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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

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

Introduced By: Representatives Place, and Newberry

Date Introduced: February 14, 2019

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-98-1, 42-98-2, 42-98-3, 42-98-4, 42-98-5, 42-98-6, 42-98-7,
2 42-98-8, 42-98-9, 42-98-9.1, 42-98-10, 42-98-11, 42-98-12, 42-98-13, 42-98-16, 42-98-17 and
3 42-98-20 of the General Laws in Chapter 42-98 entitled "Energy Facility Siting Act" are hereby
4 amended to read 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 or power generating facilities currently exists in a
17 variety of agencies within the government of the state and the political subdivisions of the state;
18 that there is overlapping jurisdiction among several state agencies in the siting of energy

1 facilities; and that there is the potential for conflicting decisions being issued by the various
2 agencies having 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) There is need for a coordinated decision on any major energy or power generating
9 facility; the technical expertise for this evaluation is available within existing agencies involved
10 with the siting process; ~~and~~

11 (e) There is a need for coordinating and expediting the review of each state agency and
12 that the authority and responsibility to perform that function should be established; ~~and~~

13 (f) The general assembly recognizes that each host community for any proposed or
14 existing power generating facility is uniquely affected by the energy facility siting process.

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 or power generating
20 facilities shall only be undertaken when those actions are justified by long term state and/or
21 regional energy need 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 or power generating
5 facilities shall be consistent with the state's established energy plans, goals, and policy.

6 (7) Before approving the construction, operation and/or alteration of a major energy
7 ~~facilities~~ or power generating facility, the board shall determine whether cost effective efficiency
8 and conservation 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 The relative environmental impact of 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~~ Complying with the state's greenhouse gas emissions
20 reduction targets in the resilient Rhode Island act of 2014, chapter 6.2 of title 42.

21 The board shall, within its rules and regulations, provide guidelines and definitions of
22 appropriate standards for the criteria designated in this subsection by January 1, ~~1991~~ 2020.

23 **42-98-3. Definitions.**

24 As used in this chapter:

25 ~~(1)~~ (1) "Agency" means any agency, council, board, or commission of the state or political
26 subdivision of the state.

27 ~~(2)~~ (2) "Alteration" means a significant modification to a major energy or power
28 generating facility, which, as determined by the board, will result in a significant impact on the
29 environment, or the public health, safety, and welfare. ~~Conversion from one type of fuel to~~
30 ~~another shall not be considered to be an "alteration."~~

31 (3) "Applicant" means the entity that seeks board approval for the construction, operation
32 or alteration of a major energy or power generating facility.

33 ~~(4)~~ (4) "Board" for purposes of this chapter ~~refers to~~ means the siting board.

34 (5) "Clean coal technology" means one of the technologies developed in the clean coal

1 technology program of the United States Department of Energy, and shown to produce emissions
2 levels substantially equal to those of natural gas fired power plants.

3 (6) "Designee" means a person currently employed by the agency that has designating
4 authority.

5 (7) "Environmental justice" means and includes the equal protection and meaningful
6 involvement of all people with respect to the development, implementation, and enforcement of
7 environmental laws, regulations, and policies and the equitable distribution of environmental
8 benefits.

9 (8) "Host community" means any city or town in the state in which all or a portion of a
10 power generating facility shall be or is located.

11 ~~(4)~~ (9) "Major energy facility" means:

12 (i) facilities Facilities for the extraction, production, conversion, and processing of coal;
13 ~~facilities for the generation of electricity designed or capable of operating at a gross capacity of~~
14 ~~forty (40) megawatts or more;~~

15 (ii) Facilities for the generation of electricity designed or capable of operating at a gross
16 capacity between greater than forty megawatts (40MW) and less than sixty megawatts (60MW);

17 (iii) ~~transmission~~ Transmission lines of sixty-nine ~~(69) Kv~~ Kilovolts (69KV) or over;

18 (iv) facilities Facilities for the conversion, gasification, treatment, transfer, or storage of
19 liquefied natural and liquefied petroleum gases;

20 (v) facilities Facilities for the processing, enrichment, storage, or disposal of nuclear fuels
21 or nuclear byproducts;

22 (vi) facilities Facilities for the refining of oil, gas, or other petroleum products;

23 (vii) facilities Facilities of ten (10) megawatts or greater capacity for the generation of
24 electricity by water power;

25 (viii) ~~and facilities~~ Facilities associated with the transfer of oil, gas, and coal via pipeline;

26 (ix) ~~any~~ Any energy facility project of the Rhode Island ~~economic development~~
27 ~~corporation~~ commerce corporation;

28 (x) ~~the~~ The board may promulgate regulations to further define "major energy facility" to
29 the extent further definition is required to carry out the purpose of this chapter, provided that any
30 waste to energy facility shall not be deemed a major energy facility for the purposes of this
31 chapter.

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

1 (10) "Power generating facility" means a facility for the generation of electricity designed
2 or capable of operating at a gross capacity of sixty megawatts (60MW) or more.

3 **42-98-4. License required.**

4 No person shall site, construct, or alter a major energy or power generating facility within
5 the state without first obtaining a license from the siting board pursuant to this chapter.

6 **42-98-5. Board established.**

7 (a) There is established the siting board which shall be a part of state government.

8 (1) When the board sits for any purpose related to a major energy facility, ~~The~~ the siting
9 board shall consist of three (3) members, as follows: the chairperson of the public utilities
10 commission, who shall serve as chairperson of the siting board; the director of the department of
11 environmental management, ~~;~~ ~~and~~ or designee, who shall be an employee of the department of
12 environmental management; and the associate director of administration for planning, ~~;~~ or
13 designee, who shall be an employee of the department of administration.

14 (2) When the board sits for any purpose related to a power generating facility, the board
15 shall consist of seven (7) members, as follows: the chairperson of the public utilities commission,
16 who shall serve as chairperson of the siting board; the director of the department of
17 environmental management, or designee, who shall be an employee of the department of
18 environmental management; the associate director of administration for planning, or designee,
19 who shall be an employee of the department of administration; the director of the department of
20 health, or designee, who shall be an employee of the department of health; the state fire marshal,
21 or designee, who shall be an employee of the state fire marshal's office; and two (2) members of
22 the public who shall be appointed by the elected chief executive of the host community or, if
23 there is no elected chief executive, the president of the town council of the host community. One
24 public member shall be a resident of the host community, and the other public member shall be
25 from the business community of the host community, but need not be a resident of the host
26 community. If there are multiple host communities, those communities shall confer and make
27 joint appointments pursuant to this section.

28 (3) Any member of the board who recuses him or herself or is otherwise unable to fulfill
29 his or her obligations shall designate his or her own successor from his or her respective agency, ~~;~~
30 or, in the case of a public member, a successor shall be appointed in like manner as set forth in
31 subsection (a)(2) of this section.

32 (4) Each application relating to a proposed or existing facility shall have a board
33 established for that application. A person may serve on two (2) or more boards simultaneously.

34 (b) Each member of the board shall take an oath to administer the duties of office

1 faithfully and impartially and that oath shall be filed in the office of the secretary of state.

2 (c) The members of the board who serve in their capacity as an employee of the state or
3 quasi-state agency or municipality shall serve without compensation~~;~~. Members of the board who
4 are not employees of the state or municipality shall receive reasonable compensation for their
5 services, as determined and approved by the board chairperson. ~~but~~ All members of the board
6 shall be reimbursed for their actual expenses necessarily incurred in the performance of their
7 duties. Such compensation and expense reimbursement shall be paid monthly by the applicant.

8 (d) The board may engage, at the applicant's expense, any consultants or expert witnesses
9 that it deems necessary to implement its statutory responsibilities; provided, however, that to the
10 maximum extent possible, board staff be drawn from existing state agencies. Any individual
11 designated as a personal assistant of the board or as board staff shall be bound to comply with the
12 ex parte provisions of § 42-35-13. Board staff may be compensated by the board, either through
13 contract or through a transfer to the state agency or department by whom the individual is
14 normally employed.

15 The board shall select ~~a~~ an employee of the public utilities commission to serve as
16 coordinator. The coordinator is to be responsible for the publication and distribution of all official
17 minutes, reports, and documents and to further serve as director of the board staff~~, which shall be~~
18 ~~located at the division of public utilities and common carriers.~~ The coordinator, under the
19 direction of the chairperson, shall coordinate and expedite the work of the various agencies to
20 ensure that decisions are made within the time frame established by this chapter.

21 ~~(d)~~(e) A quorum shall consist of a majority of the board. A quorum is required to conduct
22 any meeting of the board held for the purpose of considering and voting upon an adjudicatory
23 decision, a proposal to adopt, amend or rescind regulations, or any other matter requiring a vote
24 of the board. A majority vote of the board shall be required for all actions, including licensing
25 decisions~~; provided, however, one member of the board may conduct any hearings the board is~~
26 ~~authorized to conduct pursuant to this chapter.~~

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

1 privileged, confidential, or proprietary information.

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

4 **42-98-6. Holding over in office.**

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

15 **42-98-7. Powers and duties.**

16 (a)(1) The siting board is the licensing and permitting authority for all licenses, permits,
17 assents, or variances which, under any statute of the state or ordinance of any political
18 subdivision of the state, would be required for siting, construction or alteration of a major energy
19 [or power generating](#) facility in the state.

20 (2) Any agency, board, council, or commission of the state or political subdivision of the
21 state which, absent this chapter, would be required to issue a permit, license, assent, or variance
22 in order for the siting, construction, or alteration of a major energy [or power generating](#) facility to
23 proceed, shall sit and function at the direction of the siting board. These agencies shall follow the
24 procedures established by statute, ordinance, and/or regulation provided for determining the
25 permit, license, assent, or variance, but, instead of issuing the permit, license, assent, or variance,
26 shall forward its findings from the proceeding, together with the record supporting the findings
27 and a recommendation for final action, to the siting board.

28 (3) Notwithstanding any provision in this chapter to the contrary, in those instances in
29 which the department of environmental management exercises a permitting or licensing function
30 under the delegated authority of federal law, including, but not limited to, the Federal Clean
31 Water Act (33 U.S.C. § 1251 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §
32 6901 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), and those state laws and regulations
33 which implement those federal laws, the department of environmental management shall be the
34 licensing and permitting authority. Moreover, the authority to issue licenses and permits

1 delegated to the department of environmental management pursuant to chapter 1 of title 2 and to
2 the coastal resources management council pursuant to chapter 23 of title 46, shall remain with
3 those agencies, but in all other respects the department of environmental management and the
4 coastal resources management council shall follow the procedures set forth in this chapter.

5 (4) Each host community shall prepare and submit to the board a report as to the
6 consistency of the proposed power generating facility with the host community's comprehensive
7 plan as defined in § 45-22.2-4, as well as consistency of the proposed power generating facility
8 with all local ordinances, regulations, standards and criteria that apply to the facility.

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

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

16 (d) The siting board shall, by regulation, determine the standards for intervention, which
17 shall be liberally granted. Each host community shall be granted intervenor status as a matter of
18 right.

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

22 **42-98-8. Applications -- Contents -- Acceptance for filing.**

23 (a) The rules and regulations promulgated by the board pursuant to § 42-98-7(c) shall
24 prescribe the form and contents of applications under this chapter. The board shall review energy
25 facility siting board rules of practice and procedure every two (2) years to ensure standards for
26 filing requirements and application contents are sufficient. The applications shall contain at least
27 the following, where applicable:

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

30 (2) Detailed description of the proposed facility, including its function and operating
31 characteristics, ~~and.~~

32 (3) A complete set of plans as to all structures, underground and above ground, including
33 underground construction and transmission facilities, ~~underground or aerial,~~ associated with the
34 proposed facility, and a detailed description of the applicant's access to all necessary utilities,

1 [including, but not limited to: water; sewer; electric; and gas.](#)

2 The complete plans shall be the basis for determining jurisdiction under the energy
3 facility siting act and shall be ~~the plans~~ submitted to all agencies whose permit is required under
4 the law. [The application shall include all information which, absent this chapter, the applicant
5 would be required to submit to each agency to obtain a permit, license, variance, or assent
6 including, but not limited to, items required for major land development submissions under §§
7 45-23-40\(a\) and 45-23-41\(a\).](#)

8 ~~(3)~~(4) A detailed description and analysis of the impact of the proposed facility on its
9 physical and social environment together with a detailed description of all environmental
10 characteristics of the proposed site, and a summary of all studies prepared and relied upon in
11 connection therewith.

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

17 ~~(4)~~(5) All studies and forecasts, complete with the information, data, methodology, and
18 assumptions on which they are based, on which the applicant intends to rely in showing the need
19 for the proposed facility under the statewide master construction plan submitted annually.

20 ~~(5)~~(6) Complete detail as to the estimated construction cost of the proposed facility, the
21 projected maintenance and operation costs, estimated costs to the community such as safety and
22 public health issues, storm damage and power outages, estimated costs to businesses and
23 homeowners due to power outages, the estimated unit cost of energy to be produced by the
24 proposed facility, and expected methods of financing the facility.

25 ~~(6)~~(7) A complete life-cycle management plan for the proposed facility, including [a
26 detailed schedule providing design, material acquisition, construction, testing, and operation
27 dates; and](#) measures for protecting the public health and safety and the environment during the
28 facility's operations, including, [but not limited to,](#) plans for the handling and disposal of wastes
29 from the facility, [plans for emergency operations and shut downs](#) and plans for the
30 decommissioning of the facility at the end of its useful life.

31 ~~(7)~~(8) A study of alternatives to the proposed facility, including alternatives as to energy
32 sources, methods of energy production, and sites for the facility, together with reasons for the
33 applicant's rejection of these alternatives. [An assessment of alternatives shall include a
34 comparison of vulnerability to power outages related to storm damage and estimated costs to](#)

1 businesses and homeowners during power outages. The study shall include estimates of facility
2 cost and unit energy costs of alternatives considered.

3 (9) Identification of federal, state and municipal agencies which may exercise licensing
4 authority over any aspect of the facility or which could exercise licensing authority over any
5 aspect of the facility absent the act. When filing an application for a power generating facility, the
6 applicant shall also affirm that pre-application conferences were held with each agency, as set
7 forth in § 42-98-7.2, including the date of each such pre-application conference.

8 (10) A detailed and specific statement as to the effects the proposed facility would have
9 on the ability of the state to meet the carbon-emissions-reduction goals set forth in § 42-6.2-
10 2(a)(2).

11 (b) Simultaneous with the filing of an application for a power generating facility, the
12 applicant shall provide five (5) public copies to the executive office of each host community, one
13 public copy to the municipal clerk's office, and one public copy of the application to each of the
14 federal, state and municipal agencies identified in subsection (a) of this section, including, but not
15 limited to: the public utilities commission; the department of transportation; the department of
16 environmental management, the historical preservation and heritage commission; the division of
17 planning; the department of health; and the office of energy resources. The applicant shall also
18 notify each host community and each state and municipal agency of its ability to advise the board
19 as to completeness of the application pursuant to subsection (c) of this section. The executive
20 office of each host community shall distribute application materials to appropriate municipal
21 departments, boards, and officials.

22 (c) Each application shall be reviewed for completeness.

23 (1) Upon receiving an application, the board shall conduct a preliminary review to
24 ascertain if the application contains each item as required by subsection (a) of this section.

25 (2) Within forty-five (45) days of the filing of an application for a power generating
26 facility, each host community and state agency that receives a public copy of the application
27 pursuant to subsection (b) of this section shall advise the board in writing whether the application
28 contains sufficient information for purposes of issuing its advisory opinion. Nothing contained
29 herein shall be construed as preventing any state or municipal agency from being able to request
30 additional information during its advisory opinion process.

31 ~~(b)(3)~~ (3) Within ~~thirty (30)~~ sixty (60) days of the filing of an applicant application under this
32 chapter, and prior to docketing the application, the board shall notify the applicant whether the
33 application is in the form and addresses the matters that are required by this section and the rules
34 and regulations as are promulgated pursuant to § 42-98-7. An application ~~meeting these~~

1 ~~requirements shall then be docketed. Any application deemed to be deficient shall be returned to~~
2 ~~the applicant, together with a concise and explicit statement of the application's deficiencies.~~
3 ~~Within fifteen (15) days of the resubmission of an application following a rejection for~~
4 ~~deficiency, the board shall docket the application together with specification of continuing~~
5 ~~deficiencies noted by the board, if any. must meet every requirement of this section and all~~
6 applicable regulations in order to be docketed; no application will be docketed that does not
7 satisfy every requirement of this section and all applicable regulations.

8 (4) If the application is in the proper form and addresses all matters that are required by
9 this section and the rules and regulations promulgated pursuant to § 42-98-7, then the application
10 shall be docketed.

11 (5) If the application is deemed incomplete or deficient, the board shall notify the
12 applicant in writing, specifying each of the areas in which the application has been deemed
13 incomplete. The application may be resubmitted once all identified deficiencies have been
14 remedied.

15 (6) Within twenty-one (21) days of the applicant's receipt of notification of
16 incompleteness, the applicant may complete the filed application by curing the specified defects
17 or may file a new and more complete application. Public copies of supplemental application
18 materials shall be simultaneously provided to the host community and state agencies as set forth
19 in subsection (b) of this section.

20 (7) If the applicant completes the filed application or files a new and more complete
21 application within twenty-one (21) days of receiving notice pursuant to subsection (c)(6) of this
22 section, the board shall, within thirty (30) days of the resubmission of an application following a
23 rejection for deficiency, notify the applicant if the application is still deficient by returning it to
24 the applicant together with a concise and explicit statement of the application's deficiencies.

25 (8) If a resubmitted application is in the proper form and addresses all matters that are
26 required by this section and the rules and regulations as are promulgated pursuant to § 42-98-7,
27 then the board shall docket the resubmitted application together with the correspondence from the
28 board specifying the deficiencies in all earlier applications.

29 (9) If the application remains incomplete or the specified defects in the filed application
30 remain uncured, the board shall notify the applicant in writing of its rejection of the application
31 and instruct the applicant to file a new application.

32 (d) Any change to the application made after state and municipal agencies have been
33 assigned advisory opinions pursuant to § 42-98-9 shall be presented to the board for a
34 determination of whether the change represents a material difference to the application. If the

1 [board finds a change represents a material difference, the application may be dismissed without](#)
2 [prejudice and the applicant may refile the application.](#)

3 [\(c\) Nothing contained herein shall be construed as preventing the board from dismissing](#)
4 [an application.](#)

5 **42-98-9. Applications -- Procedures for review -- Preliminary hearing.**

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

13 (b) The board shall consider as issues in every proceeding the ability of the proposed
14 facility to meet the requirements of the laws, rules, regulations, and ordinances under which,
15 absent this chapter, the applicant would be required to obtain a permit, license, variance, or
16 assent. The agency of state government or of a political subdivision of the state which, absent this
17 chapter, would have statutory authority to grant or deny the permit, license, variance, or assent,
18 shall function at the direction of the board for hearing the issue and rendering an advisory opinion
19 thereon.

20 (c) The board ~~shall~~ [may](#) limit the scope of any agency's investigation where it finds that
21 more than one agency has jurisdiction over a matter at issue in the licensing process. In these
22 instances, the board ~~shall~~ [may](#) determine which agency shall make the necessary findings on the
23 issue after giving proper consideration to the expertise and resources available to each of the
24 agencies involved.

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

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

34 [\(f\) The commerce corporation shall conduct an investigation and render an advisory](#)

1 opinion as to the economic impacts of the proposed facility and its construction.

2 (g) The department of environmental management, in consultation with the office of
3 energy resources, shall render an advisory opinion as to the proposed facility's impact on
4 greenhouse gas emissions and consistency with the resilient Rhode Island act.

5 (h) The historical preservation and heritage commission shall conduct an investigation
6 and render an advisory opinion as to the potential impacts of the proposed facility on historic and
7 archeological sites in the state, as well as any measures proposed by the applicant to avoid,
8 minimize, or mitigate unreasonable adverse effects on those sites.

9 (i) The board shall seek advisory opinions from the zoning, planning, and building
10 departments of each host community. The board shall also seek advisory opinions from all public
11 utilities serving the utility, including, but not limited to, water; sewer; electric; and gas. Advisory
12 opinions from municipal entities shall include a study of the financial impact of the proposed
13 facility on local services, infrastructure, and all public and private property located within three
14 (3) miles of the proposed site boundaries. No advisory opinion shall be sought until the
15 application is docketed.

16 (j) Nothing contained herein shall be construed as preventing the board from requesting
17 additional advisory opinions.

18 ~~(f)~~(k) A decision of the board under this section shall be issued within thirty (30) days
19 following the conclusion of the preliminary hearing and in any event within ~~forty five (45)~~ sixty
20 (60) days of the commencement of the hearing.

21 **42-98-9.1. Public notice and hearings on construction projects in cities and towns**
22 **affected.**

23 (a) When the subject of the application is a major energy facility, the applicant shall
24 notify each host community no less than thirty (30) days prior to filing its application with the
25 board.

26 (b) When the subject of the application is a power generating facility, the applicant shall
27 notify each host community no less than sixty (60) days prior to filing its application with the
28 board.

29 ~~(a)~~(c) Upon receiving a utility company application the board shall immediately notify, in
30 writing, the councils of the towns and cities affected by the construction. This includes, but is not
31 limited to, each host community.

32 ~~(b)~~(d) When the subject of the application is a power generating facility, the ~~The~~ board
33 shall have at least ~~one~~ three (3) public ~~hearing~~ hearings in each ~~town or city affected~~ host
34 community prior to holding its own hearings and prior to taking final action on a power

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

24 (e) When the subject of the application is a major energy facility, the board shall have at
25 least one public hearing in each town or city affected by the major energy facility. Each town or
26 city affected by the major energy facility, including quasi-municipal corporations located therein,
27 may request funding from the applicant to perform studies of the local environmental effects of
28 the proposed facility. The expense of the studies shall not exceed the lesser of one hundred
29 thousand dollars (\$100,000) or one-tenth percent (.1%) of the estimated capital cost of the
30 proposed facility. If the applicant contests the relevance of the requested study, or believes it to be
31 redundant with studies already performed, the applicant may request a ruling from the board
32 whether the study is necessary and reasonably expected to produce relevant information. The
33 board's ruling shall be conclusive and final, and shall not be the basis for an interlocutory appeal,
34 injunction or otherwise delay the board's processing of the application.

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

6 ~~(d)~~(g) The applicant shall notify ~~abutting~~ the following land owners individually, in
7 writing, thirty (30) days prior to ~~the~~ any hearings, by certified mail, postage prepaid- :

8 (1) For proposed or existing power generating facilities, applicants shall notify all land
9 owners whose property is located within one and one-half (1.5) miles of the proposed site
10 boundaries;

11 (2) For all other projects, applicants shall notify all land owners whose property is located
12 within three hundred feet (300') from the proposed project or corridor.

13 ~~(e)~~(h) Public input shall be a part of the decision making process.

14 **42-98-10. Agency procedures -- Advisory opinion.**

15 (a) Each agency of the state or political subdivision of the state designated under § 42-98-
16 9 shall proceed to consider the issue or issues consigned to it for review. Each agency shall
17 conclude its consideration and issue its advisory opinion not more than six (6) months following
18 its designation under § 42-98-9; and receipt of all details required under §§ 42-98-8(a)(1) through
19 42-98-8 (a)(7) or any lesser time that the board may require, or the right to exercise the function
20 shall be forfeited to the board. If sufficient details to allow agencies to consider and issue
21 advisory opinions are unavailable for any reason, the application proceeding shall be suspended
22 for up to sixty (60) days to allow sufficient details to be submitted by the applicant. If, at the end
23 of sixty (60) days, sufficient details have not been provided in writing, the application shall be
24 denied. The applicant may refile its application no sooner than sixty (60) days from the date of
25 denial.

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

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

32 (d) Failure or refusal of the applicant to provide requested information ~~may~~ shall be
33 considered as grounds for recommending denial.

34 (e) At the request of the siting board, the director of environmental management and the

1 coastal resources management council shall give priority to the review of permits for energy
2 facilities.

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

7 **42-98-11. Final hearing -- Standards -- Decisions.**

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

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

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

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

32 (3) The proposed facility will not cause unacceptable harm to the environment, will not
33 prevent the state from reaching its greenhouse gas emissions reduction target in the resilient
34 Rhode Island act of 2014, chapter 6.2 of title 42, and will enhance the socio-economic fabric of

1 the state.

2 (c) The board shall not issue a decision granting a license to any applicant unless the
3 board has thoroughly considered whether construction of the proposed facility will adversely
4 impact the ability of the state to achieve the carbon-emissions-reduction goals set forth in § 42-
5 6.2-2(a)(2).

6 (d) Prior to the making of a decision, the board shall take into consideration any town or
7 city council resolution regarding the application. Where a host community is already burdened by
8 one or more fossil fuel energy facilities of two hundred fifty megawatts (250MW) or more, the
9 board shall abide by the town or city council's wishes with regard to a proposed new facility,
10 unless the board is presented with clear and convincing evidence to the contrary.

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

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

26 **42-98-12. Appeals and judicial review.**

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

30 (b) Any person aggrieved by a decision of the board may within ~~ten (10)~~ thirty (30) days
31 from the date of ratification of the decision, ~~obtain judicial review of the decision in the manner~~
32 ~~and according to the standards and procedures provided in chapter 5 of title 39.~~ appeal the
33 decision to the Rhode Island supreme court by filing a notice of appeal with the board and the
34 supreme court.

1 **42-98-13. Access to premises.**

2 (a) Members of the siting board, or agents of the board, while engaged in the
3 performance of their duties, may at all reasonable times enter any premises, buildings, or other
4 places belonging to, or controlled by, an applicant for a license under this chapter, and inspect the
5 premises or any part of the premises. Reasonable notice of the inspection shall be given to the
6 owner of the facility and a representative of the owner shall accompany the members of the board
7 or its agent at all times during any inspection.

8 (b) Any person obstructing, hindering, or in any way, causing to be obstructed or
9 hindered, any board member or agent of the board, in the performance of his or her duties, or who
10 shall refuse to permit any board member or agent of the board entrance into any premises,
11 buildings, or other places belonging to, or controlled by an applicant, in the performance of his or
12 her duties, shall be deemed guilty of a misdemeanor and fined not more than ~~five hundred dollars~~
13 ~~(\$500)~~ one thousand dollars (\$1,000).

14 **42-98-16. Violations.**

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

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

26 (c) The board may require the licensee to maintain those records as are reasonable and
27 necessary to monitor compliance with license provisions, and shall have the authority to enter
28 onto the property of licensees to investigate complaints of noncompliance and to perform routine
29 inspections.

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

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

4 (f) Civil proceedings to enforce this chapter may be brought by the attorney general or
5 any host community in the superior court.

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

9 **42-98-17. Appropriation, fees and grants.**

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

23 (b) The board shall be authorized to establish reasonable fees for investigations,
24 applications and hearings. Applicants shall pay those fees in full prior to the hearing process
25 commencing unless the board agrees to an alternative payment schedule. All fees collected by the
26 board shall be deposited with the general treasurer and appropriated to the board. The state
27 controller is authorized and directed to draw his or her orders upon the general treasurer for
28 payment of any sum or sums as may be necessary from time to time and upon receipt by him or
29 her of authenticated vouchers presented by the coordinator of the board.

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

33 (d) Failure of the applicant to pay expenses lawfully assessed by the board shall
34 constitute grounds for suspension of licensing proceedings or revocation of any license granted,

1 until the applicant has paid the expenses.

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

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

9 (g) The board shall not issue a license to build a new power generating facility unless the
10 applicant demonstrates it has satisfied the following requirements:

11 (1) Applicant shall provide adequate funds for the host community's fire marshal to retain
12 at least one special inspector to assist the host community's fire marshal, for the duration of the
13 construction project; and

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

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

20 (1) Be approved by the board and not otherwise employed by or financially involved in
21 the construction or operation of the facility;

22 (2) Have knowledge and field experience in electric generating facility construction; and

23 (3) Assist the local fire marshal with review and approval of an appropriate safety plan
24 for the electric generating facility, and conduct inspections during construction of the facility to
25 ensure compliance with certificates and safety standards.

26 **42-98-20. Informational filings.**

27 (a) To assist the board in achieving the policy objectives set forth in § 42-98-2, the
28 owners of any proposed energy facility, whether or not the facility qualified as a major energy or
29 power generating facility, shall make an informational filing with the board at the time of first
30 application to any other agency, board, council, or commission of the state or political
31 subdivision of the state required to issue a permit, license, assent, or variance in order for the
32 siting, construction, or alteration of the facility to proceed. Copies of any informational filing
33 shall be provided to the councils of the towns and cities affected by the proposed facility within
34 seven (7) days of filing with the board.

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

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

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

7 SECTION 2. Chapter 42-98 of the General Laws entitled "Energy Facility Siting Act" is
8 hereby amended by adding thereto the following sections:

9 **42-98-7.1. Counsel for the public.**

10 (a) Within fifteen (15) days of the board's docketing of an application related to a power
11 generating facility, the attorney general shall appoint an attorney or attorneys, licensed in Rhode
12 Island, to serve as counsel for the public.

13 (b) Counsel for the public shall represent the public in seeking to protect the quality of
14 the environment, including advocating for environmental justice matters.

15 (c) Counsel for the public shall be accorded all the rights, privileges, and responsibilities
16 of an attorney representing a party in formal action and shall serve until the decision to issue or
17 deny an application is final.

18 (d) Counsel for the public shall represent the public interest which may include issuance
19 of discovery, attendance at public comment hearings, presenting testimony and recommendations
20 to the board relevant to the application, and attending all hearings of the board.

21 (e) Fees for compensation of the counsel for the public, including fees for expert
22 witnesses, if any, shall be paid by the applicant through the board's assessment process.

23 (f) Nothing contained herein shall be construed as preventing any person or entity from
24 being represented by counsel of his or her own choosing and at his or her own expense.

25 **42-98-7.2. Pre-application requirements.**

26 (a) At least sixty (60) days prior to filing an application for a power generating facility,
27 the applicant shall meet with the board coordinator or designee to review the contents of the
28 application and discuss and arrange for the completion of all pre-filing and filing requirements of
29 the board, including information necessary to bill the applicant for costs related to the board's
30 review process.

31 (b) At least sixty (60) days prior to filing an application for a power generating facility,
32 one or more pre-application conferences, as the term is defined in § 45-23-32, shall be held with
33 each state and municipal agency which may exercise licensing authority over any aspect of the
34 facility.

1 (1) During pre-application conferences the applicant shall meet with appropriate
2 municipal officials, boards, commissions, planning staff and state agencies for advice as to the
3 required steps in the approvals process, pertinent local plans, ordinances, regulations, rules,
4 procedures and standards which may bear upon the proposed power generating facility.
5 Consistent with § 45-23-35, pre-application conferences shall encourage information sharing,
6 discussion of project concepts, and provide guidance to an applicant.

7 (2) Prior to the pre-application conference(s) applicants shall submit general, conceptual
8 materials, as requested by municipal and state officials.

9 (c) At least thirty (30) days prior to filing an application for a power generating facility,
10 an applicant must hold a public information session in each host community to present
11 information on the project and provide an opportunity for comments and questions from the
12 public.

13 SECTION 3. This act shall take effect on January 1, 2020 and shall apply to applications
14 filed on or after January 1, 2020.

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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 make changes to the membership of the energy facilities siting board by
2 increasing the size of the board from three (3) to seven (7) members for certain applications, and
3 also imposes additional requirements on applicants for energy facilities.

4 This act would take effect on January 1, 2020 and would apply to applications filed on or
5 after January 1, 2020.

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