

**2018 -- S 2905 SUBSTITUTE A**

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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2018**

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - ENERGY FACILITY SITING  
ACT

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

Date Introduced: May 17, 2018

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (ii) Maximizing efficiency;

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

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

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

17 (vi) Producing low levels of wastewater discharge;

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

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

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

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

25 ~~(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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LC005752/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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LC005752/SUB A  
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