

1 CHAPTER 42-98

2 Energy Facility Siting Act

3 Proposed Amendments – 2019

Commented [LD1]: This document tracks S2905 Sub A (which was passed by the House and introduced to the Senate in 2018). Any changes to the document (that do not match the 2018 Sub A) are noted below.

4
5 § 42-98-1 Legislative findings.

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

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

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

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

Commented [LD2]: S2905 Sub A uses "and"

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

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

32
33 § 42-98-2 Declaration of policy.

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

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

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

Commented [LD3]: S2905 Sub A uses "and"

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

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

13 (5) An energy facility planning process shall be created through which the statewide planning program, in
14 conjunction with the division of public utilities and carriers, will be empowered to undertake evaluations
15 and projections of long and short term energy needs, and any other matters that are necessary to establish
16 the state energy plans, goals, and policies. The state planning council shall be authorized and empowered
17 to adopt a long term plan assessing the state's future energy needs and the best strategy for meeting them,
18 as part of the state guide plan by January 1, 1991.

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

Commented [LD4]: S2905 Sub A uses "and"

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

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

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

28 (ii) Maximizing efficiency;

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

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

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

32 (vi) Producing low levels of wastewater discharge;

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

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

The board shall, within its rules and regulations, provide guidelines and definitions of appropriate standards for the criteria designated in this subsection by ~~January 1, 1991~~ January 1, 2020.

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§ 42-98-3 Definitions.

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

Commented [LD6]: S2905 Sub A changed this list to numerals; I have left them as alpha list.

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

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

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

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

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

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

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

~~(i)~~ "Major energy facility" means:

(1) facilities for the extraction, production, conversion, and processing of coal;

Commented [LD7]: Numbered list does not appear in S2905 Sub A; added from state agency's 2018 proposed amendments (stylistic change).

~~(2) facilities for the generation of electricity designed or capable of operating at a gross capacity of forty~~

~~(40) megawatts or more; facilities for the generation of electricity designed or capable of operating at a~~

~~gross capacity between greater than forty megawatts (40 MW) and less than sixty megawatts (60MW);~~

(3) transmission lines of sixty-nine kilovolts (69 Kv) ~~Kv~~ or over;

Commented [LD8]: Does not appear in S2905 Sub A; added from state agency's 2018 proposed amendments

(4) facilities for the conversion, gasification, treatment, transfer, or storage of liquified natural and liquified petroleum gases;

(5) facilities for the processing, enrichment, storage, or disposal of nuclear fuels or nuclear byproducts;

(6) facilities for the refining of oil, gas, or other petroleum products;

1 ~~(7)~~ facilities of ten (10) megawatts or greater capacity for the generation of electricity by water power;

2 ~~and~~

3 ~~(8)~~ facilities associated with the transfer of oil, gas, and coal via pipeline;

4 ~~(9)~~ any energy facility project of the ~~Rhode Island economic development corporation~~ Rhode Island
5 ~~commerce corporation;~~

6 ~~the~~ The board may promulgate regulations to further define "major energy facility" to the extent further
7 definition is required to carry out the purpose of this chapter, provided that any waste to energy facility
8 shall not be deemed a major energy facility for the purposes of this chapter.

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

11
12 **§ 42-98-4 License required.**

13 No person shall site, construct, or alter a major energy facility ~~or a power generating facility~~ within the
14 state without first obtaining a license from the siting board pursuant to this chapter.

15
16 **§ 42-98-5 Board established.**

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

18 ~~(1)~~ When the board sits for any purpose related to a major energy facility, ~~the~~ the siting board shall
19 consist of ~~three~~ (3) members, as follows: the chairperson of the public utilities commission, who shall
20 serve as chairperson of the siting board; the director of the department of environmental management;
21 ~~and, or their designee who shall be an employee of the department of environmental management; and the~~
22 associate director of administration for planning, ~~or their designee who shall be an employee of the~~
23 ~~department of administration.~~

24 ~~(2)~~ When the board sits for any purpose related to a power generating facility, the board shall consist of
25 ~~seven~~ (7) members, as follows: the chairperson of the public utilities commission, who shall serve as
26 chairperson of the siting board; the director of the department of environmental management, or their
27 designee who shall be an employee of the department of environmental management; and the associate
28 director of administration for planning, or their designee who shall be an employee of the department of
29 administration; ~~the director of the department of health, or their designee who shall be an employee of the~~
30 ~~department health; the state fire marshal, or their designee who shall be an employee of the state fire~~
31 ~~marshal's office; and two~~ (2) members of the public who shall be appointed by the elected chief executive
32 ~~of the host community or, if there is no elected chief executive, the president of the town council of the~~
33 ~~host community. One public member shall be a resident of the host community, and the other public~~
34 ~~member shall be from the business community of the host community but need not be a resident of the~~

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Commented [LD10]: Does not appear in S2905 Sub A; added from state agency's 2018 proposed amendments; consistent with entity name changed by legislation in 2014.

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Commented [LD12]: Does not appear in S2905 Sub A.

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Commented [LD14]: Note: State agency's proposed 5 members in 2018; National Grid also preferred 5 members in 2018.

Commented [LD15]: Alternatives to director of dept of health and state fire marshal could be:
- Director of RI department of public safety (see RIGL 36-4-2);
- Director of RI emergency management agency (see RIGL 30-15-6);
- Administrator of Division of Public Utilities & Carriers (see RIGL 30-15-6);
- Representative of a private, nonprofit, environmental advocacy organization to be appointed by the governor (See RIGL 42-11-10);
Note: All could include "or their designee"

1 host community. If there are multiple host communities, those communities shall confer and make joint
2 appointments pursuant to this section.

3 (3) Any member of the board who recuses him or herself or is otherwise unable to fulfill his or her
4 obligations shall designate his or her own successor from his or her respective agency or, in the case of a
5 public member, a successor shall be appointed in the same manner as set forth in (2) above.

6 (4) Each application relating to a proposed or existing facility shall have a board established for that
7 application. A person may serve on two (2) or more boards simultaneously.

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

10 (c) The members of the board who serve in their capacity as an employee of the state or quasi-state
11 agency or municipality shall serve without compensation. Members of the board who are not employees
12 of the state or municipality shall receive reasonable compensation for their services, as determined and
13 approved by the board chairperson. ~~but~~ All members of the board shall be reimbursed for their actual
14 expenses necessarily incurred in the performance of their duties. Such compensation and expense
15 reimbursement shall be paid monthly by the applicant.

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

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

32 (f) The board shall maintain and grant free access to records and reports in its files to members of the
33 public during normal working hours and shall permit copies of those records and reports to be made by
34 interested members of the public at their expense; provided, however, that the board shall not permit

Commented [LD16]: Phrase appears in S2905 Sub A as "in like manner"; changed for clarity.

Commented [LD17]: New (d) does not appear in S2905 Sub A; added from state agency's 2018 proposed amendments

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Commented [LD22]: New (e) does not appear in S2905 Sub A; added from state agency's 2018 proposed amendments

Commented [LD23]: New (f) does not appear in S2905 Sub A; added from state agency's 2018 proposed amendments

1 disclosure, other than to another government agency for the sole purpose of rendering an advisory
2 opinion, of any information obtained by or submitted to the board pursuant to the provisions of this
3 chapter, upon a showing, satisfactory to the board, that the information is entitled to protection as trade
4 secrets or as privileged, confidential, or proprietary information. No other governmental agency shall
5 disclose any trade secrets or privileged, confidential, or proprietary information.

6 (g) Time periods within this chapter are directory, not mandatory. For good cause shown, the board may,
7 at its discretion, extend any and all time periods herein.

8
9 **§ 42-98-6 Holding over in office.**

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

19
20 **§ 42-98-7 Powers and duties.**

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

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

31 (3) Notwithstanding any provision in this chapter to the contrary, in those instances in which the
32 department of environmental management exercises a permitting or licensing function under the
33 delegated authority of federal law, including, but not limited to, the Federal Clean Water Act (33 U.S.C. §
34 1251 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Air Act

1 (42 U.S.C. § 7401 et seq.), and those state laws and regulations which implement those federal laws, the
2 department of environmental management shall be the licensing and permitting authority. Moreover, the
3 authority to issue licenses and permits delegated to the department of environmental management
4 pursuant to chapter 1 of title 2 and to the coastal resources management council pursuant to chapter 23 of
5 title 46, shall remain with those agencies, but in all other respects the department of environmental
6 management and the coastal resources management council shall follow the procedures set forth in this
7 chapter.

8 (4) Each host community shall prepare and submit to the board a report as to the consistency of the
9 proposed power generating facility with the host community's comprehensive plan as defined in § 45-
10 22.2-1 et seq., as well as the consistency of the proposed power generating facility with all local
11 ordinances, regulations, standards and criteria that apply to the facility.

Commented [LD24]: Does not appear in S2905 Sub A.

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

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

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

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

22 **§ 42-98-7.1 Counsel for the public.**

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

Commented [LD25]: The state agency's 2018 proposed legislation designates the division of public utilities and carriers instead of an attorney appointed by the attorney general.

26 (b) Counsel for the public shall:

27 (1) Represent the public interest which may include issuance of discovery, attendance at public comment
28 hearings, presenting testimony and recommendations to the board relevant to the application, and
29 attending all hearings of the board; and

Commented [LD26]: Numbered list does not appear in S2905 Sub A; added for clarity

30 (2) Represent the public in seeking to protect the quality of the environment, including advocating for
31 environmental justice matters.

Commented [LD27]: Does not appear in S2905 Sub A; added from state agency's 2018 proposed legislation

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

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

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

8
9 **§ 42-98-7.2 Pre-Application Requirements**

10 (a) At least sixty (60) days prior to filing an application for a power generating facility, the applicant shall
11 meet with the board coordinator or designee to review the contents of the application and discuss and
12 arrange for the completion of all pre-filing and filing requirements of the board, including information
13 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 power generating facility, one or more pre-
15 application conferences, as the term is defined in § 45-23-32, shall be held with each state and municipal
16 agency which may exercise licensing authority over any aspect of the facility.

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

22 (2) Prior to the pre-application conference(s) applicants shall submit general, conceptual materials, as
23 requested by municipal and state officials.

24 (c) At least thirty (30) days prior to filing an application for a power generating facility, an applicant must
25 hold a public information session in each host community to present information on the project and
26 provide an opportunity for comments and questions from the public.

27
28 **§ 42-98-8 Applications – Contents – Acceptance for filing.**

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

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

Commented [LD28]: This entire section is new and does not appear in S2905 Sub A. Added to address Town concerns. A pre-application requirements subsection also appears in state agency's 2018 proposed legislation.

Commented [LD29]: Does not appear in S2905 Sub A; adapted from state agency's 2018 proposed legislation; amended state agency language to apply only to power generating facility

Commented [LD30]: Does not appear in S2905

Commented [LD31]: Tracks language of § 45-23-35 (subdivision of land, pre-application meetings and concept review)

Commented [LD32]: Tracks language of § 45-23-35 (subdivision of land, pre-application meetings and concept review)

Commented [LD33]: Does not appear in S2905 Sub A; added from state agency's 2018 proposed legislation; amended state agency language to apply only to power generating facility

1 (2) Detailed description of the proposed facility, including its function and operating characteristics, ~~and,~~
2 (3) A complete set of plans as to all structures, underground and above ground, including underground
3 construction and transmission facilities, ~~underground or aerial,~~ associated with the proposed facility; ~~and~~
4 a detailed description of applicant's access to all necessary utilities, including, but not limited to: water;
5 sewer; electric; and gas.

6 The complete plans shall be the basis for determining jurisdiction under the energy facility siting act and
7 shall be ~~the plans~~ submitted to all agencies whose permit is required under the law. The application shall
8 include all information which, absent this chapter, the applicant would be required to submit to each
9 agency to obtain a permit, license, variance, or assent, including but not limited to items required for
10 major land development submissions under § 45-23-40(a) and § 45-23-41(a).

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

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

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

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

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

31 (7) A study of alternatives to the proposed facility, including alternatives as to energy sources, methods of
32 energy production, and sites for the facility, together with reasons for the applicant's rejection of these
33 alternatives. An assessment of alternatives shall include a comparison of vulnerability to power outages

Commented [LD34]: Does not appear in S2905 Sub A; added for clarity.

Commented [LD35]: Does not appear in S2905 Sub A; added from state agency's 2018 proposed legislation

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Commented [LD37]: Does not appear in S2905 Sub A; added from state agency's 2018 proposed legislation

Commented [LD38]: Does not appear in S2905 Sub A; Added to address Town concerns.

1 ~~related to storm damage and estimated costs to businesses and homeowners during power outages.~~ The
 2 study shall include estimates of facility cost and unit energy costs of alternatives considered.
 3 ~~(8) Identification of federal, state and municipal agencies which may exercise licensing authority over any~~
 4 ~~aspect of the facility or which could exercise licensing authority over any aspect of the facility absent the~~
 5 ~~Act.~~ ~~When filing an application for a power generating facility, the applicant shall also affirm that pre-~~
 6 ~~application conferences were held with each agency, as set forth in § 42-98-7.2, including the date of each~~
 7 ~~such pre-application conference.~~
 8 ~~(9) A detailed and specific statement as to the effects the proposed facility would have on the ability of~~
 9 ~~the state to meet the carbon-emissions-reduction goals set forth in §42-6.2-2(a)(2).~~
 10 ~~(b) Simultaneous with the filing of an application for a power generating facility, the applicant shall~~
 11 ~~provide five (5) public copies to the executive office of each host community, one (1) public copy to the~~
 12 ~~municipal clerk's office, and one (1) public copy of the application to each of the federal, state and~~
 13 ~~municipal agencies identified in subsection (a) above, including but not limited to: Rhode Island public~~
 14 ~~utilities commission; Rhode Island department of transportation; Rhode Island department of~~
 15 ~~environmental management; Rhode Island historical preservation and heritage commission; Rhode Island~~
 16 ~~division of planning; Rhode Island department of health; and Rhode Island office of energy resources.~~
 17 ~~The applicant shall also notify each host community and each state and municipal agency of its ability to~~
 18 ~~advise the board as to completeness of the application pursuant to subsection (c) below.~~ ~~The executive~~
 19 ~~office of each host community shall distribute application materials to appropriate municipal departments,~~
 20 ~~boards, and/or officials.~~
 21 ~~(c) Each application shall be reviewed for completeness.~~
 22 ~~(1) Upon receiving an application, the board shall conduct a preliminary review to ascertain if the~~
 23 ~~application contains each item as required by subsection (a) above.~~
 24 ~~(2) Within forty-five (45) days of the filing of an application for a power generating facility, each host~~
 25 ~~community and state agency that receives a public copy of the application pursuant to subsection (b)~~
 26 ~~above shall advise the board in writing whether the application contains sufficient information for~~
 27 ~~purposes of issuing its advisory opinion. Nothing contained herein shall be construed as preventing any~~
 28 ~~state or municipal agency from being able to request additional information during its advisory opinion~~
 29 ~~process.~~
 30 ~~(b)(3) Within ~~thirty (30)~~ sixty (60) days of the filing of an applicant application under this chapter, and~~
 31 ~~prior to docketing the application,~~ the board shall notify the applicant whether the application is in the
 32 form and addresses the matters that are required by this section and the rules and regulations as are
 33 promulgated pursuant to § 42-98-7. An application ~~meeting these requirements shall then be docketed.~~
 34 ~~Any application deemed to be deficient shall be returned to the applicant, together with a concise and~~

Commented [LD39]: Does not appear in S2905 Sub A; added from state agency's 2018 proposed legislation

Commented [LD40]: Does not appear in S2905 Sub A. Adapted from EFSB rules of practice, section 1.6.

Commented [LD41]: Does not appear in S2905 Sub A. Added to address Town concerns re pre-application process.

Commented [LD42]: Does not appear in S2905 Sub A; adapted from state agency's 2018 proposed legislation; state agencies also including commerce corporation – do we want to include that agency?
*Added additional copy to municipal clerk's office to ensure prompt notification.

Commented [LD43]: Does not appear in S2905 Sub A; adapted from state agency's 2018 proposed legislation

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1 ~~explicit statement of the application's deficiencies.~~ must meet every requirement of this section and all
2 ~~applicable regulations in order to be docketed; no application will be docketed that does not satisfy every~~
3 ~~requirement of this section and all applicable regulations.~~

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4 (4) ~~If the application is in the proper form and addresses all matters that are required by this section and~~
5 ~~the rules and regulations promulgated pursuant to § 42-98-7, then the application shall be docketed.~~

6 (5) ~~If the application is deemed incomplete or deficient, the board shall notify the applicant in writing,~~
7 ~~specifying each of the areas in which the application has been deemed incomplete.~~ The application may
8 be resubmitted once all identified deficiencies have been remedied.

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9 (6) ~~Within twenty-one (21) days of the applicant's receipt of notification of incompleteness, the applicant~~
10 ~~may complete the filed application by curing the specified defects or may file a new and more complete~~
11 ~~application.~~ Public copies of supplemental application materials shall be simultaneously provided to the
12 ~~host community and state agencies as set forth in subsection (b) above.~~

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13 (7) ~~If the applicant completes the filed application or files a new and more complete application within~~
14 ~~twenty-one (21) days of receiving notice pursuant to subsection (c)(6) above, the board shall, within thirty~~
15 ~~(30) days of the resubmission of an application following a rejection for deficiency, notify the applicant if~~
16 ~~the application is still deficient by returning it to the applicant together with a concise and explicit~~
17 ~~statement of the application's deficiencies.~~

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18 (8) ~~If a resubmitted application is in the proper form and addresses all matters that are required by this~~
19 ~~section and the rules and regulations as are promulgated pursuant to § 42-98-7, then the board shall~~
20 ~~docket the resubmitted application together with the correspondence from the board specifying the~~
21 ~~deficiencies in all earlier applications.~~

22 (9) ~~If the application remains incomplete or the specified defects in the filed application remain uncured,~~
23 ~~the board shall notify the applicant in writing of its rejection of the application and instruct the applicant~~
24 ~~to file a new application.~~ Within fifteen (15) days of the resubmission of an application following a
25 ~~rejection for deficiency, the board shall docket the application together with specification of continuing~~
26 ~~deficiencies noted by the board, if any.~~

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27 (d) ~~Any change to the application made after state and municipal agencies have been assigned advisory~~
28 ~~opinions pursuant to § 42-98-9 shall be presented to the board for a determination of whether the change~~
29 ~~represents a material difference to the initial application. If the board finds a change represents a material~~
30 ~~difference, the application may be dismissed without prejudice and the applicant may refile the~~
31 ~~application.~~

Commented [LD56]: Does not appear in S2905 Sub A; adapted from state agency's 2018 proposed legislation
State agency's 2018 proposed legislation also states:
"In the instance of a proposed transmission facility, changing the preferred option shall not be considered a change if the newly proposed route was one of the alternatives originally considered and addressed in the application at the time it was filed. Any change negotiated as part of a settlement between the applicant, the public advocate, and all cities and towns that have been assigned an advisory opinion and that have intervened in the docket shall be reviewed by the board at the final hearing, but shall not be grounds, solely, for dismissal per this paragraph."
Do we want to add this or similar?

32 (e) ~~Nothing contained herein shall be construed as preventing the board from dismissing an application.~~

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

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

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

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

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

26 (f) The commerce corporation shall conduct an investigation and render an advisory opinion as to the
27 economic impacts of the proposed facility and its construction.

28 (g) The department of environmental management, in consultation with the office of energy resources,
29 shall render an advisory opinion as to the proposed facility's impact on greenhouse gas emissions and
30 consistency with the Resilient Rhode Island Act.

31 (h) The historical preservation and heritage commission shall conduct an investigation and render an
32 advisory opinion as to the potential impacts of the proposed facility on historic and archeological sites in
33 the state, as well as any measures proposed by the applicant to avoid, minimize, or mitigate unreasonable
34 adverse effects on those sites.

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

7 (j) ~~Nothing contained herein shall be construed as preventing the board from requesting additional~~
8 advisory opinions.

9 ~~(k)~~ A decision of the board under this section shall be issued within thirty (30) days following the
10 conclusion of the preliminary hearing and in any event within ~~forty five (45)~~ sixty (60) days of the
11 commencement of the hearing.

12
13 **§ 42-98-9.1 Public notice and hearings on construction projects in cities and towns affected.**

14 (a) ~~When the subject of the application is a major energy facility, the applicant shall notify each host~~
15 community no less than thirty (30) days prior to filing its application with the board.

16 (b) ~~When the subject of the application is a power generating facility, the applicant shall notify each host~~
17 community no less than sixty (60) days prior to filing its application with the board.

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

21 ~~(d)~~ When the subject of the application is a power generating facility, ~~The~~ the board shall have at least
22 one ~~three (3)~~ public hearing hearings in each town or city affected host community prior to holding its
23 own hearings and prior to taking final action on a power generating facility ~~the~~ application. All details of
24 acceptance for filing in § 42-98-8(a)(1) – (a) ~~(6)(7)~~ shall be presented at town or city hearings for public
25 comment. ~~No public hearing shall occur until the application is deemed sufficient and docketed by the~~
26 board as required in § 42-98-8(b). Public hearings shall be held within six (6) months of the date the
27 application is docketed by the board. ~~When the subject of the application is a facility for the generation of~~
28 electricity, or new facilities for the transmission of electricity, the town or city where the proposed facility
29 would be located ~~Each host community, including quasi-municipal corporations within the host~~
30 community, may request funding from the applicant to perform studies of the local environmental effects
31 of the proposed facility. The expense of those studies shall not exceed ~~the greater of the lesser of one~~
32 hundred fifty thousand dollars (\$150,000), ~~one hundred thousand dollars (\$100,000)~~ or one-tenth percent
33 (.1%) of the estimated capital cost of the proposed facility, ~~located in such city or town.~~ If the applicant
34 contests the relevance of the requested study, or believes it to be redundant with studies already

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

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

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

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

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

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

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

32
33

1 **§ 42-98-10 Agency procedures – Advisory opinion.**

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

Commented [LD67]: S2905 Sub A uses plural
“applications”

12 (b) Advisory opinions issued by agencies designated under § 42-98-9 shall not be considered as final
13 decisions of the agencies making the opinions, and shall not be subject to judicial review under § 42-35-
14 15, or any other provision of the general laws.

15 (c) Advisory opinions issued by zoning boards of review, building inspectors, or any other agency of a
16 municipality designated under § 42-98-9 shall not be reviewable by the public utilities commission under
17 § 39-1-30.

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

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

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

26

27 **§ 42-98-11 Final hearing – Standards – Decisions.**

28 (a) Within forty-five (45) days after the final date for submission of advisory opinions pursuant to § 42-
29 98-10, the board shall convene the final hearing on the application. The purpose of ~~this the final~~ hearing
30 shall not be to rehear the evidence which was presented previously in hearings before agencies designated
31 under § 42-98-9, but rather to provide the applicant, intervenors, the public, and all other parties in the
32 proceeding, the opportunity to address in a single forum, and from a consolidated, statewide prospective,
33 the issues reviewed, and the recommendations made in the proceedings before the agencies designated
34 under § 42-98-9. The board at this hearing may, at its discretion, allow the presentation of new evidence

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added from state agency’s 2018 proposed legislation

1 by any party, including intervenors, as to the issues considered by the agencies designated under § 42-98-
2 9. The board may limit the presentation of repetitive or cumulative evidence. The final hearing shall
3 proceed on not less than ~~thirty (30)~~ ten (10) days' notice to the parties and the public, and shall be
4 concluded not more than sixty (60) days following its initiation, and shall be conducted expeditiously.

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

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

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

14 (3) The proposed facility will not cause unacceptable harm to the environment, will not prevent the state
15 from reaching its greenhouse gas emissions reduction target in the Resilient Rhode Island Act of 2014, §§
16 42-6.2-1 et seq., and will enhance the socio-economic fabric of the state.

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

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

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

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

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1 rejecting, or modifying, in whole or in part, any of those advisory opinions: any resolution from a host
2 community, and the board's reasons for accepting or rejecting that resolution. The board shall, within ten
3 (10) days of granting a license, with or without conditions, deliver the decision to the governor, speaker of
4 the Rhode Island house of representatives, and the president of the Rhode Island senate.

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5
6 **§ 42-98-12 Appeals and judicial review.**

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

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

14
15 **§ 42-98-13 Access to premises.**

16 (a) Members of the siting board, or agents of the board, while engaged in the performance of their duties,
17 may at all reasonable times enter any premises, buildings, or other places belonging to, or controlled by,
18 an applicant for a license under this chapter, and inspect the premises or any part of the premises.
19 Reasonable notice of the inspection shall be given to the owner of the facility and a representative of the
20 owner shall accompany the members of the board or its agent at all times during any inspection.

21 (b) Any person obstructing, hindering, or in any way, causing to be obstructed or hindered, any board
22 member or agent of the board, in the performance of his or her duties, or who shall refuse to permit any
23 board member or agent of the board entrance into any premises, buildings, or other places belonging to, or
24 controlled by an applicant, in the performance of his or her duties, shall be deemed guilty of a
25 misdemeanor and fined not more than ~~five hundred dollars (\$500)~~ one thousand dollars (\$1,000).

Commented [LD72]: Does not appear in S2905 Sub A. Increased to match the maximum fine for a misdemeanor. See RIGL § 11-1-2.

26
27 **§ 42-98-14 Discovery.**

28 The filing of an application under this chapter constitutes consent by the applicant(s) and its (their)
29 affiliates to the jurisdiction of this state for the purposes of discovery relevant to the application.

Commented [LD73]: There are no proposed changes to this section so it did not appear in S2905 Sub A. I have included it here for completeness.

30
31 **§ 42-98-15 Exemption.**

32 The exercise of the powers granted by this chapter or the provisions thereof shall not apply to chapter 19
33 of title 23, and shall not apply to any matter over which any agency, department, or instrumentality of the

1 federal government has exclusive jurisdiction or has jurisdiction concurrent with that of the state and has
2 exercised that jurisdiction to the exclusion of regulation of the matter by the state.

Commented [LD74]: There are no proposed changes to this section so it did not appear in S2905 Sub A. I have included it here for completeness.

3
4 **§ 42-98-16 Violations.**

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

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

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

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

Commented [LD75]: Does not appear in S2905 Sub A; amended for clarity.

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

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

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

31

32 **§ 42-98-17 Appropriation, fees and grants.**

33 (a) There is created an account to be known as the "energy facility siting account", an account within the
34 public utilities commission in the general fund, hereinafter referred to as the "account", for the purpose of

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

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

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

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

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

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

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

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

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

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

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

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

9 (3) Assist the local fire marshal with review and approval of an appropriate safety plan for the electric
10 generating facility; and conduct inspections during construction of the facility to ensure compliance with
11 certificates and safety standards.

12
13 **§ 42-98-18 Liberal construction – Severability.**

14 The provisions of this chapter shall be construed liberally to effectuate its purposes. If any provision of
15 this chapter or of any rule, regulation, or determination made under this chapter, or the application of this
16 chapter to any person, agency, or circumstances, is held invalid by a court of competent jurisdiction, the
17 remainder of the chapter, rule, regulation, or determination and the application of the provisions to other
18 persons, agencies or circumstances shall not be affected by the invalidity. The invalidity of any section or
19 sections or parts of any section or sections of this chapter shall not affect the validity of the remainder of
20 the chapter.

Commented [LD76]: There are no proposed changes to this section so it did not appear in S2905 Sub A. I have included it here for completeness.

21
22 **§ 42-98-19 Applicability.**

23 (a) This chapter shall take effect upon its passage and shall operate prospectively and shall not apply to
24 any electric cogeneration energy facility capable of operating at a gross capacity of more than forty (40)
25 megawatts but less than eighty (80) megawatts which, prior to May 30, 1990, has applied to the
26 department of environmental management for an air quality permit or approval; provided, however, that,
27 notwithstanding that application, this chapter shall apply to any facility capable, at any time, of operating
28 at a gross capacity of eighty (80) megawatts or more.

29 (b) The complete plans submitted pursuant to § 42-98-8 shall be the basis for determining jurisdiction
30 under this section.

Commented [LD77]: There are no proposed changes to this section so it did not appear in S2905 Sub A. I have included it here for completeness.

31
32 **§ 42-98-20 Informational filings.**

33 (a) To assist the board in achieving the policy objectives set forth in § 42-98-2, the owners of any
34 proposed energy facility, whether or not the facility qualified as a major energy or power generating

1 facility, shall make an informational filing with the board at the time of first application to any other
2 agency, board, council, or commission of the state or political subdivision of the state required to issue a
3 permit, license, assent, or variance in order for the siting, construction, or alteration of the facility to
4 proceed. Copies of any informational filing shall be provided to the councils of the towns and cities
5 affected by the proposed facility within seven (7) days of filing with the board.

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

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

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

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14 This act shall take effect on January 1, 2020 and apply to applications filed on or after January 1, 2020.

Commented [LD78]: S2905 Sub A used "2019"

Commented [LD79]: S2905 Sub A used "2019"