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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - ENERGY FACILITY SITING
ACT

Introduced By: Senator Jessica de la Cruz

Date Introduced: June 17, 2020

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, 42-98-7, 42-98-8, 42-98-9, 42-
2 98-9.1, 42-98-10, 42-98-11 and 42-98-16 of the General Laws in Chapter 42-98 entitled "Energy
3 Facility Siting Act" are hereby amended to read as follows:

4 **42-98-1. Legislative findings.**

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

14 (b) The general assembly further finds that the authority to regulate many aspects of the
15 issues involved in the siting of major energy facilities currently exists in a variety of agencies within
16 the government of the state and the political subdivisions of the state; that there is overlapping
17 jurisdiction among several state agencies in the siting of energy facilities; and that there is the
18 potential for conflicting decisions being issued by the various agencies having authority over the

1 different aspects of the siting of a major energy facility;

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

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

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

12 (f) The general assembly recognizes that a host community for a proposed or existing major
13 generating facility is uniquely affected by the energy facility siting process.

14 **42-98-2. Declaration of policy.**

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

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

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

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

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

29 (5) An energy facility planning process shall be created through which the statewide
30 planning program, in conjunction with the division of public utilities and carriers, will be
31 empowered to undertake evaluations and projections of long and short term energy needs, and any
32 other matters that are necessary to establish the state energy plans, goals, and policies. The state
33 planning council shall be authorized and empowered to adopt a long term plan assessing the state's
34 future energy needs and the best strategy for meeting them, as part of the state guide plan by January

1 1, 1991.

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

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

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

9 (i) Using renewable fuels; ~~or~~ natural gas; ~~or coal processed by "clean coal technology"~~ as
10 their primary fuel;

11 (ii) Maximizing efficiency;

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

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

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

15 (vi) Producing low levels of wastewater discharge;

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

17 (viii) Having dual fuel capacity.

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

20 **42-98-3. Definitions.**

21 (a) "Advisory agencies" means the agencies, councils, boards, departments, and officials
22 of state or political subdivisions of the state which, absent this chapter, would have statutory
23 authority to grant or deny a permit, license, variance, or assent, and which shall function at the
24 direction of the board for hearing an issue and rendering an advisory opinion thereon, including,
25 but not limited to, the public utilities commission, department of transportation, department of
26 environmental management, historical preservation and heritage commission, division of planning,
27 department of health, office of energy resources, municipal zoning board, municipal planning
28 board, municipal building inspector, and municipal tax assessor.

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

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

1 ~~(e)~~(d) "Board" for purposes of this chapter refers to the siting board.

2 (e) "Host community" means any municipality in the state in which all or the majority of
3 a major energy facility is or shall be located.

4 (f) For purpose of this chapter, there shall be two types of "major energy facilities":

5 (1) "Major generating facility" means facilities for the generation of electricity designed or
6 capable of operating at a gross capacity of forty (40) megawatts or more.

7 ~~(d)~~(2) "Major ~~energy non-generating~~ facility" means:

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

11 (ii) Electric transmission lines of sixty-nine (69) Kv or over;

12 (iii) facilities Facilities for the conversion, gasification, treatment, transfer, or storage of
13 liquefied natural and liquefied petroleum gases;

14 (iv) facilities Facilities for the processing, enrichment, storage, or disposal of nuclear fuels
15 or nuclear byproducts;

16 (v) facilities Facilities for the refining of oil, gas, or other petroleum products; ~~facilities of~~
17 ~~ten (10) megawatts or greater capacity for the generation of electricity by water power,~~ and

18 (vi) facilities Facilities associated with the transfer of oil, gas, and coal via pipeline; ~~any~~
19 ~~energy facility project of the Rhode Island economic development corporation; the board may~~
20 ~~promulgate regulations to further define "major energy facility" to the extent further definition is~~
21 ~~required to carry out the purpose of this chapter, provided that any waste to energy facility shall~~
22 ~~not be deemed a major energy facility for the purposes of this chapter.~~

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

26 **42-98-5. Board established.**

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

28 (1) The siting board shall consist of ~~three (3)~~ five (5) members, as follows: the chairperson
29 of the public utilities commission, or designee, who shall serve as chairperson of the siting board;
30 the director of the department of environmental management or designee; and the associate director
31 of administration for planning, or designee; ~~the attorney general, or designee; and the secretary of~~
32 commerce, or designee. ~~Any member of the board who recuses him or herself shall designate his~~
33 ~~or her own successor from his or her respective agency.~~

34 (2) Any member of the board may select their own designee from their respective agency

1 [who shall serve until a final determination is made in the proceeding for which they were](#)
2 [designated.](#)

3 (b) Each member of the board, [including designees](#), shall take an oath to administer the
4 duties of office faithfully and impartially and that oath shall be filed in the office of the secretary
5 of state.

6 (c) The members of the board shall serve without compensation, but shall be reimbursed
7 for their actual expenses necessarily incurred in the performance of their duties. The board may
8 engage any consultants or expert witnesses that it deems necessary to implement its statutory
9 responsibilities; provided, however, that to the maximum extent possible, board staff be drawn
10 from existing state agencies. The board shall select a coordinator to be responsible for the
11 publication and distribution of all official minutes, reports, and documents and to further serve as
12 director of the board staff, which shall be located at the division of public utilities and common
13 carriers. The coordinator, under the direction of the chairperson, shall coordinate and expedite the
14 work of the various agencies to ensure that decisions are made within the time frame established
15 by this chapter. [The board may appoint hearing officers to conduct hearings in accordance with §](#)
16 [42-98-5.1. Any individual designated as board staff shall be bound to comply with the ex parte](#)
17 [provisions of § 42-35-13.](#)

18 (d) A quorum shall consist of a majority of the board. A majority vote of the board shall be
19 required for all actions, including licensing decisions; provided, however, one member of the board
20 may conduct any hearings the board is authorized to conduct pursuant to this chapter.

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

30 **42-98-7. Powers and duties.**

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

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

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

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

24 (c) The siting board is empowered to issue any orders, rules, or regulations as may be
25 required to effectuate the purposes of this chapter. [The board shall review its rules and regulations](#)
26 [from time to time and shall modify, amend or repeal any rules or regulations as may be required to](#)
27 [effectuate the purposes of this chapter.](#)

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

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

32 **42-98-8. Applications -- Contents -- Acceptance for filing.**

33 (a) The rules and regulations promulgated by the board pursuant to § 42-98-7(c) shall
34 prescribe the form and contents of applications under this chapter. The applications shall contain

1 at least the following, where applicable:

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

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

7 The complete set of plans shall be the basis for determining jurisdiction under the energy
8 facility siting act and shall be the plans submitted to all advisory agencies whose permit is required
9 under the law.

10 (3) A detailed description and analysis of the impact of the proposed facility on its physical
11 and social environment together with a detailed description of all environmental characteristics of
12 the proposed site, including, but not limited to, the types of fuels and waste products used, stored,
13 and produced by the facility, and a summary of all studies prepared and relied upon in connection
14 therewith.

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

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

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

28 (6) A detailed description of the short-term and long-term economic impacts associated
29 with constructing and operating the proposed project.

30 ~~(6)~~(7) A complete life-cycle management plan for the proposed facility, including
31 measures for protecting the public health and safety and the environment during the facility's
32 normal and off-normal operations, including, but not limited to, plans for the handling and disposal
33 of wastes from the facility, and plans for the decommissioning of the facility at the end of its useful
34 life.

1 ~~(7)~~(8) A study of alternatives to the proposed facility, including alternatives as to energy
2 sources, methods of energy production, and sites for the facility, together with reasons for the
3 applicant's rejection of these alternatives. The study shall include estimates of facility cost and unit
4 energy costs of alternatives considered.

5 **(b) When an application relates to a major generating facility, the application shall also**
6 **include at least the following, where applicable:**

7 **(1) All information and materials which, not set forth in this chapter, the applicant would**
8 **be required to submit to advisory agencies in order to apply for necessary permits, licenses,**
9 **variances, or assents, including, but not limited to, items required for major land development**
10 **submissions under §§ 45-23-40(a) and 45-23-41(a).**

11 **(2) Confirmation that the applicant met or attempted to meet with advisory agencies for**
12 **pre-application conferences held with state and municipal agencies, as set forth in § 42-98-8.1.**

13 **(3) Detailed description of applicant's access to all necessary utilities, including, but not**
14 **limited to, water, sewer, electric, and gas.**

15 **(c) Each application shall be reviewed prior to docketing.**

16 (1) When an application relates to a major non-generating facility, the board shall conduct
17 a preliminary review to determine whether the application contains each item as required by
18 subsection (a) ~~above of this section.~~ ~~(b)~~ Within thirty (30) days of the filing of an ~~applicant~~
19 ~~application~~ under this chapter, the board shall notify the applicant whether the application is in the
20 form and addresses the matters that are required by this section and the rules and regulations as are
21 promulgated pursuant to § 42-98-7. An application meeting these requirements shall then be
22 docketed. Any application deemed to be deficient shall be returned to the applicant, together with
23 a concise and explicit statement of the application's deficiencies. Within fifteen (15) days of the
24 resubmission of an application following a rejection for deficiency, the board shall ~~either~~ docket
25 the application together with specification of continuing deficiencies noted by the board, if any; ~~or~~
26 ~~shall issue a decision rejecting the application due to continuing deficiencies.~~

27 **(2) When an application relates to a major generating facility, the board shall conduct a**
28 **preliminary review to determine whether the application contains each item as required by**
29 **subsections (a) and (b) of this section. The advisory agencies shall review the application and shall**
30 **advise the board in writing whether the application contains sufficient information and materials**
31 **for the purposes of issuing an advisory opinion to the board. The board may require the applicant**
32 **to provide public copies of the application to each advisory agency along with notification of the**
33 **advisory agency's authority to advise the board of the application's completeness pursuant to this**
34 **chapter. Each advisory agency shall provide written comments to the board related to the**

1 sufficiency of the application within sixty (60) days of receipt of the board's notification, or the
2 right to review the application for sufficiency shall be forfeited. Nothing contained herein shall be
3 construed as preventing any advisory agency from requesting additional information during the
4 siting process. Within seventy-five (75) days of the filing of an application under this chapter, the
5 board shall notify the applicant whether the application is in the form and addresses the matters that
6 are required by this section and the rules and regulations as are promulgated pursuant to § 42-98-
7 7. An application meeting these requirements shall then be docketed. Any application deemed to
8 be deficient shall be returned to the applicant, together with a concise and explicit statement of the
9 application's deficiencies. Following the resubmission of an application after a rejection for
10 deficiency, the board shall coordinate with the advisory agencies to determine whether the
11 application's deficiencies have been cured. The board shall then either docket the application
12 together with specification of continuing deficiencies, if any, or shall issue a decision rejecting the
13 application due to continuing deficiencies.

14 **42-98-9. Applications -- Procedures for review -- Preliminary hearing.**

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

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

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

33 (d) The public utilities commission shall conduct an investigation in which the division of
34 planning of the department of administration, the governor's office of energy assistance and the

1 division of public utilities and carriers shall participate and render an advisory opinion as to the
2 need for the proposed facility.

3 (e) The statewide planning program within the department of administration shall conduct
4 an investigation and render an advisory opinion as to the socio-economic impact of the proposed
5 facility and its construction, ~~and~~ consistency with the state guide plan, and consistency with the
6 municipal comprehensive plan for the host community.

7 (f) When the subject of the application is a major generating facility, the zoning, planning,
8 and building departments of the host community shall conduct investigations and render advisory
9 opinions as to consistency with the municipal comprehensive plan, the potential impact of the
10 proposed facility on local services and infrastructure, and the potential impact on all public and
11 private property located within three (3) miles of the proposed site bounds.

12 (g) Any town or city council may submit to the board a resolution setting forth the council's
13 support or opposition to a proposed project.

14 (h) Nothing contained herein shall be construed as preventing the board from requesting
15 additional advisory opinions.

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

19 **42-98-9.1. Public notice and hearings on construction projects in cities and towns**
20 **affected.**

21 (a) Upon receiving a utility company application the board shall immediately notify, in
22 writing, the councils of the towns and cities affected by the construction.

23 (b) ~~The~~ When the subject of the application is a major non-generating facility, the board
24 shall have at least one public hearing in ~~each town or city affected~~ the host community prior to
25 holding its own hearings and prior to taking final action on the application. All details of acceptance
26 for filing in § 42-98-8(a)~~(1) — (a)(6)~~ shall be presented at town or city hearings for public comment.
27 When the subject of the application ~~is a facility for the generation of electricity, or~~ are new facilities
28 for the transmission of electricity, the town or city where the proposed facility would be located
29 may request funding from the applicant to perform studies of the local environmental effects of the
30 proposed facility. The expense of those studies shall not exceed the lesser of one hundred thousand
31 dollars (\$100,000) or one-tenth percent (.1%) of the estimated capital cost of the proposed facility
32 ~~located in such city or town.~~ If the applicant contests the relevance of the requested study, or
33 believes it to be redundant with studies already performed, the applicant may request a ruling from
34 the board whether the study is necessary and reasonably expected to produce relevant information.

1 The board's ruling shall be conclusive and final, and shall not be the basis for an interlocutory
2 appeal, injunction or otherwise delay the board's processing of the application.

3 (c) When the subject of the application is a major generating facility, the board shall have
4 at least three (3) public hearings in the host community prior to holding its own hearings and prior
5 to taking final action on the application. All details of acceptance for filing in § 42-98-8(a) and (b)
6 shall be presented at public hearings for public comment. The host community where the proposed
7 generating facility would be located may request funding from the applicant to perform studies of
8 the local environmental effects of the proposed facility. The expense of those studies shall not
9 exceed the greater of one hundred fifty thousand dollars (\$150,000) or one-tenth percent (.1%) of
10 the estimated capital cost of the proposed facility. The applicant shall also pay any and all fees and
11 expenses reasonably incurred by the host community to fully participate in the facility siting
12 process and local review, including, but not limited to, fees and expenses for legal counsel, expert
13 evaluations, transcripts and other costs associated with the energy facility siting process. If the
14 applicant contests any fee or expense as unrelated or unreasonable, the applicant may request a
15 ruling from the board whether the fee or expense is related and reasonable. The board's ruling shall
16 be conclusive and final and shall not be the basis for an interlocutory appeal, injunction or otherwise
17 delay the board's processing of the application.

18 ~~(e)~~(d) The applicant shall notify the citizens in towns and cities affected thirty (30) days
19 prior to public meetings through local papers.

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

22 (1) For applications related to major non-generating facilities, applicants shall notify all
23 property owners whose property is located within three hundred feet (300') from the limit of
24 disturbance of the proposed project or the centerline of a proposed linear project; and

25 (2) For applications related to major generating facilities, applicants shall notify all
26 property owners whose property is located within two (2) miles from the proposed site boundaries.

27 ~~(e)~~(f) 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 advisory agency
31 shall conclude its consideration and issue its advisory opinion not more than six (6) months
32 following its designation under § 42-98-9 and receipt of all application materials, or any lesser time
33 that the board may require, or the right to exercise the function shall be forfeited to the board. The
34 board may suspend an application proceeding where an applicant fails to provide requested relevant

1 [information or materials to an advisory agency in a timely manner.](#)

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

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

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

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

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

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

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

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

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

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

3 (3) The proposed facility will not cause unacceptable harm to the environment and will
4 enhance the socio-economic fabric of the state.

5 (c) For multiple applications relate to a single project, the board shall consider the
6 cumulative impacts of the related applications.

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

20 **42-98-16. Violations.**

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

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

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

1 (d) The board may designate officials or staff of any state agencies as its agents for the
2 purposes of investigating complaints, performing routine maintenance functions and issuing
3 written cease and desist orders.

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

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

9 **42-98-5.1. Hearing officers.**

10 (a) The board may appoint a hearing officer to conduct hearings related to a major non-
11 generating facility. Hearing officers shall not be appointed to conduct hearings related to a major
12 generating facility.

13 (b) A hearing officer shall be an attorney licensed to practice law in this state.

14 (c) A hearing officer shall be reasonably compensated for their services to the board, either
15 through contract or, if the hearing officer is a state employee, through a transfer to the state agency
16 or department by whom the attorney is normally employed.

17 (d) Following the completion of the hearing, the hearing officer shall file their findings and
18 recommended decision in writing with the board. The board may accept, reject, or modify, in whole
19 or in part, the hearing officer's findings and recommended decision. The hearing officer's findings
20 and recommended decision shall become effective and shall have the same force and effect as a
21 decision of the board. If the board rejects or modifies the hearing officer's findings or recommended
22 decision, then the board shall decide the matter independently and issue an order of the board with
23 its findings and decision.

24 **42-98-7.1. Public advocate.**

25 (a) Consistent with the attorney general's constitutional and statutory authority to advocate
26 for and on behalf of the citizens of Rhode Island, the attorney general shall appoint attorney(s)
27 licensed to practice law in this state to serve as public advocates regarding energy facility siting
28 matters.

29 (b) The board shall notify the attorney general when an application has been accepted and
30 docketed by the board, and the public advocate may intervene as a matter of right in any proceeding
31 before the board.

32 (c) The public advocate shall represent the citizens of Rhode Island as the attorney general
33 may direct. The public advocate shall be accorded all the rights, privileges, and responsibilities of
34 an attorney representing a party before the board.

1 (d) The public advocate shall be reasonably compensated for the advocate's services to the
2 board. Fees for compensation of the public advocate, including fees for expert witnesses, if any,
3 shall be paid by the applicant through the board's assessment process.

4 (e) No provision of this chapter shall derogate from the common law or statutory authority
5 of the attorney general nor shall any provision be construed as a limitation on the common law or
6 statutory authority of the attorney general.

7 (f) No provision of this chapter shall be construed as preventing individuals or entities from
8 being represented by counsel of their own choosing at their own expense.

9 **42-98-8.1. Pre-application requirements - Major generating facility.**

10 (a) At least sixty (60) days prior to filing an application for a major generating facility, the
11 applicant shall meet with the board coordinator or designee to review the contents of the application
12 and arrange for the completion of all pre-filing and filing requirements of the board, including
13 information necessary to bill the applicant for costs related to the board's review process.

14 (b) At least sixty (60) days prior to filing an application for a major generating facility, the
15 applicant shall meet with each advisory agency for one or more pre-application conferences, as the
16 term is defined in § 45-23-32.

17 (1) During pre-application conferences, the applicant shall meet with appropriate officials
18 and staff for advice as to the required steps in the approval process, pertinent local plans,
19 ordinances, regulations, rules, procedures, and standards which may bear upon the proposed
20 facility. Consistent with § 45-23-35, pre-application conferences shall encourage information
21 sharing, discussion of project concepts, and provide guidance to the applicant.

22 (2) Prior to pre-application conferences, the applicant shall submit general, conceptual
23 materials, as requested by officials and staff.

24 (c) At least thirty (30) days prior to filing an application for a major generating facility, an
25 applicant shall hold an advertised public information session in each municipality in which all or a
26 portion of the proposed facility is or shall be located to present information on the proposed project
27 and provide an opportunity for comments and answer questions from the public.

28 SECTION 3. This act shall take effect upon passage.

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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 increase the membership of the energy facility siting board from three (3)
2 to five (5) members and would revise the process of energy facility siting to mandate inclusion and
3 participation of the public and cities and towns. This act would allow the appointment of hearing
4 officers and public advocates and would require pre-application conferences.

5 This act would take effect upon passage.

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