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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - ENERGY FACILITY SITING
ACT

Introduced By: Representatives Keable, Newberry, Price, Handy, and Ruggiero

Date Introduced: April 26, 2018

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-98-1, 42-98-2, 42-98-3, 42-98-5, 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 facilities currently exists in a variety of agencies
17 within the government of the state and the political subdivisions of the state; that there is
18 overlapping jurisdiction among several state agencies in the siting of energy facilities; and that

1 there is the potential for conflicting decisions being issued by the various agencies having
2 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) The general assembly recognizes that each host community for any proposed or
9 existing energy facility is uniquely affected by the energy facility siting process.

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

13 ~~(e)~~(f) There is a need for coordinating and expediting the review of each state agency and
14 that the authority and responsibility to perform that function should be established.

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

6 (7) Before approving the construction, operation and/or alteration of major energy
7 facilities, the board shall determine whether cost effective efficiency and conservation
8 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) "Agency" means any agency, council, board, or commission of the state or political
26 subdivision of the state.

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

32 (d) "Major energy facility" means facilities for the extraction, production, conversion,
33 and processing of coal; facilities for the generation of electricity designed or capable of operating
34 at a gross capacity of forty (40) megawatts or more; transmission lines of sixty-nine (69) Kv or

1 over; facilities for the conversion, gasification, treatment, transfer, or storage of liquefied natural
2 and liquefied petroleum gases; facilities for the processing, enrichment, storage, or disposal of
3 nuclear fuels or nuclear byproducts; facilities for the refining of oil, gas, or other petroleum
4 products; facilities of ten (10) megawatts or greater capacity for the generation of electricity by
5 water power, and facilities associated with the transfer of oil, gas, and coal via pipeline; any
6 energy facility project of the Rhode Island economic development corporation; the board may
7 promulgate regulations to further define "major energy facility" to the extent further definition is
8 required to carry out the purpose of this chapter, provided that any waste to energy facility shall
9 not be deemed a major energy facility for the purposes of this chapter.

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

13 (f) "Host community" means any city or town in the state in which all or a portion of a
14 proposed or existing energy facility shall be or is located.

15 (g) "Environmental justice" means and includes the equal protection and meaningful
16 involvement of all people with respect to the development, implementation, and enforcement of
17 environmental laws, regulations, and policies and the equitable distribution of environmental
18 benefits.

19 (h) "Designee" means a person currently employed by the agency that has designating
20 authority.

21 **42-98-5. Board established.**

22 (a) There is established the siting board which shall be a part of state government. When
23 the board sits for any purpose related to a proposed or existing facility, The the siting board shall
24 consist of ~~three~~ (3) nine (9) members, as follows: the chairperson of the public utilities
25 commission, or their designee, who shall serve as chairperson of the siting board; the director of
26 the department of environmental management; ~~and~~ or their designee; the associate director of
27 administration for planning; ~~or their designee~~; the director of the department of health, or their
28 designee; the attorney general, or their designee; four (4) members of the public: two (2) of whom
29 shall be appointed by the elected chief executive of the host community or, if there is no elected
30 chief executive, the president of the town council of the host community, one of whom must be a
31 resident of the host community and the other from the business community of the host
32 community who need not be a resident of the host community; one of whom shall be appointed
33 by the attorney general who shall be a resident of the state and have experience or expertise in
34 one or more of the following areas: public deliberative or adjudicative proceedings; business

1 management; environmental protection; natural resource protection; energy facility design,
2 construction, operation, or management; or community and regional planning or economic
3 development; and one who shall be a member of the bar of the state appointed by the president of
4 the state bar association, who shall have experience or expertise in one or more of the following
5 areas: public deliberative or adjudicative proceedings; business management; environmental
6 protection; natural resource protection; energy facility design, construction, operation, or
7 management; or community and regional planning or economic development. If there are
8 multiple host communities, those communities shall confer and make joint appointments pursuant
9 to this section. Any member of the board who recuses him or herself or is otherwise unable to
10 fulfill their obligations shall designate his or her own successor from his or her respective agency,
11 or, in the case of a public member, a successor shall be appointed in like manner. Each
12 application relating to a proposed or existing facility shall have a board established for that
13 application. A person may serve on two (2) or more boards simultaneously.

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

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

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

1 ~~authorized to conduct pursuant to this chapter.~~

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

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

13 **42-98-6. Holding over in office.**

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

24 **42-98-7. Powers and duties.**

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

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

1 findings from the proceeding, together with the record supporting the findings and a
2 recommendation for final action, to the siting board.

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

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

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

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

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

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

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

31 **42-98-7.1. Counsel for the public.**

32 (a) Within fifteen (15) days of the board's docketing of an application, the president of
33 the Rhode Island Bar Association shall appoint an attorney or attorneys, licensed in Rhode Island,
34 to serve as counsel for the public.

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

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

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

8 (e) Nothing contained herein shall be construed as preventing any person or entity from
9 being represented by counsel of their own choosing.

10 **42-98-8. Applications -- Contents -- Acceptance for filing.**

11 (a) The rules and regulations promulgated by the board pursuant to § 42-98-7(c) shall
12 prescribe the form and contents of applications under this chapter. The board shall review EFSB
13 Rules of Practice and Procedure every two (2) years to ensure standards for filing requirements
14 and application contents are sufficient. The applications shall contain at least the following,
15 where applicable:

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

18 (2) Detailed description of the proposed facility, including its function and operating
19 characteristics, ~~and~~ complete plans as to all structures, including underground construction and
20 transmission facilities, underground or aerial, associated with the proposed facility, and a
21 detailed description of applicant's access to all necessary utilities, including, but not limited to,
22 water, sewer, electric, and gas.

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

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

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

1 to protect the public from EMF exposure.

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

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

10 (6) A complete life-cycle management plan for the proposed facility, including a detailed
11 schedule providing design, material acquisition, construction, testing, and operation dates; and
12 measures for protecting the public health and safety and the environment during the facility's
13 operations, including, but not limited to, plans for the handling and disposal of wastes from the
14 facility, plans for emergency operations and shutdowns, and plans for the decommissioning of the
15 facility at the end of its useful life.

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

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

22 (b) Within thirty (30) days of the filing of an ~~applicant~~ application under this chapter, and
23 prior to docketing the application, the board shall notify the applicant whether the application is
24 in the form and addresses the matters that are required by this section and the rules and
25 regulations as are promulgated pursuant to § 42-98-7. An application ~~meeting these requirements~~
26 ~~shall then be docketed. Any application deemed~~ must meet every requirement of this section and
27 all applicable regulations in order to be docketed; no application will be docketed that does not
28 satisfy every requirement of this section and all applicable regulations. If the application is in the
29 form and addresses all matters that are required by this section and the rules and regulations
30 promulgated pursuant to § 42-98-7, then the application shall be docketed. Any application
31 deemed to be deficient shall be returned to the applicant, together with a concise and explicit
32 statement of the application's deficiencies. Within thirty (30) days of the resubmission of an
33 application following a rejection for deficiency, the board shall notify the applicant if the
34 application is still deficient by returning it to the applicant together with a concise and explicit

1 statement of the application's deficiencies. If a resubmitted application is in the form and
2 addresses all matters that are required by this section and the rules and regulations as are
3 promulgated pursuant to § 42-98-7, then the board shall docket the resubmitted application
4 together with the correspondence from the board specifying the deficiencies in all earlier
5 applications. The application may be resubmitted once all identified deficiencies have been
6 remedied. ~~Within fifteen (15) days of the resubmission of an application following a rejection for~~
7 ~~deficiency, the board shall docket the application together with specification of continuing~~
8 ~~deficiencies noted by the board, if any.~~

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

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

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

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

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

33 (e) The statewide planning program within the department of administration shall
34 conduct an investigation and render an advisory opinion as to the socio-economic impact of the

1 proposed facility and its construction and consistency with the state guide plan. This investigation
2 shall include review of municipal comprehensive plans for all host communities to ensure the
3 proposed project conforms to each municipal comprehensive plan.

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

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

14 **42-98-9.1. Public notice and hearings on construction projects in cities and towns**
15 **affected.**

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

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

21 ~~(b)~~(c) The board shall have at least ~~one~~ three (3) public ~~hearing~~ hearings in each ~~town or~~
22 ~~city-affected~~ host community prior to holding its own hearings and prior to taking final action on
23 the application. All details of acceptance for filing in § 42-98-8(a)(1) -- (a)~~(6)~~(7) shall be
24 presented at town or city hearings for public comment. No public hearing shall occur until the
25 application is deemed sufficient and docketed by the board as required in § 42-98-8(b). Public
26 hearings shall be held within six (6) months of the date the application is docketed by the board.

27 When the subject of the application is a facility for the generation of electricity, or new facilities
28 for the transmission of electricity, ~~the town or city~~ each host community, including quasi-
29 municipal corporations within the host community, where the proposed facility would be located
30 may request funding from the applicant to perform studies of the local environmental effects of
31 the proposed facility. The expense of those studies shall not exceed the greater of the lesser of one
32 ~~hundred thousand dollars (\$100,000)~~ two hundred thousand dollars (\$200,000) or one-tenth
33 percent (.1%) of the estimated capital cost of the proposed facility. ~~located in such city or town.~~ If
34 the applicant contests the relevance of the requested study, or believes it to be redundant with

1 studies already performed, the applicant may request a ruling from the board whether the study is
2 necessary and reasonably expected to produce relevant information. The board's ruling shall be
3 conclusive and final, and shall not be the basis for an interlocutory appeal, injunction or otherwise
4 delay the board's processing of the application. The applicant shall also pay any and all fees and
5 expenses reasonably incurred by each host community, including quasi-municipal corporations
6 within the host community, to fully participate in the facility siting process, and local review,
7 including, but not limited to, fees and expenses for legal counsel, expert evaluations, transcripts
8 and other costs associated with the entire facility siting process.

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

14 ~~(e)~~(e) The applicant shall notify ~~abutting~~ the following land owners individually, in
15 writing, thirty (30) days prior to ~~the~~ any hearings, by certified mail, postage prepaid:

16 (1) For proposed or existing electric generating facilities, applicants shall notify all land
17 owners whose property is located within three (3) miles of the proposed site boundaries;

18 (2) For all other projects, applicants shall notify all land owners whose property is located
19 within one mile from the proposed project or corridor.

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

21 **42-98-10. Agency procedures -- Advisory opinion.**

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

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

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

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

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

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

13 **42-98-11. Final hearing -- Standards -- Decisions.**

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

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

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

30 (2) The proposed facility is cost-justified, and can be expected to produce energy at the
31 lowest reasonable cost to the consumer consistent with the objective of ensuring that the
32 construction and operation of the proposed facility will be accomplished in compliance with all of
33 the requirements of the laws, rules, regulations, and ordinances, under which, absent this chapter,
34 a permit, license, variance, or assent would be required, or that consideration of the public health,

1 safety, welfare, security and need for the proposed facility justifies a waiver of some part of the
2 requirements when compliance cannot be assured.

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

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

11 (d) Prior to the making of a decision, the board shall take into consideration any town or
12 city council resolution regarding the application. Where a host community is already burdened
13 by one or more fossil fuel energy facilities of eighty megawatts (80MW) or more, the board shall
14 abide by the town or city council's wishes with regard to a proposed new facility, unless the
15 board is presented with clear and convincing evidence to the contrary.

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

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

31 **42-98-12. Appeals and judicial review.**

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

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

6 **42-98-16. Violations.**

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

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

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

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

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

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

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

1 **42-98-17. Appropriation, fees and grants.**

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

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

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

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

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

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

1 (g) The board shall not issue a license to build a new fossil-fuel electric generating
2 facility unless the applicant demonstrates it has satisfied the following requirements:

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

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

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

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

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

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

18 **42-98-20. Informational filings.**

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

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

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

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

33

1 SECTION 3. This act shall take effect on 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 nine (9) members, and also imposes additional
3 requirements on applicants for energy facilities.

4 This act would take effect on January 1, 2019.

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LC005383
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