

HOUSE No. 5271

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, August 11, 1976.

The committee on Ways and Means, to whom was referred the Bill providing for a change in the law relative to the establishment of the electric power facilities siting council (printed in, House, No. 4374, changed), report that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 5271).

For the committee,

STEVE T. CHMURA.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Six.

AN ACT PROVIDING FOR A CHANGE IN THE LAW RELATIVE TO THE ESTABLISHMENT OF THE ENERGY FACILITIES SITING COUNCIL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The second paragraph of section 69H of Chapter
2 164 of the General Laws is hereby amended by striking out the
3 first sentence, as most recently amended by section 2 of Chapter
4 617 of the Acts of 1975, and inserting in place thereof the
5 following sentence: —

6 Said council shall be composed of the secretary of administra-
7 tion and finance, the secretary of consumer affairs, the secretary
8 of environmental affairs, and the secretary of manpower affairs,
9 or their respective designees, and five persons to be appointed by
10 the governor for terms of three years, one of whom shall be
11 experienced in the conservation and protection of the environ-
12 ment, one of whom shall be a professional engineer registered
13 under the provisions of chapter one hundred and twelve, one of
14 whom shall be experienced in matters relating to the electric
15 power industry and who shall vote only on those matters directly
16 related to such industry, one of whom shall be experienced in
17 matters relating to the gas industry and who shall vote only on
18 those matters directly related to such industry, and one of whom
19 shall be experienced in matters relating to the oil industry and
20 who shall vote only on those matters directly related to such
21 industry, provided that the council shall not include as a member
22 any person who receives, or has during the previous two years
23 received, a significant portion of his income directly or indirectly
24 from an electric, gas or oil company.

1 SECTION 2. The first paragraph of section 69I of said chapter
2 164, as appearing in section 4 of said chapter 617, is hereby
3 amended by striking out the third sentence and inserting in place

4 thereof the following two sentences: — Every gas company shall
5 individually or jointly with others, file with the council a long-
6 range forecast with respect to the gas requirements of its market
7 area, taking into account wholesale bulk gas sales or purchases or
8 other cooperative arrangements with other gas companies, for the
9 ensuing five-year period. Said forecast of gas requirements shall
10 consist of (a) the gas sendout necessary to serve projected firm
11 customers, and (b) the available supplies, for the ensuing five-year
12 period.

1 SECTION 3. The second paragraph of said section 69I of said
2 chapter 164 is hereby further amended by striking out clauses (2)
3 and (3) and inserting in place thereof the following clauses: —

4 (2) A forecast of the electric power needs or gas requirements
5 for its market area, taking into account wholesale bulk power or
6 gas sales or purchases, or other co-operative arrangements with
7 other utilities and energy policies as adopted by the com-
8 monwealth.

9 (3) A description of actions planned to be taken by the
10 company which will affect capacity to meet such needs or
11 requirements, including, but not limited to: expansion, reduction,
12 or removal of existing facilities; construction or acquisition of
13 additional facilities; a description of alternatives to planned
14 action such as other methods of generating, manufacturing or
15 storing, other site locations, other sources of electrical power or
16 gas, and no additional electrical power or gas; a description of the
17 environmental impact of each proposed facility, provided,
18 however, that the above provisions shall not apply to facilities
19 which have been approved as part of a previous long-range
20 forecast or supplement thereto. The council shall after public
21 notice and a period for comment be empowered to issue and
22 revise its own list of guidelines. A minimum of data shall be
23 required by these guidelines from the applicant for review
24 concerning land use impact, water resource impact, air quality
25 impact, solid waste impact, radiation impact and noise impact.

1 SECTION 4. The fifth paragraph of said section 69I of said
2 Chapter 164, as inserted by section 7 of said Chapter 617, is

3 hereby further amended by striking out clauses (2) and (3) and
4 inserting in place thereof the following two clauses: —

5 (2) A description of the applicant's qualification and capability
6 in transshipment, transportation, storage, refining and marketing
7 of oil or refined oil products.

8 (3) An analysis of the proposed facility including but not
9 limited to a description of alternatives to the planned action, such
10 as other site locations, other oil facilities, and no additional oil
11 facilities; and a description of the environmental impact of the
12 proposed facility, said description to include buffer zones and
13 other measures to minimize damage to the environment. The
14 Council shall after public notice and a period for comment be
15 empowered to issue and revise its own list of guidelines. A
16 minimum of data shall be required by these guidelines from the
17 applicant for review concerning land use impact, water resource
18 impact, air quality impact, solid waste impact, radiation impact
19 and noise impact.

1 SECTION 5. Section 69J of said chapter 164, as amended by
2 section 8 of said chapter 617, is hereby amended by striking out
3 the second paragraph and inserting in place thereof the following
4 paragraph: —

5 The council by a majority vote shall within twelve months from
6 the date of filing approve a long-range forecast or notice of
7 intention to construct an oil facility, or within twenty-four
8 months from the date of filing a notice of intention to construct
9 an oil facility for the refining of oil designed so that more than
10 thirty-five per cent of its output could be gasoline or refined oil
11 products lighter than gasoline, if it determines that it meets the
12 following requirements: all information relating to current
13 activities, environmental impact, facilities agreements and energy
14 policies as adopted by the commonwealth is substantially
15 accurate and complete; projections of the demand for electric
16 power, or gas requirements and of the capacities for existing and
17 proposed facilities are based on substantially accurate historical
18 information and reasonable statistical projection methods,
19 provided, however, that the council shall not require in any gas
20 forecast or hearing conducted thereon the presentation of
21 information relative to the demand for gas; projections relating to

22 service area, facility use and pooling or sharing arrangements are
23 consistent with such forecasts of other companies subject to this
24 chapter as may have already been approved and reasonable
25 projections of activities of other companies in the New England
26 area; plans for expansion and construction of the applicant's new
27 facilities are consistent with current health, environmental
28 protection, and resource use and development policies as adopted
29 by the Commonwealth; and are consistent with the policies stated
30 in section sixty-nine H to provide a necessary power supply for
31 the commonwealth with a minimum impact on the environment
32 at the lowest possible cost; and in the case of a notice of intention
33 to construct an oil facility, that all information regarding sources
34 of supply for such facility and financial information regarding the
35 applicant and its proposed facility are substantially accurate and
36 complete, that it is satisfied as to the adequacy of the applicant's
37 capital investment plans to complete its facility, the long term
38 economic viability of the facility, the overall financial soundness
39 of the applicant, the qualification and capability of the applicant
40 in the transshipment, transportation, storage, refining and
41 marketing of oil or refined oil products, and that plans including
42 buffer zones or alternatives thereto for the applicant's new facility
43 are consistent with current health, environmental protection and
44 resource use and development policies as adopted by the com-
45 monwealth.

1 SECTION 6. Section 69K of said Chapter 164 is hereby
2 amended by striking out the first and second paragraphs, as
3 amended by section 9 of said Chapter 617, and inserting in place
4 thereof the following paragraphs: —

5 Any electric, gas or oil company which proposes to construct
6 or operate facilities in the commonwealth may petition the
7 council for a certificate of environmental impact and public need
8 with respect to such facility. The council shall consider such
9 petition providing: the electric, gas or oil company is prevented
10 from building a facility because it cannot meet standards imposed
11 by a state or local agency with commercially available equipment
12 or because the processing or granting by a state or local agency of
13 any approval, consent, permit or certificate has been unduly

14 delayed for any reason, including the preparation and publication
15 of any environmental impact report required by section sixty-two
16 of chapter 30; or the electric, gas or oil company believes there are
17 inconsistencies among resource use permits issued by such state
18 or local agencies; or the electric, gas or oil company believes that
19 a nonregulatory issue or condition has been raised or imposed by
20 such state or local agencies such as but not limited to aesthetics
21 and recreation; or the facility cannot be constructed due to any
22 disapprovals, conditions or denials by a state or local agency or
23 body, except with respect to any lands or interests therein,
24 excluding public ways, owned or managed by any state agency or
25 local government.

26 With respect to the siting of oil facilities, other than oil
27 pipelines, this section shall not be construed to override those
28 local zoning by-laws in effect on the date when a notice of
29 intention required by section sixty-nine I is filed.

1 SECTION 7. The first paragraph of section 69 O of said
2 chapter 164, as so appearing, is hereby amended by adding the
3 following sentence: —

4 The council shall not be bound by the requirements of section
5 sixty-two of chapter thirty to the extent that compliance with said
6 requirements will prevent the council from rendering a decision
7 upon the application within the time limitations of this
8 paragraph.

1 SECTION 8. Said Chapter 164 is hereby further amended by
2 inserting after section 69R the following section: —

3 *Section 69S.* A company may petition the council for the right
4 to exercise the power of eminent domain with respect to oil
5 pipelines specified and contained in the proposed Notice of
6 Intention submitted in accordance with section sixty-nine I if
7 such company is unable to reach agreement with the owners of
8 land for acquisition of any necessary estate or interest in land.
9 The company shall forward at the time of filing such petition a
10 copy thereof to each city and town affected.

11 The company shall file with such petition or have annexed
12 thereto: (1) a statement of the use for which such land is to be

13 taken; (2) a description of land to be taken sufficient for the
14 identification thereof; (3) a statement of the estate or interest in
15 the land to be taken for such use; (4) a plan showing the land to
16 be taken; (5) a statement of the sum of money established by such
17 company to be just compensation for the land to be taken; and
18 (6) such additional maps and information as the council requires.

19 The council after such notice as it may direct, shall give a
20 public hearing or hearings in the community in which the greater
21 portion of said land in question is located. The council may
22 thereafter authorize the company to take by eminent domain
23 under chapter seventy-nine such lands necessary for the
24 construction of the oil pipeline as required in the public interest,
25 convenience and necessity. The council shall transmit a certified
26 copy of its order to the company, to the clerk of each affected
27 community and to each affected land owner.

28 If the council dismisses the petition at any stage in said
29 proceedings, no further action shall be taken thereon, except that
30 the company may file a new petition after the expiration of a year
31 from such dismissal.

32 Following a taking under this section, the company may
33 forthwith proceed to utilize such land. If the company shall not
34 utilize the land so taken for the purpose or purposes authorized in
35 the council's order within such time as the council shall
36 determine, its rights under such taking shall cease and terminate.

37 No land, rights of way or other easements therein in any public
38 way, public place, public park or reservation shall be taken by
39 eminent domain under the provisions of this section.

40 This section shall apply only to oil pipelines which are facilities
41 as defined in section sixty-nine G.

