

Power Plant Siting Act Exposed

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The **Power Plant Siting Act** (http://www.alecexposed.org/w/images/5/59/3E4-Power_Plant_Siting_Act_Exposed.pdf) was adopted by ALEC's Natural Resources Task Force at the States and Nation Policy Summit on December 15, 2001, approved by the full ALEC Board of Directors in January, 2002. According to ALEC.org, the Act was re-approved by the ALEC Board of Directors on January 28, 2013. (Accessed on 6/29/2015).

ALEC Bill Text

Summary

This Act creates a single Board that functions as the permitting authority for all governmental approvals necessary to site a Power Plant in the state.

Model Legislation

Section 1. {Title}

This act shall be known and may be cited as the Power Plant Siting Act.

Section 2. {Findings}

The legislature finds and declares:

A. Demand for electricity is at an all time high.

B. Reasonably priced, reliable sources of energy are vital to the well-being and prosperity of the people of this state.

C. Power Plants are developed primarily through the free enterprise system, require a major commitment of funds and resources and years to build, and the decision to permit or deny their construction has a long term impact on the economy of the state.

D. Power Plants that sell into the wholesale power market strengthen competition and enhance the reliability of the electric transmission system.

E. The authority to regulate many aspects of the issues involved in the siting of Power Plants currently exists in a variety of departments and agencies within the government of the state and political subdivisions of the state; there is overlapping jurisdiction among several state agencies in the siting of Power Plants; and there is the potential for conflicting decisions being issued by the various agencies having authority over different aspects of the siting process.

F. There is a need for coordinating and expediting the review of applications for the siting of Power Plants and the authority and responsibility to perform that function should be consolidated in a single body that will render final decisions concerning the siting of Power Plants.

Section 3. {Definitions}

As used in this Act:

A. “Board” means the Siting Board established by this Act.

B. “Power Plant” means an electric power generating plant with an installed capacity rating of [__] megawatts or more.

Section 4. {Siting Board}

There is established a Siting Board, hereinafter referred to as the “Board,” which shall be a part of the state government.

A. Composition. The Siting Board shall consist of five (5) members, as follows: the chairperson of the public utilities commission, who shall serve as chairperson of the siting Board; the director of the department of environmental protection; one designee of the Speaker of the House, one designee of the President Pro Tempore of the Senate and one member of the public, to be appointed by the Governor [State Agency heads may be added to the board at the discretion of the state legislature].

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

(b) The members of the Board shall serve [with/without] compensation, but shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties. The Board may engage any consultants or expert witnesses that it deems necessary to implement its statutory responsibilities; provided, however, that to the maximum extent possible, Board staff shall be drawn from existing state agencies.

(c) A quorum shall consist of a majority of the Board. A majority vote of the Board shall be required for all actions, including permitting decisions.

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

B. Powers of the Board. No person shall construct or operate a Power Plant without first obtaining a permit authorizing the siting of the Power Plant from the Board. This requirement shall not apply to any Power Plant with an installed capacity rating of less than [__] megawatts that complies with the NOx standard of [__] parts per million.

(a) The Board is the sole authority for all permits, licenses, certificates, authorizations and other

governmental approvals that, under any statute of the state or ordinance of any political subdivision of the state, including local governments, would be required for the siting, construction or operation of a Power Plant in the state.

(1) Any department, agency, commission or other administrative or regulatory body of the state or political subdivision of the state which, absent this Act, would be required to issue a permit or other governmental approval in order to allow the siting, construction or operation of a Power Plant shall operate at the direction of the Board. These agencies shall follow the procedures established by statute, ordinance, and/or regulation provided for reviewing the application for a permit or other governmental approval, but, instead of issuing the permit or other governmental approval shall forward its findings from the proceeding, together with the record supporting the findings and a recommendation for final action to the Board.

(2) Notwithstanding any provision in this Act to the contrary, in those instances in which the department of environmental protection exercises a permitting function under the delegated authority of federal law, including, but not limited to, the Federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), and those state laws and regulations which implement those federal laws, the department of environmental protection shall be the permitting authority, but in all other respects the department of environmental protection shall follow the procedures set forth in this Act.

(b) The Board is authorized and empowered to summon and examine witnesses and to compel the production and examination of documents and any other evidence that may be necessary for the discharging of the duties imposed by this Act.

(c) The Board is empowered to issue any regulations as may be required to effectuate the purposes of this Act.

C. Contents of Applications for Siting Power Plants. The rules and regulations promulgated by the Board shall set forth the form and contents of an application for a permit authorizing the siting a Power Plant under this Act. The applications shall contain at least the following, where applicable:

(a) Identification of the proposed owner(s) of the Power Plant, including identification of all affiliates of the proposed owners.

(b) Detailed description of the proposed Power Plant, including its location, function and operating characteristics, and complete plans as to all structures, including transmission facilities, associated with the proposed Power Plant.

D. Board's Review of Applications. The Board shall use the following procedures in reviewing an application for a permit authorizing the siting of a Power Plant:

(a) Within thirty (30) days of the filing of an application with the Board, the Board shall notify the applicant whether the application is in the form and addresses the matters that are required by this section and the rules and regulations as are promulgated pursuant to this Act. An application meeting these requirements shall then be docketed. Any application deemed to be deficient shall be returned to the applicant, together with a concise statement of the application's deficiencies. Within fifteen (15) days of the resubmission of an application following a rejection for deficiency, the Board shall docket the application together with specification of any additional deficiencies noted by the Board, if any.

(b) Within sixty (60) days following the Board's docketing of an application, the Board shall

determine the issues to be considered by the Board in evaluating the application, and designate those departments and agencies of state government and of political subdivisions of the state which shall act at the direction of the Board for the purpose of providing findings and recommendations for final action on those issues.

(c) The Board shall consider as issues the ability of the proposed Power Plant to comply with the requirements of the laws, rules, regulations, and ordinances under which, absent this Act, the applicant would be required to obtain a permit or other governmental approval. The agency of state government or of a political subdivision of the state which, absent this Act, would have statutory authority to grant or deny the permit, shall function at the direction of the Board for hearing the issue and providing its findings and recommendations for final action thereon.

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

(e) Each agency of the state or political subdivision of the state designated shall proceed to consider the issue or issues assigned to it for review. Each agency shall conclude its consideration and issue its findings and recommendations for final action not more than 90 days following its designation or any lesser time that the Board may require, or the right to exercise the function shall be forfeited to the Board.

(f) Within thirty (30) days after the final date of submission of agency findings and recommendations for final action pursuant to this Act, the Board shall convene a hearing on the application. The purpose of this hearing shall not be to rehear the evidence which was presented previously before agencies designated by the Board, but rather to provide the opportunity to address in a single forum, and from a consolidated, statewide prospective, the issues reviewed, and the recommendations made by the designated agencies. The Board shall limit the presentation of repetitive or cumulative evidence. The hearing shall proceed on not less than thirty (30) days' notice to the parties and the public, shall be concluded not more than thirty (30) days following its initiation, and shall be conducted expeditiously. In the discretion of the Board, for good cause shown, the time prescribed for the hearing may be extended for up to thirty (30) additional days.

(g) Within sixty (60) days of the conclusion of the hearing, the Board shall issue its final decision on the application. A decision in favor of the application shall constitute a granting of all permits or other governmental approvals which under any law, rule, regulation, or ordinance of the state or of a political subdivision thereof would, absent this Act, be required for the proposed Power Plant. The decision may be issued conditional upon the applicant's receipt of permits required by federal law. The Board's decision shall explicitly address each of the findings and recommendations received from agencies, and include the Board's reasons for accepting, rejecting, or modifying, in whole or in part, any of those findings and recommendations.

(h) The decision issued by the Siting Board shall constitute the sole, final, binding, and determinative regulatory decision within the state for the purposes of siting a Power Plant.

(i) If the Board's decision is to approve the siting of the Power Plant, no action may be taken by any department or agency of state government, any political subdivision of the state, or any other person that would prevent the Power Plant from fully accessing the market for electricity or impose limitations or restrictions on the ability of the Power Plant to enter into contracts for the sale of electricity, including requiring the sale of electricity to any designated users.

E. Appeals. Any person that was deemed to be a party to the case during the hearing before the Board and is aggrieved by the decision of the Board may within ten (10) days from the date of the decision, obtain judicial review of the decision in the manner and according to the standards and procedures provided by law. The only issues to be decided in an administrative or judicial review of a decision by the Board shall be whether the Board acted arbitrarily or capriciously, abused its discretion or acted contrary to law in its review of the issues presented at the hearing. No automatic stay of the Board decision is allowed as a matter of law without a finding by the Appeals court that the appeal will likely be successful.

Section 5. {Severability Clause}

Section 6. {Repealer Clause}

Section 7. {Effective Date}

Adopted by the Natural Resources Task Force at the States and Nation Policy Summit, December 15, 2001.

Approved by the full ALEC Board of Directors January, 2002.

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