

2020 -- S 2192

LC003439

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - ENERGY FACILITY SITING ACT

Introduced By: Senators Miller, Conley, Valverde, and Sosnowski

Date Introduced: February 04, 2020

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-98-3, 42-98-8, 42-98-11 and 42-98-16 of the General Laws in  
2 Chapter 42-98 entitled "Energy Facility Siting Act" are hereby amended to read as follows:

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

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

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

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

11 (d) ~~"Major energy facility" means facilities for the extraction, production, conversion,~~  
12 ~~and processing of coal; facilities for the generation of electricity designed or capable of operating~~  
13 ~~at a gross capacity of forty (40) megawatts or more; transmission lines of sixty nine (69) Kv or~~  
14 ~~over; facilities for the conversion, gasification, treatment, transfer, or storage of liquefied natural~~  
15 ~~and liquefied petroleum gases; facilities for the processing, enrichment, storage, or disposal of~~  
16 ~~nuclear fuels or nuclear byproducts; facilities for the refining of oil, gas, or other petroleum~~  
17 ~~products; facilities of ten (10) megawatts or greater capacity for the generation of electricity by~~  
18 ~~water power, and facilities associated with the transfer of oil, gas, and coal via pipeline; any~~

~~energy facility project of the Rhode Island economic development corporation; the board may promulgate regulations to further define "major energy facility" to the extent further definition is required to carry out the purpose of this chapter, provided that any waste to energy facility shall not be deemed a major energy facility for the purposes of this chapter.~~

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

(e) "Fossil fuel facility" means an electricity generating facility that uses as its primary or secondary fuel, natural gas, coal, petroleum, any petroleum distillate, or any combination of those fuels.

(f) "Major energy facility" means facilities for the extraction, production, conversion, and processing of coal; facilities for the generation of electricity designed or capable of operating at a gross capacity of forty (40) megawatts or more; transmission lines of sixty-nine (69) Kv or over; facilities for the conversion, gasification, treatment, transfer, or storage of liquefied natural and liquefied petroleum gases; facilities for the processing, enrichment, storage, or disposal of nuclear fuels or nuclear byproducts; facilities for the refining of oil, gas, or other petroleum products; facilities of ten (10) megawatts or greater capacity for the generation of electricity by water power, and facilities associated with the transfer of oil, gas, and coal via pipeline; any energy facility project of the Rhode Island economic development corporation; the board may promulgate regulations to further define "major energy facility" to the extent further definition is required to carry out the purpose of this chapter, provided that any waste to energy facility shall not be deemed a major energy facility for the purposes of this chapter.

(g) "Renewable energy facility" means an electricity generating unit located within the state and which is a renewable energy resource as defined in § 39-26-5.

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

(a) The rules and regulations promulgated by the board pursuant to § 42-98-7(c) shall prescribe the form and contents of applications under this chapter. The applications shall contain at least the following, where applicable:

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

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

In the case of a fossil fuel facility, a plan shall include provisions to construct or invest in

1 one or more renewable energy facilities in conjunction with construction and operation of the  
2 proposed fossil fuel facility. The aggregate estimated cost or investment in one or more  
3 renewable energy facilities shall be equal to no less than twenty percent (20%) of the estimated  
4 cost of the fossil fuel facility.

5 The complete plans shall be the basis for determining jurisdiction under the energy  
6 facility siting act and shall be the plans submitted to all agencies whose permit is required under  
7 the law.

8 (3) 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) 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) 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) A complete life-cycle management plan for the proposed facility, including measures  
26 for protecting the public health and safety and the environment during the facility's operations,  
27 including plans for the handling and disposal of wastes from the facility, and plans for the  
28 decommissioning of the facility at the end of its useful life.

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

33 (b) Within thirty (30) days of the filing of an applicant under this chapter, the board shall  
34 notify the applicant whether the application is in the form and addresses the matters that are

1 required by this section and the rules and regulations as are promulgated pursuant to § 42-98-7.  
2 An application meeting these requirements shall then be docketed. Any application deemed to be  
3 deficient shall be returned to the applicant, together with a concise and explicit statement of the  
4 application's deficiencies. Within fifteen (15) days of the resubmission of an application  
5 following a rejection for deficiency, the board shall docket the application together with  
6 specification of continuing deficiencies noted by the board, if any.

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

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

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

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

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

33 (4) In the case of an application for permitting of a fossil fuel facility, the applicant has  
34 complied with § 42-98-8. The board shall not approve the fossil fuel facility application unless

1 and until:

2 (i) The applicant's plan for the construction of one or more renewable energy facilities, as  
3 the board in its discretion may modify, change, or amend, has been approved;

4 (ii) The applicant has satisfied the renewable energy facilities investment of § 42-98-8; or

5 (iii) In lieu of building or investing in one or more renewable energy facilities, and at the  
6 applicant's sole election, the applicant may pay an amount equal to twenty-five percent (25%) of  
7 the actual cost of the fossil fuel facility into the renewable energy development fund as  
8 established by § 39-26-7. A payment equal to at least twelve and five-tenths percent (12.5%) of  
9 the estimated cost of the fossil fuel facility shall be made prior to the commencement of  
10 construction. The second payment equal to the remainder of twenty-five percent (25%) of the  
11 actual costs of the fossil fuel facility shall be paid within forty-five (45) days of the commercial  
12 operation date of the fossil fuel facility as determined by the Independent System Operator-New  
13 England or successor entity regulated by the Federal Energy Regulatory Commission.

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

26 **42-98-16. Violations.**

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

32 (b) Failure to comply with any provision, condition or limitation contained in a board  
33 license to site, build, or alter a major energy facility and/or failure to comply with a board cease  
34 and desist order and/or a board order to remedy a non-complying action shall be grounds for

1 suspension or revocation of the license, and/or shall be punishable by a fine of not more than  
2 twenty thousand dollars (\$20,000). Each day of continuing noncompliance shall be considered a  
3 separate violation and so punished.

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

8 (d) The board shall revoke a fossil fuel facility license already granted, in the event of a  
9 willful failure of a licensee to comply with the construction or investment in renewable energy  
10 facilities, or, in the alternative, the failure to make payment to the renewable energy development  
11 fund pursuant to § 42-98-11. The applicant/licensee shall be provided notice and a hearing prior  
12 to revocation. The applicant/licensee shall be afforded a reasonable opportunity to cure a willful  
13 failure not to exceed one hundred eighty (180) days following notice and hearing before  
14 revocation of license.

15 ~~(d)~~(e) The board may designate officials or staff of any state agencies as its agents for the  
16 purposes of investigating complaints, performing routine maintenance functions and issuing  
17 written cease and desist orders.

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

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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

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1           This act would provide that applicants/licenseses for fossil fuel electricity generating  
2 facilities invest in renewable energy facilities in conjunction with the fossil fuel facility  
3 construction.

4           This act would take effect upon passage.

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