any state agencies as its agents for the purposes of investigating complaints, performing
7 routine maintenance functions and issuing written cease and desist orders.

8 (e) Any license may be revoked or suspended for any materially false statement in the
9 application or supplemental submissions by the applicant when a true answer would have
10 warranted the board's refusal to issue a license in the first instance.

11 (f) Civil proceedings to enforce this chapter may be brought by the Rhode Island attorney
12 general's office or any host community in the superior court.

13 (g) Nothing in this chapter shall preclude a host community from enforcing municipal
14 ordinances, levying fines, or pursuing any other legally available enforcement remedies, unless
15 such ordinances are in direct conflict with a certificate or license issued by the board.

16 **42-98-17. Appropriation, fees and grants.**

17 (a) There is created an account to be known as the "energy facility siting account", an
18 account within the public utilities commission in the general fund, hereinafter referred to as the
19 "account", for the purpose of providing the financial means for the board to purchase materials
20 and to employ on a contract or other basis legal counsel, official stenographers, engineers,
21 accountants, and expert witnesses and for other necessary expenses of the board in investigations
22 and hearings on applications for licensure under this chapter. The general assembly shall annually
23 appropriate to the account the amounts as may be required to bring the balance of the account to
24 the sum of one hundred thousand dollars (\$100,000); provided, however, that if at June 30 in any
25 year the balance in the account shall be in excess of one hundred thousand dollars (\$100,000), the
26 amount of the excess shall be transferred to the general account of the state. The controller is
27 authorized and directed to draw his or her orders upon the general treasurer for the payment from
28 the account of the sums as may be required from time to time upon receipt by the controller of
29 proper vouchers approved by the chairperson of the board or the secretary.

30 (b) The board shall be authorized to establish reasonable fees for investigations,
31 applications and hearings. Applicants shall pay those fees in full prior to the hearing process
32 commencing unless the board agrees to an alternative payment schedule. All fees collected by the
33 board shall be deposited with the general treasurer and appropriated to the board. The state
34 controller is authorized and directed to draw his or her orders upon the general treasurer for

1 payment of any sum or sums as may be necessary from time to time and upon receipt by him or
2 her of authenticated vouchers presented by the coordinator of the board.

3 (c) All moneys collected by the chairperson or the secretary pursuant to this section shall
4 be paid by him or her monthly to the general treasurer to be added to the energy facility siting
5 account.

6 (d) Failure of the applicant to pay expenses lawfully assessed by the board shall
7 constitute grounds for suspension of licensing proceedings or revocation of any license granted,
8 until the applicant has paid the expenses.

9 (e) The board shall be empowered to draw upon this account and to distribute monies
10 from the fees to and bodies of state and local government participating in licensing actions or
11 acting as the board's agents for the purposes of insuring compliance with license provisions and
12 for employing staff or consultants and for carrying out the provisions of this chapter.

13 (f) The board shall be authorized to receive any grants made for the purpose of planning
14 for or regulating the siting of energy facilities and to disburse and administer the grants under the
15 terms of the grants.

16 (g) The board shall not issue a license to build a new fossil-fuel electric generating
17 facility unless the applicant demonstrates it has satisfied the following requirements:

18 (1) Applicant shall provide adequate funds for the host community fire marshal to retain
19 at least one special inspector to assist the host community fire marshal, for the duration of the
20 construction project; and

21 (2) Applicant shall provide adequate funds to be used in the training of local public safety
22 and emergency management personnel in the host community, including quasi-municipal
23 corporations within the host community, and personnel from neighboring communities which
24 would likely provide mutual aid within the host community, on the complex issues of electric
25 generating facility construction and operation.

26 (h) The special inspector retained under subsection (g) of this section shall:

27 (1) Be approved by the board and not otherwise employed or financially involved in the
28 construction or operation of the facility; have knowledge and field experience in electric
29 generating facility construction; and

30 (2) Assist the local fire marshal with review and approval of an appropriate safety plan
31 for the electric generating facility; and conduct inspections during construction of the facility to
32 ensure compliance with certificates and safety standards.

33 **42-98-20. Informational filings.**

34 (a) To assist the board in achieving the policy objectives set forth in § 42-98-2, the

1 owners of any proposed energy facility, whether or not the facility qualified as a major energy
2 facility, shall make an informational filing with the board at the time of first application to any
3 other agency, board, council, or commission of the state or political subdivision of the state
4 required to issue a permit, license, assent, or variance in order for the siting, construction, or
5 alteration of the facility to proceed. Copies of any informational filing shall be provided to the
6 councils of the towns and cities affected by the proposed facility within seven (7) days of filing
7 with the board.

8 (b) The informational filing shall contain at least the following:

9 (1) Identification of the proposed owner(s) of the facility, including identification of all
10 affiliates of the proposed owners, as the term is defined in § 39-3-27.

11 (2) Detailed description of the proposed facility, including its function and operating
12 characteristics, and complete plans as to all structures, including underground construction and
13 transmission facilities, underground or aerial, associated with the proposed facility.

14 SECTION 2. This act shall take effect upon passage.

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LC002145/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- ENERGY FACILITY SITING
ACT

1 This act would amend various sections of the "Energy Facility Siting Act" relative to
2 their procedures and the consideration of host communities' rights and enforcement of city or
3 town ordinances, rules and regulations, the siting board's membership, and certain conditions
4 relating to board members and quorum requirements.

5 This act would take effect upon passage.

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LC002145/SUB A
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