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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 Slater, and Diaz

Date Introduced: February 27, 2019

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-98-1, 42-98-2, 42-98-3, 42-98-4, 42-98-5, 42-98-6, 42-98-7,
2 42-98-8, 42-98-9, 42-98-9.1, 42-98-10, 42-98-11, 42-98-12, 42-98-13, 42-98-16, 42-98-17 and
3 42-98-20 of the General Laws in Chapter 42-98 entitled "Energy Facility Siting Act" are hereby
4 amended to read as follows:

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

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

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

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

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

8 (d) There is need for a coordinated decision on any major energy or power generating
9 facility; the technical expertise for this evaluation is available within existing agencies involved
10 with the siting process; ~~and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (i) ~~Using renewable fuels, natural gas, or coal processed by "clean coal technology" as~~
12 The relative environmental impact of their primary fuel;

13 (ii) Maximizing efficiency;

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

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

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

17 (vi) Producing low levels of wastewater discharge;

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

19 (viii) ~~Having dual fuel capacity~~ Complying with the state's greenhouse gas emissions
20 reduction targets in the resilient Rhode Island act of 2014, chapter 6.2 of title 42.

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

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

24 As used in this chapter:

25 ~~(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 facility, which, as
28 determined by the board, will result in a significant impact on the environment, or the public
29 health, safety, and welfare. ~~Conversion from one type of fuel to another shall not be considered to~~
30 ~~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 ~~(c)~~ (4) "Board" for purposes of this chapter ~~refers to~~ means the siting board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **42-98-5. Board established.**

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

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

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

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

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

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

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

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

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

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

28 ~~(e)~~(f) The board shall maintain and grant free access to records and reports in its files to
29 members of the public during normal working hours and shall permit copies of those records and
30 reports to be made by interested members of the public at their expense; provided, however, that
31 the board shall not permit disclosure, other than to another government agency for the sole
32 purpose of rendering an advisory opinion, of any information obtained by or submitted to the
33 board pursuant to the provisions of this chapter, upon a showing, satisfactory to the board, that
34 the information is entitled to protection as trade secrets or as privileged, confidential, or

1 proprietary information. No other governmental agency shall disclose any trade secrets or
2 privileged, confidential, or proprietary information.

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

5 **42-98-6. Holding over in office.**

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

16 **42-98-7. Powers and duties.**

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

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

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

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

6 (4) Each host community shall prepare and submit to the board a report as to the
7 consistency of the proposed power generating facility with the host community's comprehensive
8 plan as defined in § 45-22.2-1, as well as consistency of the proposed power generating facility
9 with all local ordinances, regulations, standards and criteria that apply to the facility.

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

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

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

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

23 **42-98-8. Applications -- Contents -- Acceptance for filing.**

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

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

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

33 (3) A complete set of plans as to all structures, underground and above ground, including
34 underground construction and transmission facilities, ~~underground or aerial,~~ associated with the

1 proposed facility-, and a detailed description of the applicant's access to all necessary utilities,
2 including, but not limited to: water; sewer; electric; and gas.

3 The complete plans shall be the basis for determining jurisdiction under the energy
4 facility siting act and shall be ~~the plans~~ submitted to all agencies whose permit is required under
5 the law. The application shall include all information which, absent this chapter, the applicant
6 would be required to submit to each agency to obtain a permit, license, variance, or assent
7 including, but not limited to, items required for major land development submissions under §§
8 45-23-4(a) and 45-23-40(a).

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

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

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

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

26 ~~(6)~~(7) A complete life-cycle management plan for the proposed facility, including
27 measures for protecting the public health and safety and the environment during the facility's
28 operations, including plans for the handling and disposal of wastes from the facility, and plans for
29 the decommissioning of the facility at the end of its useful life.

30 ~~(7)~~(8) A study of alternatives to the proposed facility, including alternatives as to energy
31 sources, methods of energy production, and sites for the facility, together with reasons for the
32 applicant's rejection of these alternatives. An assessment of alternatives shall include a
33 comparison of vulnerability to power outages related to storm damage and estimated costs to
34 businesses and homeowners during power outage. The study shall include estimates of facility

1 cost and unit energy costs of alternatives considered.

2 (9) Identification of federal, state and municipal agencies which may exercise licensing
3 authority over any aspect of the facility or which could exercise licensing authority over any
4 aspect of the facility absent the act. When filing an application for a power generating facility, the
5 applicant shall also affirm that pre-application conferences were held with each agency, as set
6 forth in § 42-6.2-2(a)(2), including the date of each such pre-application conference.

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

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

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

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

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

29 ~~(b)(3) Within ~~thirty (30)~~ sixty (60) days of the filing of an applicant application under this~~
30 ~~chapter, and prior to docketing the application, the board shall notify the applicant whether the~~
31 ~~application is in the form and addresses the matters that are required by this section and the rules~~
32 ~~and regulations as are promulgated pursuant to § 42-98-7. An application meeting these~~
33 ~~requirements shall then be docketed. Any application deemed to be deficient shall be returned to~~
34 ~~the applicant, together with a concise and explicit statement of the application's deficiencies.~~

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

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

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

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

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

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

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

30 (d) Any change to the application made after state and municipal agencies have been
31 assigned advisory opinions pursuant to § 42-98-9 shall be presented to the board for a
32 determination of whether the change represents a material difference, the application may be
33 dismissed without prejudice and the applicant may refile the application.

34 (c) Nothing contained herein shall be construed as preventing the board from dismissing

1 [an application.](#)

2 **42-98-9. Applications -- Procedures for review -- Preliminary hearing.**

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

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

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

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

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

31 [\(f\) The commerce corporation shall conduct an investigation and render an advisory
32 opinion as to the economic impacts of the proposed facility and its construction.](#)

33 [\(g\) The department of environmental management, in consultation with the office of
34 energy resources, shall render an advisory opinion as to the proposed facility's impact on](#)

1 greenhouse gas emissions and consistency with the resilient Rhode Island act.

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

6 (i) The board shall seek advisory opinions from the zoning, planning, and building
7 departments of each host community. The board shall also seek advisory opinions from all public
8 utilities serving the facility, shall include a study of the financial impact of the proposed facility
9 on local services, infrastructure, and all public and private property located within three (3) miles
10 of the proposed site boundaries. No advisory opinion shall be sought until the application is
11 docketed.

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

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

17 **42-98-9.1. Public notice and hearings on construction projects in cities and towns**
18 **affected.**

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

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

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

28 ~~(d)~~ When the subject of the application is a power generating facility, the ~~The~~ board
29 shall have at least ~~one~~ three (3) public ~~hearing~~ hearings in each ~~town or city affected~~ host
30 community prior to holding its own hearings and prior to taking final action on a power
31 generating facility ~~the~~ application. All details of acceptance for filing in §§ 42-98-8(a)(1) --
32 ~~(a)(6)~~ 42-98-8(a)(7) shall be presented at town or city hearings for public comment. No public
33 hearing shall occur until the application is deemed sufficient and docketed by the board as
34 required in § 42-98-8(b). Public hearings shall be held within six (6) months of the date the

1 application is docketed by the board. ~~When the subject of the application is a facility for the~~
2 ~~generation of electricity, or new facilities for the transmission of electricity, the town or city~~ Each
3 host community, including quasi-municipal corporations within the host community, ~~where the~~
4 ~~proposed facility would be located~~ may request funding from the applicant to perform studies of
5 the local environmental effects of the proposed facility. The expense of those studies shall not
6 exceed the greater of ~~the lesser of one hundred thousand dollars (\$100,000)~~ one hundred fifty
7 thousand dollars (\$150,000) or one-tenth percent (.1%) of the estimated capital cost of the
8 proposed facility. ~~located in such city or town.~~ If the applicant contests the relevance of the
9 requested study, or believes it to be redundant with studies already performed, the applicant may
10 request a ruling from the board whether the study is necessary and reasonably expected to
11 produce relevant information. The board's ruling shall be conclusive and final, and shall not be
12 the basis for an interlocutory appeal, injunction or otherwise delay the board's processing of the
13 application. The applicant shall also pay any and all fees and expenses reasonably incurred by
14 each host community, including quasi-municipal corporations within the host community, to fully
15 participate in the facility siting process, and local review, including, but not limited to, fees and
16 expenses for legal counsel, expert evaluations, transcripts and other costs associated with the
17 entire facility siting process. At the request of an applicant, the chairperson of the board may
18 refuse to approve any fee or expense incurred by the host community if the chairperson believes
19 the fee or expense is excessive or unreasonable.

20 (e) When the subject of the application is a major energy facility, the board shall have at
21 least one public hearing in each town or city affected by the major energy facility. Each town or
22 city affected by the major energy facility, including quasi-municipal corporations located therein,
23 may request funding from the applicant to perform studies of the local environmental effects of
24 the proposed facility. If the applicant contests the relevance of the requested study, or believes it
25 to be redundant with studies already performed, the applicant may request a ruling from the board
26 whether the study is necessary and reasonably expected to produce relevant information. The
27 board's ruling shall be conclusive and final, and shall not be the basis for an interlocutory appeal,
28 injunction or otherwise delay the board's processing of the application.

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

34 ~~(d)~~(g) The applicant shall notify ~~abutting~~ the following land owners individually, in

1 writing, thirty (30) days prior to the hearings, by certified mail, postage prepaid- ;

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

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

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

8 **42-98-10. Agency procedures -- Advisory opinion.**

9 (a) Each agency of the state or political subdivision of the state designated under § 42-98-
10 9 shall proceed to consider the issue or issues consigned to it for review. Each agency shall
11 conclude its consideration and issue its advisory opinion not more than six (6) months following
12 its designation under § 42-98-9; and receipt of all details required under §§ 42-98-8(a)(1) through
13 42-98-8 (a)(7) or any lesser time that the board may require, or the right to exercise the function
14 shall be forfeited to the board. If sufficient details to allow agencies to consider and issue
15 advisory opinions are unavailable for any reason, the application proceeding shall be suspended
16 for up to sixty (60) days to allow sufficient details to be submitted by the applicant. If, at the end
17 of sixty (60) days, sufficient details have not been provided in writing, the application shall be
18 denied. The applicant may refile its applications no sooner than sixty (60) days from the date of
19 denial.

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

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

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

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

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

1 **42-98-11. Final hearing -- Standards -- Decisions.**

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

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

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

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

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

29 (c) The board shall not issue a decision granting a license to any applicant unless the
30 board has thoroughly considered whether construction of the proposed facility will adversely
31 impact the ability of the state to achieve the carbon-emissions-reduction goals set forth in § 42-
32 6.2-2(a)(2).

33 (d) Prior to the making of a decision, the board shall take into consideration any town or
34 city council resolution regarding the application. Where a host community is already burdened by

1 one or more fossil fuel energy facilities of two hundred fifty megawatts (250MW) or more, the
2 board shall abide by the town or city council's wishes with regard to a proposed new facility,
3 unless the board is presented with clear and convincing evidence to the contrary.

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

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

19 **42-98-12. Appeals and judicial review.**

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

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

28 **42-98-13. Access to premises.**

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

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

7 **42-98-16. Violations.**

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

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

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

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

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

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

33 (g) Nothing in this chapter shall preclude a host community from enforcing municipal
34 ordinances, levying fines, or pursuing any other legally available enforcement remedies, unless

1 [such ordinances are in direct conflict with a certificate or license issued by the board.](#)

2 **42-98-17. Appropriation, fees and grants.**

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

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

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

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

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

33 (f) The board shall be authorized to receive any grants made for the purpose of planning
34 for or regulating the siting of energy facilities and to disburse and administer the grants under the

1 terms of the grants.

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

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

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

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

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

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

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

19 **42-98-20. Informational filings.**

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

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

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

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

34 SECTION 2. Chapter 42-98 of the General Laws entitled "Energy Facility Siting Act" is

1 hereby amended by adding thereto the following sections:

2 **42-98-7.1. Counsel for the public.**

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

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

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

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

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

15 **42-98-7.2. Pre-application requirements.**

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

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

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

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

33 (c) At least thirty (30) days prior to filing an application for a power generating facility,
34 an applicant must hold a public information session in each host community to present

1 [information on the project and provide an opportunity for comments and questions from the](#)
2 [public.](#)

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO STATE AFFAIRS AND GOVERNMENT -- ENERGY FACILITY SITING
ACT

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

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

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