

2019 -- H 5804

LC002053

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

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

Introduced By: Representatives Bennett, Edwards, and Jacquard

Date Introduced: March 06, 2019

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

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

4 **42-98-2. Declaration of policy.**

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

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

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

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

17 (4) The licensure and regulatory authority of the state be consolidated in a single body,
18 which will render the final licensing decision concerning the siting, construction, operation and/or

1 alteration of major energy facilities;

2 (5) An energy facility planning process shall be created through which the ~~statewide~~
3 ~~planning program, in conjunction with~~ office of energy resources and the division of public
4 utilities and carriers, in conjunction with the statewide planning program, will be empowered to
5 undertake evaluations and projections of long and short term energy needs, and any other matters
6 that are necessary to establish the state energy plans, goals, and policies which then may be
7 adopted as part of the state guide plan. ~~The state planning council shall be authorized and~~
8 ~~empowered to adopt a long term plan assessing the state's future energy needs and the best~~
9 ~~strategy for meeting them, as part of the state guide plan by January 1, 1991.~~

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

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

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

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

19 (ii) Maximizing efficiency;

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

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

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

23 (vi) Producing low levels of wastewater discharge;

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

25 (viii) Having dual fuel capacity.

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

28 **42-98-3. Definitions.**

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

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

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

2 (d) "Major energy facility" means:

3 (1) Facilities ~~facilities~~ for the extraction, production, conversion, and processing of coal;

4 (2) Facilities ~~facilities~~ for the generation of electricity designed or capable of operating at
5 a gross capacity of forty (40) megawatts or more;

6 (3) Transmission ~~transmission~~ lines of sixty-nine (69) ~~Kv~~ kilovolts or over;

7 (4) Facilities ~~facilities~~ for the conversion, gasification, treatment, transfer, or storage of
8 liquefied natural and liquefied petroleum gases;

9 (5) Facilities ~~facilities~~ for the processing, enrichment, storage, or disposal of nuclear fuels
10 or nuclear byproducts;

11 (6) Facilities ~~facilities~~ for the refining of oil, gas, or other petroleum products;

12 (7) Facilities ~~facilities~~ of ten (10) megawatts or greater capacity for the generation of
13 electricity by water power; ~~and~~

14 (8) Facilities ~~facilities~~ associated with the transfer of oil, gas, and coal via pipeline; or

15 (9) Any ~~any~~ energy facility project of the Rhode Island commerce corporation, ~~economic~~
16 ~~development corporation; the~~

17 The board may promulgate regulations to further define "major energy facility" to the
18 extent further definition is required to carry out the purpose of this chapter, provided that any
19 waste to energy facility shall not be deemed a major energy facility for the purposes of this
20 chapter.

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

24 **42-98-5. Board established.**

25 (a) There is established the siting board which shall be a part of state government. The
26 siting board shall consist of ~~three (3)~~ five (5) members, as follows: the chairperson of the public
27 utilities commission, who shall serve as chairperson of the siting board; the director of the
28 department of environmental management; ~~and~~ the associate director of administration for
29 planning; the executive director of the commerce corporation; and one public member who shall
30 be a resident of this state and be competent by training or experience in the field of government
31 law, energy matters, economics and finance, or engineering and accounting. The public member
32 shall be appointed by the governor subject to the advice and consent of the senate. The public
33 member shall serve for a single term of five (5) years or until a successor is appointed. If the
34 public member resigns or is no longer able to serve, the governor may appoint, subject to the

1 advice and consent of the senate, a new public member to serve the remainder of the term. ~~Any~~
2 ~~member of the board who recuses him or herself shall designate his or her own successor from his~~
3 ~~or her respective agency.~~

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

6 (c) The members of the board shall serve without compensation, but shall be reimbursed
7 for their actual expenses necessarily incurred in the performance of their duties.

8 (d) The board may engage any consultants or expert witnesses that it deems necessary to
9 implement its statutory responsibilities; provided, however, that to the maximum extent possible,
10 board staff be drawn from existing state agencies. Any individual designated by the board as a
11 personal assistant of the board or as board staff shall be bound to comply with the ex parte
12 provisions of § 42-35-13. Board staff may be compensated by the board, either through contract
13 or through a transfer to the state agency or department by whom the individual is normally
14 employed. The board shall select ~~a~~ an employee of the public utilities commission to serve as
15 coordinator. The coordinator is to be responsible for the publication and distribution of all official
16 minutes, reports, and documents and to further serve as director of the board staff, ~~which shall be~~
17 ~~located at the division of public utilities and common carriers.~~ The coordinator, under the
18 direction of the chairperson, shall coordinate and expedite the work of the various agencies to
19 ensure that decisions are made within the time frame established by this chapter.

20 ~~(d)~~(e) A quorum shall consist of a majority of the board. A majority vote of the board
21 shall be required for all actions, including licensing decisions; provided, however, ~~one member of~~
22 the board may appoint a hearing officer, who shall be an attorney licensed to practice law in this
23 state, to conduct any hearings the board is authorized to conduct pursuant to this chapter. The
24 hearing officer shall be compensated by the board, either through contract or, if the hearing
25 officer is a state employee, through a transfer to the state agency or department by whom the
26 attorney is normally employed. Following completion of the hearing, the hearing officer shall file
27 their findings and recommended decision in writing with the board. The board may approve and
28 adopt the hearing officer's findings and recommended decision, in which case, the hearing
29 officer's findings and recommended decision shall become effective and shall have the same
30 force and effect as a decision by the board. The board may, however, at its discretion, upon
31 considering the evidence in the matter at issue and the findings and recommended decision of the
32 hearing officer, decide the matter independently, and in such case the decision of the board with
33 its findings and decision shall become effective when approved by the board. The board may
34 promulgate rules to implement this provision.

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

10 (g) The board may promulgate any necessary rules to implement this or any other section
11 of the act.

12 **42-98-6. Holding over in office.**

13 When the term of office of a member of the siting board expires or otherwise terminates,
14 and that person has participated in the preliminary hearing ~~all or a substantial part of the evidence~~
15 ~~in a proceeding before the board~~, that person shall remain a member of the siting board for the
16 sole purpose of completing the hearing and deciding the matter pending and signing the findings,
17 orders, and judgments in the proceeding. For these services, the person shall be paid necessary
18 expenses as fixed by the siting board as composed following the expiration of that person's term
19 of office. For this purpose, a proceeding shall be deemed completed when the siting board enters
20 its final decision therein regardless of whether that decision is or may be appealed to the supreme
21 court and the case remanded to the siting board for further proceedings.

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 applications shall contain
25 at least the following, where applicable:

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

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

31 The ~~complete plans~~ detailed description as required in this subsection shall be the basis
32 for determining jurisdiction under the energy facility siting act and shall be ~~the plans~~ submitted to
33 all agencies whose permit is required under the law.

34 (3) A detailed description and analysis of the impact of the proposed facility on its

1 physical and social environment together with a detailed description of all environmental
2 characteristics of the proposed site, and a summary of all studies prepared and relied upon in
3 connection therewith.

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

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

12 (5) Complete detail as to the estimated construction cost of the proposed facility, the
13 projected maintenance and operation costs, estimated costs to the community such as safety and
14 public health issues, ~~storm damage and power outages, estimated costs to businesses and~~
15 ~~homeowners due to power outages,~~ the estimated unit cost of energy to be produced by the
16 proposed facility, and expected methods of financing the facility.

17 (6) A complete life-cycle management plan for the proposed facility, including measures
18 for protecting the public health and safety and the environment during the facility's operations,
19 including plans for the handling and disposal of wastes from the facility, and plans for the
20 decommissioning of the facility at the end of its useful life.

21 (7) A study of alternatives to the proposed facility, including alternatives as to energy
22 sources, methods of energy production, and sites for the facility, together with reasons for the
23 applicant's rejection of these alternatives. An assessment of alternatives shall include a
24 comparison of vulnerability to power outages related to storm damage and estimated costs to
25 businesses and homeowners during power outages. The study shall include estimates of facility
26 cost and unit energy costs of alternatives considered.

27 (8) A description of all laws, rules, regulations, and ordinances under which, absent this
28 chapter, the applicant would be required to obtain a permit, license, assent, or variance in order
29 for the siting, construction, or alteration of a major energy facility to proceed; a description,
30 including the purpose, of each such permit, license, assent, and variance and identification of the
31 corresponding agency, board, council, or commission of the state or political subdivision of the
32 state which, absent this chapter, would have jurisdiction to grant such permit, license, assent, or
33 variance; and, for each such permit, license, assent, and variance, a brief identification and
34 description of the materials furnished in the application that are necessary to issue an advisory

1 opinion pursuant to § 42-98-9(b) and, if applicable, an explanation as to why such advisory
2 opinion is not needed.

3 (9) A description, including the purpose, of all federal, state, and municipal permits,
4 licenses, assents, variances, and reviews required for the siting, construction, or alteration of a
5 major energy facility and for each such permit, license, assent, variance, and review, the
6 corresponding agency, board, council, or commission of the federal government, state, or political
7 subdivision of the state which has jurisdiction; and a description of the process to obtain each
8 such permit, license, assent, variance, and review.

9 (10) Documentation that the applicant complied with the pre-filing public information
10 session.

11 For each of the above requirements, the applicant shall provide verified pre-filed
12 testimony that supports the applicant's position that the proposed facility satisfies the standards
13 set forth by § 42-98-11(c) and meets all other requirements necessary for the issuance of a
14 license.

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

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

27 (2) Within forty-five (45) days of the filing of the application, each agency that receives a
28 public copy of the application pursuant to § 42-98-9.2(d) shall advise the board in writing
29 whether the application contains sufficient information for purposes of issuing its advisory
30 opinion. Nothing herein will prohibit any state or municipal agency from being able to request
31 additional information during its advisory opinion process.

32 (3) Within sixty (60) days of the filing of the application, the board shall determine
33 whether the application is administratively complete and, if such a finding is made, the
34 application shall be docketed.

1 (4) If the board determines that an application is administratively incomplete, it shall
2 notify the applicant in writing, specifying each of the areas in which the application has been
3 deemed incomplete.

4 (5) Within ten (10) days of the applicant's receipt of notification of incompleteness, the
5 applicant may file a new and more complete application or complete the filed application by
6 curing the specified defects.

7 (6) If the applicant files a new and more complete application or completes the filed
8 application within ten (10) days of receiving notice issued pursuant to subsection (4) of this
9 section, the board shall, no later than fourteen (14) days after receipt of the new or completed
10 application, determine whether the new or completed application is administratively complete. If
11 the board determines that the application is administratively complete, the application shall be
12 docketed.

13 (7) If the application remains administratively incomplete or the specified defects in the
14 filed application remain uncured, the board shall notify the applicant in writing of its rejection of
15 the application and instruct the applicant to file a new application.

16 (c) Any change to the application made after state and municipal agencies have been
17 assigned advisory opinions pursuant to subsection (d) of this section and § 42-98-10 shall be
18 presented to the board for a determination of whether the change represents a material difference
19 to the initial application. Upon finding a change represents a material difference, the application
20 may be dismissed without prejudice and the applicant may refile the application at any time. In
21 the instance of a proposed transmission facility, changing the preferred option shall not be
22 considered a change if the newly proposed route was one of the alternatives originally considered
23 and addressed in the application at the time it was filed. Any change negotiated as part of a
24 settlement between the applicant, the public advocate, and all cities and towns that have been
25 assigned an advisory opinion and that have intervened in the docket shall be reviewed by the
26 board at the final hearing, but shall not be grounds, solely, for dismissal pursuant to this section.

27 (d) Within fourteen (14) days of docketing, the board shall formally designate the state
28 and municipal agencies to which advisory opinions are assigned, and set a schedule for the
29 completion of advisory opinions, interventions, and the preliminary hearing. The preliminary
30 hearing shall commence not later than sixty (60) days after this decision.

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

1 involved.

2 (2) For projects that include a facility that is regulated by the public utilities commission,
3 a facility intending to participate in a program regulated by the public utilities commission, or a
4 facility whose cost is intended to be paid for by non-bypassable charges on utility bills, the public
5 utilities commission shall render an advisory opinion as to the need, cost, and benefits of the
6 proposed facility.

7 (3) In the event a project that falls within the board's jurisdiction previously received
8 approval from the public utilities commission to be included in the regulated utility's rates, that
9 decision shall be considered the public utilities commission's advisory opinion.

10 (4) The division of planning within the department of administration shall render an
11 advisory opinion as to the social impacts of the proposed facility and its construction and the
12 project's consistency with the state guide plan.

13 (5) The commerce corporation shall render an advisory opinion as to the economic
14 impacts of the proposed facility and its construction.

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

18 (7) The historical preservation and heritage commission shall issue an advisory opinion
19 as to the potential impact(s) of the proposed facility on historic and archeological sites in the
20 state, as well as any measures proposed by the applicant to avoid, minimize, or mitigate
21 unreasonable adverse effects on those sites.

22 (8) Nothing in this section shall limit the authority the board possesses under this chapter
23 to dismiss an application or to request additional advisory opinions.

24 (9) Once the board designates the agencies directed to render an advisory opinion and
25 sets the advisory opinion deadline, the agencies may, in the interest of efficiency of process and
26 public input, coordinate to provide alignment of the agencies' respective reviews.

27 **42-98-9. Applications -- Procedures for review -- Preliminary hearing.**

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

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

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

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

17 ~~(e) The statewide planning program within the department of administration shall
18 conduct an investigation and render an advisory opinion as to the socio-economic impact of the
19 proposed facility and its construction and consistency with the state guide plan.~~

20 (f) A decision of the board under this section shall be issued within thirty (30) days
21 following the conclusion of the preliminary hearing and in any event within forty-five (45) days
22 of the commencement of the hearing.

23 **42-98-10. Agency procedures -- Advisory opinion.**

24 (a) Each agency of the state or political subdivision of the state designated under § 42-98-
25 9 shall proceed to consider the issue or issues ~~consigned~~ assigned to it for review. Each state
26 agency shall conclude its consideration and issue its advisory opinion not more than ~~six (6)~~ four
27 (4) months following its designation under ~~§ 42-98-9~~ § 42-98-8(d), or any lesser time that the
28 board may require, or the right to exercise the function shall be forfeited to the board.

29 (b) Advisory opinions issued by agencies designated under ~~§ 42-98-9~~ § 42-98-8(d) shall
30 not be considered as final decisions of the agencies making the opinions, and shall not be subject
31 to judicial review under § 42-35-15, or any other provision of the general laws.

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

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

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

6 **42-98-11. Final hearing -- Standards -- Decisions.**

7 (a) Within ~~forty-five (45)~~ ten (10) days after the final date for submission of advisory
8 opinions pursuant to § 42-98-10, the board shall set a procedural schedule designed to convene
9 the final hearing on the application within forty-five (45) days from the final date for submission
10 of advisory opinions. The schedule shall allow an opportunity for exchange of discovery and the
11 filing of testimony by all parties, including the public advocate, prior to the final hearing.

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

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

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

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

34 (3) The proposed facility will not cause unacceptable harm to the physical environment

1 [or social environment](#) and will enhance the ~~socio-economic fabric~~ [economy](#) of the state.

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

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

16 **42-98-7.1. Public advocate established -- Powers and duties.**

17 (a) The division of public utilities and carriers shall serve as the energy facility siting
18 public advocate and shall represent the public interest in all cases docketed by the board.

19 (b) The public advocate shall participate in all cases before the siting board. The public
20 advocate shall have the discretion to determine the manner in which it participates. The division
21 of public utilities and carriers may assign a then-current employee or may contract with an
22 attorney licensed in this state to represent it before the board.

23 (c) The division of public utilities and carriers acting as public advocate may use the
24 expertise of staff of relevant state agencies in the administration of its duties. Acting as the public
25 advocate, the division of public utilities and carriers may hire technical experts, if needed, to
26 sponsor testimony and attend evidentiary hearings.

27 (d) Acting as the public advocate, the division of public utilities and carriers will be
28 responsible for reviewing the application for completeness and making recommendations on any
29 deficiencies in the initial application.

30 (e) The division of public utilities and carriers acting as public advocate will be
31 responsible for representing the public interest which may include issuance of discovery,
32 attendance at public comment hearings, presenting testimony and recommendations to the board
33 relevant to the application, and attending all hearings of the board.

34 (f) Costs incurred by the division of public utilities and carriers acting as the public

1 advocate, including hiring of an attorney, use of staff of relevant state agencies, and hiring of
2 technical experts shall be funded by direct assessment of the applicant through the board's
3 assessing process.

4 **42-98-9.2. Pre-application requirements.**

5 (a) At least thirty (30) days prior to filing an application, an applicant must hold a public
6 information session in each municipality in which its project will be located, for the purposes of
7 presenting information on the project and providing an opportunity for comments and questions
8 from the public.

9 (b) At least sixty (60) days prior to filing an application, an applicant must meet with
10 municipal officials to explain the project and determine what information will be needed by
11 municipal officials to conduct their reviews as required by § 42-98-9(b).

12 (c) At least sixty (60) days prior to filing an application, the applicant shall arrange to
13 meet with the board coordinator or designee to review the contents of the application and discuss
14 and arrange for the execution of any pre-filing or filing requirements of the board, including
15 information necessary to bill the applicant for processing and executing the board's review
16 process.

17 (d) Simultaneously with its filing of the application with the board, the applicant shall
18 notify the division of public utilities and carriers, the office of energy resources, department of
19 environmental management, division of planning, the historic preservation and heritage
20 commission, department of health, commerce corporation, and the executive office of each host
21 city or town. Such notification shall notify the agency of its ability pursuant to § 42-98-9(b)(2) to
22 advise the board as to completeness of the application, and include one public copy of the
23 application to each state agency listed above and five (5) copies to each host city or town. The
24 executive office of each city or town shall be responsible for distributing the application to the
25 appropriate municipal departments, boards, and officials.

26 (e) The board may waive or modify the timing requirements contained in this section for
27 good cause and if such waiver is in the best interest of the state.

28 SECTION 3. Section 42-98-20 of the General Laws in Chapter 42-98 entitled "Energy
29 Facility Siting Act" is hereby repealed.

30 **~~42-98-20. Informational filings.~~**

31 ~~(a) To assist the board in achieving the policy objectives set forth in § 42-98-2, the~~
32 ~~owners of any proposed energy facility, whether or not the facility qualified as a major energy~~
33 ~~facility, shall make an informational filing with the board at the time of first application to any~~
34 ~~other agency, board, council, or commission of the state or political subdivision of the state~~

1 ~~required to issue a permit, license, assent, or variance in order for the siting, construction, or~~
2 ~~alteration of the facility to proceed.~~

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

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

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

9 SECTION 4. This act shall take effect upon passage. Applications submitted prior to the
10 effective date shall be governed by the law in effect at the time the application was submitted.

=====
LC002053
=====

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 provisions relative to the energy facility siting act including
2 designating the public utilities commission as the public advocate and would create certain pre-
3 application requirements.

4 This act would take effect upon passage. Applications submitted prior to the effective
5 date would be governed by the law in effect at the time the application was submitted.

=====
LC002053
=====