

2018 -- S 2905

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - ENERGY FACILITY SITING
ACT

Introduced By: Senators P Fogarty, Miller, Goldin, Euer, and Calkin

Date Introduced: May 17, 2018

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

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

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

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

15 (b) The general assembly further finds that the authority to regulate many aspects of the
16 issues involved in the siting of major energy 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 [and 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 [and 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 and 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 or
7 power generating facilities 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, §§ 42-6.2-1 et seq.

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~~ January 1,
23 2019.

24 **42-98-3. Definitions.**

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

27 ~~(b)~~(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 and/or alteration of a major energy or power generating facility.

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

34 ~~(e)~~(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 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;~~ facilities for the generation of electricity
14 designed or capable of operating at a gross capacity less than sixty megawatts (60MW);
15 transmission lines of sixty-nine (69) Kv or over; facilities for the conversion, gasification,
16 treatment, transfer, or storage of liquefied natural and liquefied petroleum gases; facilities for the
17 processing, enrichment, storage, or disposal of nuclear fuels or nuclear byproducts; facilities for
18 the refining of oil, gas, or other petroleum products; facilities of ten (10) megawatts or greater
19 capacity for the generation of electricity by water power, and facilities associated with the
20 transfer of oil, gas, and coal via pipeline; any energy facility project of the Rhode Island
21 economic development corporation; the board may promulgate regulations to further define
22 "major energy facility" to the extent further definition is required to carry out the purpose of this
23 chapter, provided that any waste to energy facility shall not be deemed a major energy facility for
24 the purposes of this chapter.

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

27 **42-98-5. Board established.**

28 (a) There is established the siting board which shall be a part of state government. When
29 the board sits for any purpose related to a major energy facility, ~~The~~ the siting board shall consist
30 of three (3) members, as follows: the chairperson of the public utilities commission, or their
31 designee, who shall serve as chairperson of the siting board; the director of the department of
32 environmental management; ~~and,~~ or their designee; and the associate director of administration
33 for planning; or their designee. When the board sits for any purpose related to a power generating
34 facility, the board shall consist of seven (7) members, as follows: the chairperson of the public

1 utilities commission, or their designee; who shall serve as chairperson of the siting board; the
2 director of the department of environmental management, or their designee; the associate director
3 of administration for planning, or their designee; the director of the department of health, or their
4 designee; the state fire marshal, or their designee; and two (2) members of the public who shall be
5 appointed by the elected chief executive of the host community or, if there is no elected chief
6 executive, the president of the town council of the host community. One public member shall be a
7 resident of the host community, and the other public member shall be from the business
8 community of the host community, but need not be a resident of the host community. If there are
9 multiple host communities, those communities shall confer and make joint appointments pursuant
10 to this section. Any member of the board who recuses him or herself or is otherwise unable to
11 fulfill their obligations shall designate his or her own successor from his or her respective agency;
12 or, in the case of a public member, a successor shall be appointed in like manner. Each
13 application relating to a proposed or existing facility shall have a board established for that
14 application. A person may serve on two (2) or more boards simultaneously.

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

17 (c) The members of the board who serve in their capacity as an employee of the state or
18 quasi-state agency or municipality shall serve without compensation;. Members of the board who
19 are not employees of the state or municipality shall receive reasonable compensation for their
20 services, as determined and approved by the board chairperson. ~~but~~ All members of the board
21 shall be reimbursed for their actual expenses necessarily incurred in the performance of their
22 duties. Such compensation and expense reimbursement shall be paid monthly by the applicant.
23 The board may engage, at the applicant's expense, any consultants or expert witnesses that it
24 deems necessary to implement its statutory responsibilities; provided, however, that to the
25 maximum extent possible, board staff be drawn from existing state agencies. The board shall
26 select a coordinator to be responsible for the publication and distribution of all official minutes,
27 reports, and documents and to further serve as director of the board staff, which shall be located
28 at the division of public utilities and common carriers. The coordinator, under the direction of the
29 chairperson, shall coordinate and expedite the work of the various agencies to ensure that
30 decisions are made within the time frame established by this chapter.

31 (d) A quorum shall consist of a majority of the board. A quorum is required to conduct
32 any meeting of the board held for the purpose of considering and voting upon an adjudicatory
33 decision, a proposal to adopt, amend or rescind regulations, or any other matter requiring a vote
34 of the board. A majority vote of the board shall be required for all actions, including licensing

1 decisions; ~~provided, however, one member of the board may conduct any hearings the board is~~
2 ~~authorized to conduct pursuant to this chapter.~~

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

12 (f) Time periods within this chapter are discretionary, not mandatory. For good cause
13 shown, the board may, at its discretion, extend any and all time periods herein.

14 **42-98-6. Holding over in office.**

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

25 **42-98-7. Powers and duties.**

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

30 (2) Any agency, board, council, or commission of the state or political subdivision of the
31 state which, absent this chapter, would be required to issue a permit, license, assent, or variance
32 in order for the siting, construction, or alteration of a major energy or power generating facility to
33 proceed, shall sit and function at the direction of the siting board. These agencies shall follow the
34 procedures established by statute, ordinance, and/or regulation provided for determining the

1 permit, license, assent, or variance, but, instead of issuing the permit, license, assent, or variance,
2 shall forward its findings from the proceeding, together with the record supporting the findings
3 and a recommendation for final action, to the siting board.

4 (3) Notwithstanding any provision in this chapter to the contrary, in those instances in
5 which the department of environmental management exercises a permitting or licensing function
6 under the delegated authority of federal law, including, but not limited to, the Federal Clean
7 Water Act (33 U.S.C. § 1251 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §
8 6901 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), and those state laws and regulations
9 which implement those federal laws, the department of environmental management shall be the
10 licensing and permitting authority. Moreover, the authority to issue licenses and permits
11 delegated to the department of environmental management pursuant to chapter 1 of title 2 and to
12 the coastal resources management council pursuant to chapter 23 of title 46, shall remain with
13 those agencies, but in all other respects the department of environmental management and the
14 coastal resources management council shall follow the procedures set forth in this chapter.

15 (4) Each host community shall prepare and submit to the board a report as to the
16 consistency of the proposed power generating facility with all local ordinances, regulations,
17 standards and criteria that apply to the facility.

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

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

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

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

31 **42-98-8. Applications -- Contents -- Acceptance for filing.**

32 (a) The rules and regulations promulgated by the board pursuant to § 42-98-7(c) shall
33 prescribe the form and contents of applications under this chapter. The board shall review Energy
34 Siting Board Rules of Practice and Procedure every two (2) years to ensure standards for filing

1 requirements and application contents are sufficient. The applications shall contain at least the
2 following, where applicable:

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

5 (2) Detailed description of the proposed facility, including its function and operating
6 characteristics, ~~and~~ complete plans as to all structures, including underground construction and
7 transmission facilities, underground or aerial, associated with the proposed facility-, and a
8 detailed description of applicant's access to all necessary utilities, including, but not limited to:
9 water; sewer; electric; and gas.

10 The complete plans shall be the basis for determining jurisdiction under the energy
11 facility siting act and shall be the plans submitted to all agencies whose permit is required under
12 the law. The application shall include all information which, absent this chapter, the applicant
13 would be required to submit to each agency to obtain a permit, license, variance, or assent.

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

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

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

26 (5) Complete detail as to the estimated construction cost of the proposed facility, the
27 projected maintenance and operation costs, estimated costs to the community such as safety and
28 public health issues, storm damage and power outages, estimated costs to businesses and
29 homeowners due to power outages, the estimated unit cost of energy to be produced by the
30 proposed facility, and expected methods of financing the facility.

31 (6) A complete life-cycle management plan for the proposed facility, including a detailed
32 schedule providing design, material acquisition, construction, testing, and operation dates; and
33 measures for protecting the public health and safety and the environment during the facility's
34 operations, including, but not limited to, plans for the handling and disposal of wastes from the

1 facility, [plans for emergency operations and shutdowns](#), and plans for the decommissioning of the
2 facility at the end of its useful life.

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

7 [\(8\) A detailed and specific statement as to the effects the proposed facility would have on](#)
8 [the ability of the state to meet the carbon-emissions-reduction goals set forth in § 42-6.2-2\(a\)\(2\).](#)

9 (b) Within thirty (30) days of the filing of an ~~applicant~~ [application](#) under this chapter, ~~and~~
10 [prior to docketing the application](#), the board shall notify the applicant whether the application is
11 in the form and addresses the matters that are required by this section and the rules and
12 regulations as are promulgated pursuant to § 42-98-7. An application ~~meeting these requirements~~
13 ~~shall then be docketed. Any application deemed~~ [must meet every requirement of this section and](#)
14 [all applicable regulations in order to be docketed; no application will be docketed that does not](#)
15 [satisfy every requirement of this section and all applicable regulations. If the application is in the](#)
16 [form and addresses all matters that are required by this section and the rules and regulations](#)
17 [promulgated pursuant to § 42-98-7, then the application shall be docketed. Any application](#)
18 [deemed](#) to be deficient shall be returned to the applicant, together with a concise and explicit
19 statement of the application's deficiencies. [Within thirty \(30\) days of the resubmission of an](#)
20 [application following a rejection for deficiency, the board shall notify the applicant if the](#)
21 [application is still deficient by returning it to the applicant together with a concise and explicit](#)
22 [statement of the application's deficiencies. If a resubmitted application is in the form and](#)
23 [addresses all matters that are required by this section and the rules and regulations as are](#)
24 [promulgated pursuant to § 42-98-7, then the board shall docket the resubmitted application](#)
25 [together with the correspondence from the board specifying the deficiencies in all earlier](#)
26 [applications. The application may be resubmitted once all identified deficiencies have been](#)
27 [remedied.](#) ~~Within fifteen (15) days of the resubmission of an application following a rejection for~~
28 ~~deficiency, the board shall docket the application together with specification of continuing~~
29 ~~deficiencies noted by the board, if any.~~

30 **42-98-9. Applications -- Procedures for review -- Preliminary hearing.**

31 (a) Within sixty (60) days following the board's docketing of an application the board
32 shall, on not less than forty-five (45) days' notice to all agencies, subdivisions of the state, and the
33 public, convene a preliminary hearing on the application to determine the issues to be considered
34 by the board in evaluating the application, and to designate those agencies of state government

1 and of political subdivisions of the state which shall act at the direction of the board for the
2 purpose of rendering advisory opinions on these issues, and to determine petitions for
3 intervention.

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

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

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

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

25 (f) The board shall seek advisory opinions from the zoning, planning, and building
26 departments of each host community. The board shall also seek advisory opinions from all public
27 utilities serving the facility, including, but not limited to, water, sewer, electric and gas. Advisory
28 opinions from municipal entities shall include a study of the financial impact of the proposed
29 facility on local services, infrastructure, and all public and private property located within three
30 (3) miles of the proposed site boundaries. No advisory opinion shall be sought until the
31 application is docketed.

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

1 **42-98-9.1. Public notice and hearings on construction projects in cities and towns**
2 **affected.**

3 (a) The applicant shall notify each host community no less than thirty (30) days prior to
4 filing its application with the board.

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

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

34 (d) When the subject of the application is a major energy facility, the board shall have at

1 least one public hearing in each town or city affected by the major energy facility. Each town or
2 city affected by the major energy facility, including quasi-municipal corporations located therein,
3 may request funding from the applicant to perform studies of the local environmental effects of
4 the proposed facility. The expense of the studies shall not exceed the lesser of one hundred
5 thousand dollars (\$100,000) or one-tenth percent (.1%) of the estimated capital cost of the
6 proposed facility. If the applicant contests the relevance of the requested study, or believes it to be
7 redundant with studies already performed, the applicant may request a ruling from the board
8 whether the study is necessary and reasonably expected to produce relevant information. The
9 board's ruling shall be conclusive and final, and shall not be the basis for an interlocutory appeal,
10 injunction or otherwise delay the board's processing of the application.

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

16 ~~(f)~~(f) The applicant shall notify ~~abutting~~ the following land owners individually, in
17 writing, thirty (30) days prior to ~~the~~ any hearings, by certified mail, postage prepaid-;

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

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

23 ~~(g)~~(g) Public input shall be a part of the decision-making process.

24 **42-98-10. Agency procedures -- Advisory opinion.**

25 (a) Each agency of the state or political subdivision of the state designated under § 42-98-
26 9 shall proceed to consider the issue or issues consigned to it for review. Each agency shall
27 conclude its consideration and issue its advisory opinion not more than six (6) months following
28 its designation under § 42-98-9; and receipt of all details required under § 42-98-8(a)(1) through
29 (a)(7), or any lesser time that the board may require, or the right to exercise the function shall be
30 forfeited to the board. If sufficient details to allow agencies to consider and issue advisory
31 opinions are unavailable for any reason, the application proceeding shall be suspended for up to
32 sixty (60) days to allow sufficient details to be submitted by the applicant. If, at the end of sixty
33 (60) days, sufficient details have not been provided in writing, the application shall be denied.
34 The applicant may refile its applications no sooner than sixty (60) days from the date of denial.

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

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

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

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

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

16 **42-98-11. Final hearing -- Standards -- Decisions.**

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

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

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

33 (2) The proposed facility is cost-justified, and can be expected to produce energy at the
34 lowest reasonable cost to the consumer consistent with the objective of ensuring that the

1 construction and operation of the proposed facility will be accomplished in compliance with all of
2 the requirements of the laws, rules, regulations, and ordinances, under which, absent this chapter,
3 a permit, license, variance, or assent would be required, or that consideration of the public health,
4 safety, welfare, security and need for the proposed facility justifies a waiver of some part of the
5 requirements when compliance cannot be assured.

6 (3) The proposed facility will not cause unacceptable harm to the environment, will not
7 prevent the state from reaching its greenhouse gas emissions reduction target in the Resilient
8 Rhode Island Act of 2014, §§ 42-6.2-1 et seq., and will enhance the socio-economic fabric of the
9 state.

10 (c) The board shall not issue a decision granting a license to any applicant unless the
11 board has thoroughly considered whether construction of the proposed facility will adversely
12 impact the ability of the state to achieve the carbon-emissions-reduction goals set forth in § 42-
13 6.2-2(a)(2).

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

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

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

34 **42-98-12. Appeals and judicial review.**

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

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

9 **42-98-16. Violations.**

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

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

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

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

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

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

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

4 **42-98-17. Appropriation, fees and grants.**

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **42-98-20. Informational filings.**

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

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

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

33 (2) Detailed description of the proposed facility, including its function and operating
34 characteristics, and complete plans as to all structures, including underground construction and

1 transmission facilities, underground or aerial, associated with the proposed facility.

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

4 **42-98-7.1. Counsel for the public.**

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

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

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

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

15 (e) Nothing contained herein shall be construed as preventing any person or entity from
16 being represented by counsel of their own choosing and at their own expense.

17 SECTION 3. This act shall take effect on January 1, 2019 and apply to applications filed
18 on or after January 1, 2019.

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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 application, and
3 also imposes additional requirements on applicants for energy facilities.

4 This act would take effect on January 1, 2019 and would apply to applications filed on or
5 after January 1, 2019.

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