

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1675

S. P. 483

In Senate, April 9, 1975

On further Motion of Senator Trotzky of Cumberland referred to Committee on Natural Resources. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Reeves of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Establish the Electric Facility Siting Act.

Be it enacted by the People of the State of Maine, as follows:

§ MRSA c. 339 is enacted to read:

CHAPTER 339

ELECTRIC FACILITY SITING

§ 5051. Short title

This Act shall be known and may be cited as the "Electric Facility Siting Act."

§ 5052. Policy and purpose

The Legislature finds and declares that there is a critical and urgent need for the creation of an efficient, time-saving and less costly process for the siting of electrical generating facilities in the State of Maine. The construction and operation of electrical generating facilities of all kinds in a timely manner is of great importance to the well-being of the citizens of the State in order to assure a continuing and adequate supply of electrical energy from plants located at sites selected to prevent environmental harm. The current statutes requiring review of proposed electrical facility sites precludes an opportunity for participation by state agencies in the initial planning and selection of sites for proposed electrical facilities constructed by electric utility companies. The initial selection of sites has been left to the utilities and with state agencies only responding to specific proposals from utilities. In enacting this Act the Legislature intends to create a process for siting of electrical facilities which would permit careful and extensive review

and acquisition of proposed sites by the State well in advance of the time needed for the construction of such facilities thereby saving time and money for utility companies and consumers of electricity.

The Legislature finds and declares that this Act will result in a substantial savings to electric companies in the planning of electrical facilities and selection of sites therefor. The Act will further provide a savings to consumers by insuring that construction of electrical facilities does not exceed those necessary to meet the needs of the State and that the costs of site selection and planning is kept to a minimum

The Legislature further finds and declares that the proposed expenditure of public funds in the manner provided herein is in the public interest and will result in a direct and substantial benefit to the citizens of the State by providing a bank of sites suitable for location of electrical facilities and thereby insuring a continuing supply of electrical energy for the people of the State.

§ 5053. Definitions

As used in this chapter unless the context otherwise indicates, the following terms shall have the following meanings.

1. Council. "Council" shall mean the Electric Facility Siting Council as created herein.
2. Director. "Director" shall mean the Director of the Office of Energy Resources as created by section 5005.
3. Electric company. "Electric company" shall mean any such company as defined in Title 35, section 15, subsection 5.
4. Electric facility. "Electric facility" shall mean any real estate, structures, equipment, machinery, or other personal property owned, controlled, operated or managed by an electric company designed for or capable of producing or generating electricity at a gross capacity of 100 megawatts or more and any electric transmission line designed for or capable of carrying 125 kilowatts or more.
5. Fund. "Fund" shall mean the Energy Facility Siting Fund as created herein.
6. Site bank. "Site bank" shall mean the Energy Facility Site Bank as created herein.

§ 5054. Electric Facility Siting Council

1. Council created. There is established the Electric Facility Siting Council which shall be responsible for implementation of this Act. The council shall be composed of 5 members, 4 of whom shall be appointed by the Governor, with the consent of the Executive Council. Such members shall serve for a term of 4 years. Members appointed to initially fill such positions shall serve terms of one, 2, 3 and 4 years respectively, such terms to be assigned by lot. Any vacancy occurring in said council shall be filled by appointment

for the unexpired portion of the term in which such vacancy occurs. The Director of the Office of Energy Resources shall be a member ex officio of the council and shall be its chairman.

Members of the council shall be paid \$4,000 per year and shall be reimbursed for their actual and reasonable expenses incurred in the course of their official duties.

2. Powers. The council shall have the authority to:

A. Administer the fund and authorize expenditures therefrom and for the purposes and in the manner provided by this Act;

B. Undertake all necessary studies and research to carry out the requirements of this Act;

C. Accept funds from any source for the purpose of carrying out the purposes of this Act, such funds to be deposited in the Electric Facility Siting Fund;

D. Enter into such contracts as may be necessary, including retention of consultants, to accomplish the purposes of this Act;

E. Hire such employees, subject to the Personnel Laws, as may be necessary to implement this Act;

F. Prepare necessary budgets;

G. Promulgate rules and regulations, consistent with the Administrative Code, establishing procedures to comply with the requirements of this Act;

H. Acquire, manage, and dispose of real and personal property necessary to conduct studies and technological development on proposed sites and the impact of electric facilities thereon;

I. Acquire and convey real estate subject to limitations prescribed herein for the location of electric facilities;

J. Sue and be sued;

K. Enter upon any lands, waters and premises for the purpose of making surveys, soundings, boring and any other tests and examinations as the council may deem necessary or convenient in the exercise of its powers, and such entry shall not be deemed a trespass, nor shall an entry for such purpose be deemed an entry under any condemnation proceedings, provided that the council shall pay any actual damages resulting to such lands, waters and premises as a result of such entry and activities.

§ 5055. Electric Facility Siting Fund

1. Fund created. There is hereby created an Electric Facility Siting Fund as a separate, non-lapsing revolving fund for carrying out the purposes of this chapter. To this fund shall be credited all income from management, or lease of sites in the site bank and all revenues from the siting surcharge. The fund shall be maintained by the Treasurer of State and may be invested

in such manner as may be provided for by statute. Interest received on such investment shall be credited to the fund.

2. **Siting surcharge.** There is hereby established a siting surcharge to be paid monthly by electric companies to the Treasurer of State. Beginning on the effective date of this Act, the siting surcharge shall be assessed at the rate of 0.1 mills per kilowatt hour of electricity generated within the State. Electric companies are authorized to add the amount of such surcharge to customer's bills in the manner prescribed by the Public Utilities Commission. In paying such surcharge to the Treasurer of State, electric companies are authorized to deduct therefrom $1\frac{1}{2}\%$ of the surcharge collected as compensation for expenses incurred in the collection of such surcharge.

3. **Annual budget.** On January 1, 1976, and annually thereafter, the council shall submit to the Public Utilities Commission a budget stating the proposed expenditures from the fund for the following fiscal year. Upon receipt thereof, the Public Utilities Commission shall establish the siting surcharge for each electric company in the State for the subsequent fiscal year to provide sufficient income to meet the projected expenditures in the Council's budget for said fiscal year.

4. **Limits on surcharge.** The surcharge created by this chapter shall not continue beyond January 1, 1990, nor shall the rate of assessment exceed 0.5 mills per kilowatt hour.

§ 5056. Comprehensive energy planning

1. **Reports.** Within one year after the effective date of this act, and every 5 years thereafter, each electric company shall submit to the council an energy report containing 5, 10 and 20-year forecasts of electrical demands in its respective service area. Such forecasts shall include, in such form and detail as the council may require, the following information:

A. A forecast of estimated base and peak load demands for the residential, commercial, industrial and other major demand sectors and reserve margins for each year during the forecast period, a description of the factors influencing such demands and a description of the basis for such projections;

B. A list of existing electric facilities in service and a description of planned and potential electric facilities at existing sites including expansion, removal or reduction of existing facilities;

C. A description of all then existing agreements with other electric companies for the purchase or sale of electric power or reserve capacity;

D. A list of electric facilities which will be needed to serve projected electrical requirements, proposed location of such facilities and the anticipated size and type of facilities needed to meet such requirements;

E. A description of additional system capacity which might be achieved through, among other things, improvements in generating or transmission capacity, importation of power, interstate or interregional pooling or other cooperative arrangements, reduction or control of demand, and other improvements in efficiency of operation;

F. A forecast of the availability and cost of fuel resources for the forecast periods;

G. A description of alternatives to any proposed action of the electric company including alternate methods of generation, alternate sites, and means for reduction or control of demand.

Electric companies shall annually submit to the council a report updating and supplementing the required 5-year reports.

Copies of such energy reports and annual supplements shall be forwarded by the council to the Governor, Legislature, Public Utilities Commission, and all agencies of state or regional government which might be affected by such forecasts, involved in the utilization or conservation of natural resources or involved in land use planning.

2. Draft Comprehensive Plan. Within 6 months after the receipt of such energy reports, the council shall prepare a Draft Comprehensive Energy Plan evaluating the reports of the electric companies and containing:

A. An analysis of the anticipated 5, 10 and 20-year level of demand for electrical energy in the relevant service areas and statewide;

B. An evaluation of the probable service area and state-wide environmental, economic and health and safety impact of constructing and operating the electric facilities proposed by the electric companies;

C. An evaluation of alternate methods for generating and transmitting the projected electrical energy requirements, the reliability of such alternate methods and their impact upon and utilization of renewable and nonrenewable resource;

D. An evaluation of the means by which the projected growth of electrical energy needs may be reduced together with an estimate of the amount of such reduction to be obtained by each of the means analyzed; and

E. Identification of proposed electric facility sites.

3. Public participation and final comprehensive energy plan. Such Draft Comprehensive Energy Plan shall be distributed to all concerned state and regional governmental agencies and municipalities where electric facilities are proposed to be located. Such draft plan shall be publicly available.

Not sooner than 2 months after the preparation of such draft plan, the council shall commence a public hearing for the purpose of soliciting comments and evaluation on such draft plan. Within 4 months after the completion of such public hearing the council shall adopt a comprehensive energy plan containing all those elements set forth in subsection 2.

4. Continuing reevaluation. The council shall undertake a continuing process to review the sufficiency of its comprehensive energy plan and the annual supplements submitted by electric companies. In the event that the council determines to amend its comprehensive energy plan it shall publish a draft of such revisions and conduct a public hearing thereon as required by subsection 3.

§ 5057. Evaluation of energy facility sites

The comprehensive energy plan of the council shall serve as the basis for a continuing process undertaken by the council to locate and evaluate sites in the State of Maine for the location of electrical facilities. In undertaking such process the council may evaluate sites recommended by electric companies or any other person or agency or any site which may otherwise come to its attention.

In evaluating proposed sites the Council shall consider :

1. The type and size of plants suitable for each site;
2. The environmental impact of the location of an energy facility on each site and any unavoidable adverse environmental impact resulting from the construction or operation of an electric facility;
3. The socio-economic impact resulting from utilization of the site;
4. Any irreversible and irretrievable commitment of resources which would result from utilization of the site;
5. Any necessary or desirable limitations which ought to be imposed on the use of the site;
6. Problems and objections raised by other federal, state and local agencies to the utilization of the site; and
7. Whether the site is consistent with the comprehensive energy plan.

After having preliminarily identified sites which the council finds to be consistent with the aforesaid standards, the council shall, from time to time, conduct public hearings for the purpose of soliciting comment on and evaluation of such preliminary sites.

§ 5058. Review by the Department of Environmental Protection and Land Use Regulation Commission

1. Submission of data. After completion of the review required by section 5057 and after having preliminarily selected sites for the location of electrical generating facilities, the council shall submit such proposed sites to the Department of Environmental Protection and, with respect to sites within its jurisdiction, to the Land Use Regulation Commission, for their respective review. The council shall supply to such agencies all the data and research compiled by it in the preliminary investigation of such site. The council shall indicate the type and design of energy facility planned for each such site, the means of waste disposal and waste treatment, proposed transmission lines, and all other relevant information or plans related to the proposed use of the site.

2. Review. Upon receipt of such information and data, the Department of Environmental Protection shall promptly review the same and determine whether the proposed site and facility complies with the requirements of Title 38, sections 481-488, 413-414-A, 581-603, 421; Title 12, section 4701-4709 and any other applicable statutes administered or enforced by said depart-

ment. For sites within its jurisdiction, the Land Use Regulation Commission shall similarly determine whether the proposed site complies with the requirements of Title 12, chapter 206-A. In performing such review the Department of Environmental Protection and the Land Use Regulation Commission shall employ the same procedures, including public hearing procedures, employed in all other cases under such laws. In the event that a proposed electric facility site is incompatible with the comprehensive plan or zoning map adopted by the Land Use Regulation Commission, the commission shall consider whether to amend said plan and map.

The Department of Environmental Protection and Land Use Regulation Commission may disapprove, approve or approve with conditions the proposed use for such site.

§ 5059. Site acquisition.

1. Director to acquire sites. The council may acquire for inclusion in the electric facility site bank any site it finds to have complied with the standards in section 5057 which is compatible with the comprehensive energy plan and which has been approved by the Department of Environmental Protection and, where necessary, the Land Use Regulation Commission. Such site shall be held and managed by the council in the site bank solely for the purposes provided herein. The council shall maintain in the site bank those sites which it deems necessary to fulfill the goals of the comprehensive energy plan.

The council may acquire for sites any land or interest therein within the State of Maine, with or without improvements, by purchase, gift or eminent domain. All proceedings with respect to the power of eminent domain shall be in the manner prescribed by Title 35, chapter 263.

2. Lands of other agencies. The Council may order that sites owned, held or managed by other agencies of the State be transferred to the council for inclusion in the site bank only after prior express consent of such agency and only after having provided to or acquired for such agency another site of equal value and utility, such substitute site to be subject to approval of the transferror agency.

§ 5060. Lease of sites to utilities.

An electric company may request the council to lease to it a site in the site bank on which such company desires to locate an energy facility. Upon receipt of such request the council shall lease such site to the company in the manner and on the terms provided herein.

1. Appraisal. The lease payment shall be based upon the appraised value of the site as established by 3 qualified real estate appraisers, one each appointed by the council and company and the 3rd selected by the first 2. The council shall lease the site for a term of not more than 99 years nor less than 40 years or such lesser term of years requested by the electric company. The total lease payments shall equal the appraised value of the site apportioned uniformly over the length of the lease. The proceeds of such lease shall be deposited in the fund.

In addition to the appraised value of the site, the electric company shall pay to the council prior to execution of the lease a sum determined by the council to equal the total cost incurred by the council in evaluating such site and obtaining the necessary approvals therefor.

2. Terms. The council shall include in any lease such terms and conditions as it deems necessary to protect the public health, safety or general welfare and to maintain and improve the environment of the State of Maine. Any electrical facility constructed on such site shall be constructed, operated and maintained in the manner required by the Department of Environmental Protection or the Land Use Regulation Commission pursuant to their respective orders of approval issued under section 5058.

3. Prohibition. No electric facility shall be constructed by an electric company at any site other than one leased from the site bank, provided that an electric company may construct, operate and maintain an electrical facility in existence, under construction or in possession of all state, local and federal licenses to construct and operate as of the effective date of this Act, and further provided that existing generating facilities may be expanded by the addition of a total of no more than 100 megawatts of generating capacity.

4. Other laws. Electric facilities constructed, operated or maintained by an electric company on a site acquired from the site bank shall not be subject to other state, regional or municipal zoning or land use or environmental laws, except those laws specified in section 5058, subsection 2, approvals under which shall have previously been granted, provided that the construction, operation and maintenance of such facilities shall be subject to regulations or requirements of general effect and applicability promulgated by the Department of Environmental Protection or the Land Use Regulation Commission pursuant to the foregoing sections and subsequent to the review undertaken under section 5058.

§ 5061. Temporary use of sites.

After acquisition of any site for the site bank and prior to its lease to an electric company the council may authorize such interim uses of the site that will not prevent the prompt utilization of such site for an electric facility. Such uses may include, but not be limited to, public recreational facilities, forest management and fish and wildlife refuges. Income received from such interim uses shall be deposited in the fund.

Pending conveyance to an electric company, the council shall pay to the municipality wherein a site is located an amount from the fund equal to but in lieu of municipal taxes.

§ 5062. Continuing evaluation process.

The council shall undertake a continuing review process for the purpose of reevaluating sites acquired in the site bank to determine whether, in light of changing condition, technology, standards or increased or improved knowledge with respect to environmental impact, such site remains suitable for location of an electric facility.

If, after hearing, the council determines that such site is no longer suitable for such purpose, it shall forthwith remove such site from the site bank. Such site shall thereafter be managed by and under the jurisdiction of the Department of Conservation.

The Department of Environmental Protection or the Land Use Regulation Commission may, at any time prior to lease of a site to an electric company, reconsider the approval granted under section 5058, subsection 2, on the grounds that changing technology, conditions or standards or improved or increased knowledge with respect to anticipated environmental impact of an electric facility or changes in the comprehensive plan or zoning maps of the Land Use Regulation Commission necessitate a reevaluation of the initial order of approval issued under section 5058, subsection 2.

If, after such reevaluation, the Department of Environmental Protection or the Land Use Regulation Commission determines to alter the conditions of its approval such altered conditions shall have the same force and effect as if originally ordered by the Department of Environmental Protection or the Land Use Regulation Commission. The council may thereafter determine whether to retain said site in the site bank.

If, after such reevaluation, the Department of Environmental Protection or the Land Use Regulation Commission determines to rescind its original order of approval the site shall forthwith be removed from the Site Bank and transferred to the Department of Conservation.

FISCAL NOTE

The surcharge established by this Act will result in revenues of approximately \$1,000,000 per year.

STATEMENT OF FACT

This Act is modeled on the Maryland Energy Siting Act, the California Energy Conservation and Development Act and the Massachusetts Electric Facility Siting Act. As the findings and purpose indicate, increased demands for electrical power require new solutions to the problems of balancing environmental considerations and the need for rapid construction of power plants. The current decision-making process requires utilities to select power plant sites, undertake extensive environmental studies and undergo lengthy hearings with no assurance that such site will meet the statutory requirements. The time required to evaluate power plant sites and the uncertainty resulting from current review processes impedes the development of a continuing, reliable, adequate source of electrical energy for the State. Furthermore, the current environmental review process places on the electric utility the expense and risk of evaluating sites with no assurance that an approval will be forthcoming. Furthermore, current site review processes provide no role for the State in the initial site selection process. State environmental

review occurs only with respect to sites selected by the utility and ignores the fact that other more superior sites may exist which are preferable to the one selected by the electric utility.

In order to correct this problem the Act establishes a procedure for environmental review and acquisition of sites suitable for power plants and transmission lines well in advance of the time such sites might actually be needed. Under the Act the Electric Facility Siting Council evaluates long-range energy forecasts submitted by private utilities and prepares a comprehensive energy plan based on that evaluation. That plan would evaluate the number, type and general location of power plants necessary to meet future needs for the State. Using that plan, the council would evaluate sites for power plants and transmission lines, obtain the Department of Environmental Protection and the Land Use Regulation approval and acquire the site for inclusion in an Electrical Facility Siting Bank. Utilities may then lease sites from the site bank to construct power plants or locate transmission lines. Since all necessary permits have already been obtained, no further permits are required. The entire operation is funded by a small surcharge on electrical use, \$0.0001 - \$0.0005 per kilowatt hour, deposited into an electric facility siting fund. Any income from leases of sites is deposited back into a revolving fund for use in acquiring more sites.

This program constitutes a comprehensive involvement of the State in the planning and selection of sites for new power plants benefiting the electric utilities and the citizens of the State.