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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- ENERGY FACILITY SITING  
ACT

Introduced By: Representative David A. Bennett

Date Introduced: January 25, 2021

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

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

4 **42-98-2. Declaration of policy.**

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

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

8 (2) Construction, operation, and/or alteration of major energy facilities shall only be  
9 undertaken when those actions are justified by long term state and/or regional energy need  
10 forecasts;

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

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

1 (5) An energy facility planning process shall be created through which the ~~statewide~~  
2 ~~planning program, in conjunction with~~ office of energy resources and the division of public utilities  
3 and carriers, in conjunction with the statewide planning program, will be empowered to undertake  
4 evaluations and projections of long and short term energy needs, and any other matters that are  
5 necessary to establish the state energy plans, goals, and policies which then may be adopted as part  
6 of the state guide plan. ~~The state planning council shall be authorized and empowered to adopt a~~  
7 ~~long term plan assessing the state's future energy needs and the best strategy for meeting them, as~~  
8 ~~part of the state guide plan by January 1, 1991.~~

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

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

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

16 (i) Using renewable fuels, natural gas, or coal processed by "clean coal technology" as their  
17 primary fuel;

18 (ii) Maximizing efficiency;

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

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

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

22 (vi) Producing low levels of wastewater discharge;

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

24 (viii) Having dual fuel capacity.

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

27 **42-98-3. Definitions.**

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

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

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

- 1 (d) "Major energy facility" means:
- 2 (1) Facilities ~~facilities~~ for the extraction, production, conversion, and processing of coal;
- 3 (2) Facilities ~~facilities~~ for the generation of electricity designed or capable of operating at
- 4 a gross capacity of forty (40) megawatts or more;
- 5 (3) Transmission ~~transmission~~ lines of sixty-nine (69) ~~Kv~~ kilovolts or over;
- 6 (4) Facilities ~~facilities~~ for the conversion, gasification, treatment, transfer, or storage of
- 7 liquefied natural and liquefied petroleum gases;
- 8 (5) Facilities ~~facilities~~ for the processing, enrichment, storage, or disposal of nuclear fuels
- 9 or nuclear byproducts;
- 10 (6) Facilities ~~facilities~~ for the refining of oil, gas, or other petroleum products;
- 11 (7) Facilities ~~facilities~~ of ten (10) megawatts or greater capacity for the generation of
- 12 electricity by water power; ~~and~~
- 13 (8) Facilities ~~facilities~~ associated with the transfer of oil, gas, and coal via pipeline; or
- 14 (9) Any ~~any~~ energy facility project of the Rhode Island commerce corporation, ~~economic~~
- 15 ~~development corporation; the~~

16 The board may promulgate regulations to further define "major energy facility" to the

17 extent further definition is required to carry out the purpose of this chapter, provided that any waste

18 to energy facility shall not be deemed a major energy facility for the purposes of this chapter.

19 (e) "Clean coal technology" means one of the technologies developed in the clean coal

20 technology program of the United States Department of Energy, and shown to produce emissions

21 levels substantially equal to those of natural gas fired power plants.

22 **42-98-5. Board established.**

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

24 siting board shall consist of ~~three (3)~~ five (5) members, as follows: the chairperson of the public

25 utilities commission, who shall serve as chairperson of the siting board; the director of the

26 department of environmental management; ~~and~~ the associate director of administration for

27 planning; the executive director of the commerce corporation; and one public member who shall

28 be a resident of this state and be competent by training or experience in the field of government

29 law, energy matters, economics and finance, or engineering and accounting. The public member

30 shall be appointed by the governor subject to the advice and consent of the senate. The public

31 member shall serve for a single term of five (5) years or until a successor is appointed. If the public

32 member resigns or is no longer able to serve, the governor may appoint, subject to the advice and

33 consent of the senate, a new public member to serve the remainder of the term. ~~Any member of the~~

34 ~~board who recuses him or herself shall designate his or her own successor from his or her respective~~

1 ~~agency.~~

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

4 (c) The members of the board shall serve without compensation, but shall be reimbursed  
5 for their actual expenses necessarily incurred in the performance of their duties.

6 (d) The board may engage any consultants or expert witnesses that it deems necessary to  
7 implement its statutory responsibilities; provided, however, that to the maximum extent possible,  
8 board staff be drawn from existing state agencies. Any individual designated by the board as a  
9 personal assistant of the board or as board staff shall be bound to comply with the ex parte  
10 provisions of § 42-35-13. Board staff may be compensated by the board, either through contract or  
11 through a transfer to the state agency or department by whom the individual is normally employed.  
12 The board shall select ~~a~~ an employee of the public utilities commission to serve as coordinator. The  
13 coordinator is to be responsible for the publication and distribution of all official minutes, reports,  
14 and documents and to further serve as director of the board staff, ~~which shall be located at the~~  
15 ~~division of public utilities and common carriers.~~ The coordinator, under the direction of the  
16 chairperson, shall coordinate and expedite the work of the various agencies to ensure that decisions  
17 are made within the time frame established by this chapter.

18 (d)(e) A quorum shall consist of a majority of the board. A majority vote of the board shall  
19 be required for all actions, including licensing decisions; provided, however, ~~one member of~~ the  
20 board may appoint a hearing officer, who shall be an attorney licensed to practice law in this state,  
21 to conduct any hearings the board is authorized to conduct pursuant to this chapter. The hearing  
22 officer shall be compensated by the board, either through contract or, if the hearing officer is a state  
23 employee, through a transfer to the state agency or department by whom the attorney is normally  
24 employed. Following completion of the hearing, the hearing officer shall file their findings and  
25 recommended decision in writing with the board. The board may approve and adopt the hearing  
26 officer's findings and recommended decision, in which case, the hearing officer's findings and  
27 recommended decision shall become effective and shall have the same force and effect as a decision  
28 by the board. The board may, however, at its discretion, upon considering the evidence in the matter  
29 at issue and the findings and recommended decision of the hearing officer, decide the matter  
30 independently, and in such case the decision of the board with its findings and decision shall  
31 become effective when approved by the board. The board may promulgate rules to implement this  
32 provision.

33 (e)(f) The board shall maintain and grant free access to records and reports in its files to  
34 members of the public during normal working hours and shall permit copies of those records and

1 reports to be made by interested members of the public at their expense; provided, however, that  
2 the board shall not permit disclosure, other than to another government agency for the sole purpose  
3 of rendering an advisory opinion, of any information obtained by or submitted to the board pursuant  
4 to the provisions of this chapter, upon a showing, satisfactory to the board, that the information is  
5 entitled to protection as trade secrets or as privileged, confidential, or proprietary information. No  
6 other governmental agency shall disclose any trade secrets or privileged, confidential, or  
7 proprietary information.

8 [\(g\) The board may promulgate any necessary rules to implement this or any other section](#)  
9 [of the act.](#)

10 **42-98-6. Holding over in office.**

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

20 **42-98-8. Applications -- Contents -- Acceptance for filing.**

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

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

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

29 The ~~complete plans~~ [detailed description as required in this subsection](#) shall be the basis for  
30 determining jurisdiction under the energy facility siting act and shall be ~~the plans~~ submitted to all  
31 agencies whose permit is required under the law.

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

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

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

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

14           (6) A complete life-cycle management plan for the proposed facility, including measures  
15 for protecting the public health and safety and the environment during the facility's operations,  
16 including plans for the handling and disposal of wastes from the facility, and plans for the  
17 decommissioning of the facility at the end of its useful life.

18           (7) A study of alternatives to the proposed facility, including alternatives as to energy  
19 sources, methods of energy production, and sites for the facility, together with reasons for the  
20 applicant's rejection of these alternatives. An assessment of alternatives shall include a comparison  
21 of vulnerability to power outages related to storm damage and estimated costs to businesses and  
22 homeowners during power outages. The study shall include estimates of facility cost and unit  
23 energy costs of alternatives considered.

24           (8) A description of all laws, rules, regulations, and ordinances under which, absent this  
25 chapter, the applicant would be required to obtain a permit, license, assent, or variance in order for  
26 the siting, construction, or alteration of a major energy facility to proceed; a description, including  
27 the purpose, of each such permit, license, assent, and variance and identification of the  
28 corresponding agency, board, council, or commission of the state or political subdivision of the  
29 state which, absent this chapter, would have jurisdiction to grant such permit, license, assent, or  
30 variance; and, for each such permit, license, assent, and variance, a brief identification and  
31 description of the materials furnished in the application that are necessary to issue an advisory  
32 opinion pursuant to § 42-98-9(b) and, if applicable, an explanation as to why such advisory opinion  
33 is not needed.

34           (9) A description, including the purpose, of all federal, state, and municipal permits,

1 licenses, assents, variances, and reviews required for the siting, construction, or alteration of a  
2 major energy facility and for each such permit, license, assent, variance, and review, the  
3 corresponding agency, board, council, or commission of the federal government, state, or political  
4 subdivision of the state which has jurisdiction; and a description of the process to obtain each such  
5 permit, license, assent, variance, and review.

6 (10) Documentation that the applicant complied with the pre-filing public information  
7 session.

8 For each of the above requirements, the applicant shall provide verified pre-filed testimony  
9 that supports the applicant's position that the proposed facility satisfies the standards set forth by §  
10 42-98-11(c) and meets all other requirements necessary for the issuance of a license.

11 ~~(b) Within thirty (30) days of the filing of an applicant under this chapter, the board shall~~  
12 ~~notify the applicant whether the application is in the form and addresses the matters that are required~~  
13 ~~by this section and the rules and regulations as are promulgated pursuant to § 42-98-7. An~~  
14 ~~application meeting these requirements shall then be docketed. Any application deemed to be~~  
15 ~~deficient shall be returned to the applicant, together with a concise and explicit statement of the~~  
16 ~~application's deficiencies. Within fifteen (15) days of the resubmission of an application following~~  
17 ~~a rejection for deficiency, the board shall docket the application together with specification of~~  
18 ~~continuing deficiencies noted by the board, if any. Each application shall be reviewed for~~  
19 completeness.

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

23 (2) Within forty-five (45) days of the filing of the application, each agency that receives a  
24 public copy of the application pursuant to § 42-98-9.2(d) shall advise the board in writing whether  
25 the application contains sufficient information for purposes of issuing its advisory opinion. Nothing  
26 herein will prohibit any state or municipal agency from being able to request additional information  
27 during its advisory opinion process.

28 (3) Within sixty (60) days of the filing of the application, the board shall determine whether  
29 the application is administratively complete and, if such a finding is made, the application shall be  
30 docketed.

31 (4) If the board determines that an application is administratively incomplete, it shall notify  
32 the applicant in writing, specifying each of the areas in which the application has been deemed  
33 incomplete.

34 (5) Within ten (10) days of the applicant's receipt of notification of incompleteness, the

1 applicant may file a new and more complete application or complete the filed application by curing  
2 the specified defects.

3 (6) If the applicant files a new and more complete application or completes the filed  
4 application within ten (10) days of receiving notice issued pursuant to subsection (b)(4) of this  
5 section, the board shall, no later than fourteen (14) days after receipt of the new or completed  
6 application, determine whether the new or completed application is administratively complete. If  
7 the board determines that the application is administratively complete, the application shall be  
8 docketed.

9 (7) If the application remains administratively incomplete or the specified defects in the  
10 filed application remain uncured, the board shall notify the applicant in writing of its rejection of  
11 the application and instruct the applicant to file a new application.

12 (c) Any change to the application made after state and municipal agencies have been  
13 assigned advisory opinions pursuant to subsection (d) of this section and § 42-98-10 shall be  
14 presented to the board for a determination of whether the change represents a material difference  
15 to the initial application. Upon finding a change represents a material difference, the application  
16 may be dismissed without prejudice and the applicant may refile the application at any time. In the  
17 instance of a proposed transmission facility, changing the preferred option shall not be considered  
18 a change if the newly proposed route was one of the alternatives originally considered and  
19 addressed in the application at the time it was filed. Any change negotiated as part of a settlement  
20 between the applicant, the public advocate, and all cities and towns that have been assigned an  
21 advisory opinion and that have intervened in the docket shall be reviewed by the board at the final  
22 hearing, but shall not be grounds, solely, for dismissal pursuant to this section.

23 (d) Within fourteen (14) days of docketing, the board shall formally designate the state and  
24 municipal agencies to which advisory opinions are assigned, and set a schedule for the completion  
25 of advisory opinions, interventions, and the preliminary hearing. The preliminary hearing shall  
26 commence not later than sixty (60) days after this decision.

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

31 (2) For projects that include a facility that is regulated by the public utilities commission,  
32 a facility intending to participate in a program regulated by the public utilities commission, or a  
33 facility whose cost is intended to be paid for by non-bypassable charges on utility bills, the public  
34 utilities commission shall render an advisory opinion as to the need, cost, and benefits of the

1 proposed facility.

2 (3) In the event a project that falls within the board's jurisdiction previously received  
3 approval from the public utilities commission to be included in the regulated utility's rates, that  
4 decision shall be considered the public utilities commission's advisory opinion.

5 (4) The division of planning within the department of administration shall render an  
6 advisory opinion as to the social impacts of the proposed facility and its construction and the  
7 project's consistency with the state guide plan.

8 (5) The commerce corporation shall render an advisory opinion as to the economic impacts  
9 of the proposed facility and its construction.

10 (6) The department of environmental management, in consultation with the office of energy  
11 resources, shall render an advisory opinion as to the proposed facility's impact on greenhouse gas  
12 emissions and its consistency with the resilient Rhode Island act.

13 (7) The historical preservation and heritage commission shall issue an advisory opinion as  
14 to the potential impact(s) of the proposed facility on historic and archeological sites in the state, as  
15 well as any measures proposed by the applicant to avoid, minimize, or mitigate unreasonable  
16 adverse effects on those sites.

17 (8) Nothing in this section shall limit the authority the board possesses under this chapter  
18 to dismiss an application or to request additional advisory opinions.

19 (9) Once the board designates the agencies directed to render an advisory opinion and sets  
20 the advisory opinion deadline, the agencies may, in the interest of efficiency of process and public  
21 input, coordinate to provide alignment of the agencies' respective reviews.

22 **42-98-9. Applications -- Procedures for review -- Preliminary hearing.**

23 (a) Within sixty (60) days following the board's docketing of an application the board shall,  
24 on not less than ~~forty-five (45)~~ thirty (30) days' notice to all agencies, subdivisions of the state, and  
25 the public, convene a preliminary hearing on the application to determine ~~the~~ whether there are any  
26 issues beyond the statutory issues to be considered by the board in evaluating the application, and  
27 ~~to designate those agencies of state government and of political subdivisions of the state which~~  
28 ~~shall act at the direction of the board for the purpose of rendering advisory opinions on these issues,~~  
29 ~~and to determine~~ to rule on petitions for intervention.

30 (b) The board shall consider as issues in every proceeding the ability of the proposed  
31 facility to meet the requirements of the laws, rules, regulations, and ordinances under which, absent  
32 this chapter, the applicant would be required to obtain a permit, license, variance, or assent. The  
33 agency of state government or of a political subdivision of the state which, absent this chapter,  
34 would have statutory authority to grant or deny the permit, license, variance, or assent, shall

1 function at the direction of the board for hearing the issue and rendering an advisory opinion  
2 thereon.

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

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

11 (e) ~~The statewide planning program within the department of administration shall conduct  
12 an investigation and render an advisory opinion as to the socio-economic impact of the proposed  
13 facility and its construction and consistency with the state guide plan.~~

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

17 **42-98-10. Agency procedures -- Advisory opinion.**

18 (a) Each agency of the state or political subdivision of the state designated under § 42-98-  
19 9 shall proceed to consider the issue or issues ~~consigned~~ assigned to it for review. Each state agency  
20 shall conclude its consideration and issue its advisory opinion not more than ~~six (6)~~ four (4) months  
21 following its designation under ~~§ 42-98-9~~ § 42-98-8(d), or any lesser time that the board may  
22 require, or the right to exercise the function shall be forfeited to the board.

23 (b) Advisory opinions issued by agencies designated under ~~§ 42-98-9~~ § 42-98-8(d) shall  
24 not be considered as final decisions of the agencies making the opinions, and shall not be subject  
25 to judicial review under § 42-35-15, or any other provision of the general laws.

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

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

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

34 **42-98-11. Final hearing -- Standards -- Decisions.**

1 (a) Within ~~forty-five (45)~~ ten (10) days after the final date for submission of advisory  
2 opinions pursuant to § 42-98-10, the board shall set a procedural schedule designed to convene the  
3 final hearing on the application within forty-five (45) days from the final date for submission of  
4 advisory opinions. The schedule shall allow an opportunity for exchange of discovery and the filing  
5 of testimony by all parties, including the public advocate, prior to the final hearing.

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

17 ~~(b)~~(c) The board shall issue a decision granting a license only upon finding that the  
18 applicant has shown that:

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

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

28 (3) The proposed facility will not cause unacceptable harm to the physical environment or  
29 social environment and will enhance the ~~socio-economic fabric~~ economy of the state.

30 ~~(c)~~(d) Within sixty (60) days of the conclusion of the final hearing the board shall issue its  
31 final decision on the application. A decision in favor of the application shall constitute a granting  
32 of all permits, licenses, variances, or assents, which under any law, rule, regulation, or ordinance  
33 of the state or of a political subdivision thereof which would, absent this chapter, be required for  
34 the proposed facility. The decision may be issued requiring any modification or alteration of the

1 proposed facility, and may be issued on any condition the board deems warranted by the record,  
2 and may be issued conditional upon the applicant's receipt of permits required by federal law. The  
3 board's decision shall explicitly address each of the advisory opinions received from agencies, and  
4 the board's reasons for accepting, rejecting, or modifying, in whole or in part, any of those advisory  
5 opinions. The board shall, within ten (10) days of granting a license, with or without conditions,  
6 deliver the decision to the [governor](#), speaker of the Rhode Island house of representatives, and the  
7 president of the Rhode Island senate.

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

10 **42-98-7.1. Public advocate established -- Powers and duties.**

11 [\(a\) The division of public utilities and carriers shall serve as the energy facility siting public](#)  
12 [advocate and shall represent the public interest in all cases docketed by the board.](#)

13 [\(b\) The public advocate shall participate in all cases before the siting board. The public](#)  
14 [advocate shall have the discretion to determine the manner in which it participates. The division of](#)  
15 [public utilities and carriers may assign a then-current employee or may contract with an attorney](#)  
16 [licensed in this state to represent it before the board.](#)

17 [\(c\) The division of public utilities and carriers acting as public advocate may use the](#)  
18 [expertise of staff of relevant state agencies in the administration of its duties. Acting as the public](#)  
19 [advocate, the division of public utilities and carriers may hire technical experts, if needed, to](#)  
20 [sponsor testimony and attend evidentiary hearings.](#)

21 [\(d\) Acting as the public advocate, the division of public utilities and carriers will be](#)  
22 [responsible for reviewing the application for completeness and making recommendations on any](#)  
23 [deficiencies in the initial application.](#)

24 [\(e\) The division of public utilities and carriers acting as public advocate will be responsible](#)  
25 [for representing the public interest which may include issuance of discovery, attendance at public](#)  
26 [comment hearings, presenting testimony and recommendations to the board relevant to the](#)  
27 [application, and attending all hearings of the board.](#)

28 [\(f\) Costs incurred by the division of public utilities and carriers acting as the public](#)  
29 [advocate, including hiring of an attorney, use of staff of relevant state agencies, and hiring of](#)  
30 [technical experts shall be funded by direct assessment of the applicant through the board's assessing](#)  
31 [process.](#)

32 **42-98-9.2. Pre-application requirements.**

33 [\(a\) At least thirty \(30\) days prior to filing an application, an applicant must hold a public](#)  
34 [information session in each municipality in which its project will be located, for the purposes of](#)

1 presenting information on the project and providing an opportunity for comments and questions  
2 from the public.

3 (b) At least sixty (60) days prior to filing an application, an applicant must meet with  
4 municipal officials to explain the project and determine what information will be needed by  
5 municipal officials to conduct their reviews as required by § 42-98-9(b).

6 (c) At least sixty (60) days prior to filing an application, the applicant shall arrange to meet  
7 with the board coordinator or designee to review the contents of the application and discuss and  
8 arrange for the execution of any pre-filing or filing requirements of the board, including information  
9 necessary to bill the applicant for processing and executing the board's review process.

10 (d) Simultaneously with its filing of the application with the board, the applicant shall  
11 notify the division of public utilities and carriers, the office of energy resources, department of  
12 environmental management, division of planning, the historic preservation and heritage  
13 commission, department of health, commerce corporation, and the executive office of each host  
14 city or town. Such notification shall notify the agency of its ability pursuant to § 42-98-9(b) to  
15 advise the board as to completeness of the application, and include one public copy of the  
16 application to each state agency listed above and five (5) copies to each host city or town. The  
17 executive office of each city or town shall be responsible for distributing the application to the  
18 appropriate municipal departments, boards, and officials.

19 (e) The board may waive or modify the timing requirements contained in this section for  
20 good cause and if such waiver is in the best interest of the state.

21 SECTION 3. Section 42-98-20 of the General Laws in Chapter 42-98 entitled "Energy  
22 Facility Siting Act" is hereby repealed.

23 **42-98-20. Informational filings:**

24 ~~(a) To assist the board in achieving the policy objectives set forth in § 42-98-2, the owners~~  
25 ~~of any proposed energy facility, whether or not the facility qualified as a major energy facility, shall~~  
26 ~~make an informational filing with the board at the time of first application to any other agency,~~  
27 ~~board, council, or commission of the state or political subdivision of the state required to issue a~~  
28 ~~permit, license, assent, or variance in order for the siting, construction, or alteration of the facility~~  
29 ~~to proceed.~~

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

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

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

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

2 SECTION 4. This act shall take effect upon passage. Applications submitted prior to the  
3 effective date shall be governed by the law in effect at the time the application was submitted.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- ENERGY FACILITY SITING  
ACT

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1           This act would amend provisions relative to the energy facility siting act including  
2     designating the public utilities commission as the public advocate and would create certain pre-  
3     application requirements.

4           This act would take effect upon passage. Applications submitted prior to the effective date  
5     would be governed by the law in effect at the time the application was submitted.

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