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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - ENERGY FACILITY SITING
ACT

Introduced By: 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 or power generating facilities currently exists in a
17 variety of agencies within the government of the state and the political subdivisions of the state;
18 that there is overlapping jurisdiction among several state agencies in the siting of energy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (ii) Maximizing efficiency;

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

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

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

17 (vi) Producing low levels of wastewater discharge;

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

19 (viii) ~~Having dual fuel capacity~~ Complying with the state's greenhouse gas emissions
20 reduction targets in the Resilient Rhode Island Act of 2014, §§ 42-6.2-1 et seq.

21 The board shall, within its rules and regulations, provide guidelines and definitions of
22 appropriate standards for the criteria designated in this subsection by ~~January 1, 1991~~ January 1,
23 2019.

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

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

27 ~~(2)~~ (2) "Alteration" means a significant modification to a major energy or power
28 generating facility, which, as determined by the board, will result in a significant impact on the
29 environment, or the public health, safety, and welfare. ~~Conversion from one type of fuel to~~
30 ~~another shall not be considered to be an "alteration."~~

31 (3) "Applicant" means the entity that seeks board approval for the construction, operation
32 and/or alteration of a major energy or power generating facility.

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

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

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

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

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

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

11 ~~(4)(9)~~ "Major energy facility" means facilities for the extraction, production, conversion,
12 and processing of coal; ~~facilities for the generation of electricity designed or capable of operating~~
13 ~~at a gross capacity of forty (40) megawatts or more;~~ facilities for the generation of electricity
14 designed or capable of operating at a gross capacity between greater than forty megawatts
15 (40MW) and less than sixty megawatts (60MW); transmission lines of sixty-nine (69) Kv or over;
16 facilities for the conversion, gasification, treatment, transfer, or storage of liquefied natural and
17 liquefied petroleum gases; facilities for the processing, enrichment, storage, or disposal of nuclear
18 fuels or nuclear byproducts; facilities for the refining of oil, gas, or other petroleum products;
19 facilities of ten (10) megawatts or greater capacity for the generation of electricity by water
20 power, and facilities associated with the transfer of oil, gas, and coal via pipeline; any energy
21 facility project of the Rhode Island economic development corporation; the board may
22 promulgate regulations to further define "major energy facility" to the extent further definition is
23 required to carry out the purpose of this chapter, provided that any waste to energy facility shall
24 not be deemed a major energy facility for the purposes of this chapter.

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

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

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

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

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

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

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

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

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

18 **42-98-6. Holding over in office.**

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

29 **42-98-7. Powers and duties.**

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

34 (2) Any agency, board, council, or commission of the state or political subdivision of the

1 state which, absent this chapter, would be required to issue a permit, license, assent, or variance
2 in order for the siting, construction, or alteration of a major energy [or power generating](#) facility to
3 proceed, shall sit and function at the direction of the siting board. These agencies shall follow the
4 procedures established by statute, ordinance, and/or regulation provided for determining the
5 permit, license, assent, or variance, but, instead of issuing the permit, license, assent, or variance,
6 shall forward its findings from the proceeding, together with the record supporting the findings
7 and a recommendation for final action, to the siting board.

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

19 [\(4\) Each host community shall prepare and submit to the board a report as to the](#)
20 [consistency of the proposed power generating facility with all local ordinances, regulations,](#)
21 [standards and criteria that apply to the facility.](#)

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

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

29 (d) The siting board shall, by regulation, determine the standards for intervention, [which](#)
30 [shall be liberally granted. Each host community shall be granted intervenor status as a matter of](#)
31 [right.](#)

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

1 **42-98-8. Applications -- Contents -- Acceptance for filing.**

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

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

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

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

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

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

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

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

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

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

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

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

34 **42-98-9. Applications -- Procedures for review -- Preliminary hearing.**

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

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

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

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

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

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

1 application is docketed.

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

5 **42-98-9.1. Public notice and hearings on construction projects in cities and towns**
6 **affected.**

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

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

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

1 the request of an applicant, the chairperson of the board may refuse to approve any fee or expense
2 incurred by the host community if the chairperson believes the fee or expense is excessive or
3 unreasonable.

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

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

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

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

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

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

28 **42-98-10. Agency procedures -- Advisory opinion.**

29 (a) Each agency of the state or political subdivision of the state designated under § 42-98-
30 9 shall proceed to consider the issue or issues consigned to it for review. Each agency shall
31 conclude its consideration and issue its advisory opinion not more than six (6) months following
32 its designation under § 42-98-9; and receipt of all details required under § 42-98-8(a)(1) through
33 (a)(7), or any lesser time that the board may require, or the right to exercise the function shall be
34 forfeited to the board. If sufficient details to allow agencies to consider and issue advisory

1 opinions are unavailable for any reason, the application proceeding shall be suspended for up to
2 sixty (60) days to allow sufficient details to be submitted by the applicant. If, at the end of sixty
3 (60) days, sufficient details have not been provided in writing, the application shall be denied.
4 The applicant may refile its applications no sooner than sixty (60) days from the date of denial.

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

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

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

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

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

20 **42-98-11. Final hearing -- Standards -- Decisions.**

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

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

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

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

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

14 (c) The board shall not issue a decision granting a license to any applicant unless the
15 board has thoroughly considered whether construction of the proposed facility will adversely
16 impact the ability of the state to achieve the carbon-emissions-reduction goals set forth in § 42-
17 6.2-2(a)(2).

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

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

25 ~~(e)~~(f) Within sixty (60) days of the conclusion of the final hearing the board shall issue its
26 final decision on the application. A decision in favor of the application shall constitute a granting
27 of all permits, licenses, variances, appraisals, or assents, which under any law, rule, regulation, or
28 ordinance of the state or of a political subdivision thereof which would, absent this chapter, be
29 required for the proposed facility. The decision may be issued requiring any modification or
30 alteration of the proposed facility, and may be issued on any condition the board deems warranted
31 by the record, and may be issued conditional upon the applicant's receipt of permits required by
32 federal law. The board's decision shall explicitly address each of the advisory opinions received
33 from agencies, and the board's reasons for accepting, rejecting, or modifying, in whole or in part,
34 any of those advisory opinions; any resolution from a host community, and the board's reasons

1 [for accepting or rejecting that resolution](#). The board shall, within ten (10) days of granting a
2 license, with or without conditions, deliver the decision to the speaker of the Rhode Island house
3 of representatives, and the president of the Rhode Island senate.

4 **42-98-12. Appeals and judicial review.**

5 (a) The licensing decision issued by the siting board shall constitute the sole, final,
6 binding, and determinative regulatory decision within the state for the purposes of siting,
7 building, operating, or altering a major energy [or power generating](#) facility.

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

13 **42-98-16. Violations.**

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

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

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

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

34 [\(e\) Any license may be revoked or suspended for any materially false statement in the](#)

1 application or supplemental submissions by the applicant when a true answer would have
2 warranted the board's refusal to issue a license in the first instance.

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

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

8 **42-98-17. Appropriation, fees and grants.**

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **42-98-20. Informational filings.**

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

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

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

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

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

8 **42-98-7.1. Counsel for the public.**

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

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

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

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

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

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

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LC005383/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - ENERGY FACILITY SITING
ACT

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

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

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LC005383/SUB A
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