

**HOUSE . . . . . No. 2980**

The Commonwealth of Massachusetts

PRESENTED BY:

***Frank I. Smizik***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to comprehensive siting reform for land based wind projects.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Thomas P. Conroy</i>	<i>13th Middlesex</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>
<i>Michael Barrett</i>	<i>Third Middlesex</i>
<i>Michael J. Moran</i>	<i>18th Suffolk</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>

**HOUSE . . . . . No. 2980**

By Mr. Smizik of Brookline, a petition (accompanied by bill, House, No. 2980) of Frank I. Smizik and others relative to comprehensive siting reform for certain land based wind projects. Telecommunications, Utilities and Energy.

**The Commonwealth of Massachusetts**

An Act relative to comprehensive siting reform for land based wind projects.

*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. This act shall be construed in a manner to achieve its public purposes,  
2 which are to encourage the development of clean, renewable, electric generating plants and  
3 ancillary facilities powered by wind, ensure that such facilities are sited in appropriate locations  
4 based on clear, predictable and protective environmental, cultural and historic resource  
5 standards and streamline the permitting of such facilities at the state and local level and reduce  
6 delays associated with appeals of such permits.

7 □SECTION 2. Subsection (a) of section 10 of chapter 25A of the General Laws, as appearing in  
8 the 2008 Official Edition, is hereby amended by adding the following sentence:- The director  
9 shall identify an employee of the department who shall work within the department and  
10 collaborate with regional planning authorities to provide technical assistance to municipalities  
11 with respect to the siting of wind energy facilities.

12 □SECTION 3. Said section 10 of said chapter 25A, as so appearing, is hereby amended by  
13 striking out, in lines 22 and 23, the words “or other local governmental body” and inserting in  
14 place thereof the following words:- , other local governmental body or other local governmental  
15 bodies acting jointly on a regional basis.

16 □SECTION 4. Said section 10 of said chapter 25A, as so appearing, is hereby further amended  
17 by inserting after the word “locations”, in lines 27 and 28, the following words:- within the  
18 municipality, other local governmental body or other local governmental bodies acting jointly on  
19 a regional basis.

20 □SECTION 5. Said section 10 of said chapter 25A, as so appearing, is hereby further amended  
21 by inserting after the word “municipality”, in lines 29, 42 and 43, each time it appears, the  
22 following words:- , other local governmental body or other local governmental bodies acting  
23 jointly on a regional basis.

24 □SECTION 6. The General Laws are hereby amended by inserting after chapter 25C the  
25 following chapter:-

26 □CHAPTER 25D.

27 □WIND ENERGY PERMITTING

28 □DEFINITIONS:

29 □Section 1. As used in this chapter, the following words shall, unless the context clearly  
30 requires otherwise, have the following meanings:-

31 □“Department”, the department of energy resources established in chapter 25A.

32 □“Expedited permitting”, the expedited procedure established in section 4 that a person  
33 proposing to construct a wind energy facility with a capacity of at least 2 megawatts or related  
34 test towers may follow to receive a permit from a host municipality.

35 □“Facility”, a wind energy facility.

36 □“Host municipality”, a city or town in which a facility is located.

37 □“Interested party”, an abutter; abutting municipality; a lawfully established trust, corporation,  
38 partnership, sole proprietorship, firm, franchise, association, organization, holding company,  
39 joint stock company, receivership, business or real estate trust or any other legal entity organized  
40 for profit or charitable purposes that is substantially and specifically affected by a proposed  
41 facility; or any group consisting of not fewer than 10 residents of the municipality in which the  
42 facility is proposed.

43 □ “Person”, a natural person, corporation, association, partnership or other legal entity.

44 □“Regional planning agency”, an agency with regulatory authority to issue permits, licenses or  
45 other governmental approvals for particular land uses within its jurisdiction.

46 □“Significant wind resource area”, an area within a municipality with a significant percentage of  
47 land that has sufficiently high winds and sufficient regularity to support wind energy facilities of  
48 2 megawatts or more.

49 □“Wind energy facility”, a facility including blades, turbines, towers, supports, foundations and  
50 any ancillary facilities such as roadways, transmission or distribution lines, substations and any  
51 other buildings, structures or equipment whose primary purpose is to support the generation,  
52 transmission and delivery of at least 2 megawatts of electricity powered by wind; provided,  
53 however, that “wind energy facility” shall not include structures or buildings whose primary  
54 purpose is unrelated to the generation, transmission and delivery of electricity powered by wind.

55 □“Local wind energy permitting board”, a municipal board appointed under section 3 or if no  
56 board has been appointed, the planning board in the city or town of the proposed facility.

57 □LOCAL PERMIT PROCESS:

58 □Section 2. The department, in consultation with the regional planning agencies, shall identify  
59 municipalities containing a significant wind resource area; provided, however, that prior to a  
60 final determination that a municipality contains a significant wind resource area, the department  
61 shall hold at least 1 public hearing in the region containing the host municipality and offer a  
62 period for public comment. A municipality identified as containing a significant wind resource  
63 area shall establish a local wind energy permitting board to conduct local permitting of a wind  
64 energy facility, within 30 days of receipt of a letter of intent from an applicant seeking to file an  
65 application under this chapter. A municipality not identified as containing a significant wind

66 resource area may establish a local wind energy permitting board.

67 □Section 3. A local wind energy permitting board established under section 2 may be composed  
68 of 3 or 5 members appointed by the city manager in the case of a city under a Plan E form of  
69 government, the mayor in the case of all other cities or the board of selectmen in the case of a  
70 town. A 3- member board shall consist of 1 member of the zoning board of appeals, 1  
71 representative of the conservation commission, if any, and 1 member of the planning board. A 5-  
72 member board shall consist of 2 members of the conservation commission, 1 member from the  
73 zoning board of appeals and 2 members from the planning board. The appointing authority shall  
74 appoint a chair of the board. If the city manager in the case of a city under a Plan E form of  
75 government, the mayor in the case of all other cities, or the board of selectmen in the case of a  
76 town determine that it is not feasible to establish a local wind energy permitting board, the  
77 planning board shall serve as the local wind energy permitting board. In such instance, the  
78 planning board shall take actions to maximize the opportunity for input from other municipal  
79 boards and shall, at a minimum, ensure that the conservation commission, if any, and zoning  
80 board of appeals are provided with copies of the application and notices of all public hearings  
81 relating to the application.

82 □Section 4. (a) A person proposing to construct a wind energy facility with a capacity of at least  
83 2 megawatts or related test towers may follow the expedited permitting procedure established in  
84 this chapter.

85 □(b) A proposal to develop a wind energy facility or related test towers that complies with the  
86 standards established in section 69U of chapter 164 shall be eligible for the expedited permitting  
87 established in this section and section 69V of said chapter 164. A proposal that does not comply  
88 with the standards established in said section 69U of said chapter 164 shall be governed by the  
89 procedure established in subsection (g).

90 □(c) The project proponent shall file an application with the local wind energy permitting board  
91 and the clerk of the host municipality in lieu of separate applications to the local boards. The  
92 proponent shall also file the application with the clerk of any abutting municipality. The  
93 application shall identify all local laws, rules or regulations from which a waiver is sought.  
94 Within 60 days of receipt, the chair of the local wind energy permitting board, or the chair's  
95 designee, shall determine whether the application is complete and inform the proponent of that  
96 decision. If the application is incomplete, the proponent shall be allowed 30 days or such longer  
97 time as may be mutually agreed upon to complete the application. After the expiration of this  
98 period, the proponent may elect to go forward with the information provided, and the procedures  
99 and timelines in this section shall apply.

100 □(d) The local wind energy permitting board shall immediately notify each local board, as  
101 applicable, of the filing of an application by sending a copy of the application to the applicable  
102 local boards for such board's recommendations and shall, within 60 days of the local wind  
103 energy permitting board's determination that an application is complete or the expiration of the  
104 additional information period described in subsection (c), and in compliance with the notice and  
105 publication provisions of section 11 of chapter 40A, hold a public hearing and a written public

106 comment period of at least 45 days on the application. The local wind energy permitting board  
107 shall request the recommendations of the local boards as it deems necessary or helpful in making  
108 its decision upon such application and shall have the same power to issue a permit or other  
109 approval as any local board or official who would otherwise act with respect to such application,  
110 including, but not limited to: the power to attach conditions to said permit or approval as are  
111 consistent with this section and all other laws, rules and regulations.

112  (e) The local wind energy permitting board, in making its decision on the application, shall  
113 apply all applicable local by-laws and ordinances, including by-laws regulating construction in  
114 and around and the disturbance of, wetlands and other environmentally sensitive areas. The local  
115 wind energy permitting board shall consider the recommendations of the local boards and may  
116 assess fees on wind energy facility applicants to retain consultants under section 53G of chapter  
117 44. The board may waive zoning and nonzoning requirements of the municipality's local laws,  
118 regulations, policies or other regulatory requirements.

119  (f) The local wind energy permitting board shall file with the city or town clerk a written  
120 decision, based upon a majority vote of the board, within 120 days of the local wind energy  
121 permitting board's determination that an application is complete or the expiration of the  
122 additional information period described in subsection (c), unless the time period is extended by  
123 mutual agreement of the board and the applicant and the agreement is filed with the city or town  
124 clerk prior to the expiration of the 120 day period. Failure to file a written decision or extension  
125 within the 120 day period shall result in a constructive approval of the application, unless a  
126 municipal board has made a timely referral of an application to a regional planning agency under  
127 subsection (l).

128  (g) A wind energy facility that does not comply with the standards established under section  
129 69U of chapter 164 shall be governed by subsections (a) to (f), inclusive, except that the deadline  
130 for a decision shall be within 180 days of the wind energy permitting board's determination that  
131 an application is complete or the expiration of the additional information period described in  
132 subsection (c). If the applicant states that the project complies with the standards in said section  
133 69U of said chapter 164, but the local wind energy permitting board determines through a vote or  
134 interim written decision within the 120 day period that the application does not comply with  
135 those standards, the deadline for a decision shall be extended so that the deadline is 180 days  
136 from the local wind energy permitting board's determination that an application is complete or  
137 the expiration of the additional information period described in subsection (c), unless a municipal  
138 board has made a timely referral of an application to a regional planning agency under  
139 subsection (l). Failure to file a written decision or extension within the 180 day period shall  
140 result in a constructive approval of the application, unless a municipal board has made a timely  
141 referral of an application to a regional planning agency under subsection (l).

142  (h) The local wind energy permitting board may assess a community mitigation fee upon the  
143 applicant, which shall not exceed a cap established by the department. The cap shall be set so as  
144 to ensure that community mitigation fees do not render the project economically non-viable.

145  (i) The applicant shall offer the host municipality, or its designee, the option of entering into a

146 legally enforceable purchase and sale agreement for not more than 10 per cent of the electricity  
147 generated on site for use by the host municipality or its designee; provided, however, that the  
148 local wind energy permitting board may accept other forms of mitigation, including, but not  
149 limited to, a purchase and sale agreement for electricity between the applicant and a  
150 municipality, a county, a regional planning agency or other regional governmental entity, a  
151 municipal electric cooperative or a municipal aggregator of energy. The host municipality may  
152 enter into legally enforceable agreements with the applicant for additional mitigation measures.

153  (j) Notwithstanding any general or special law to the contrary, a municipality whose local wind  
154 energy permitting board has approved an application under this section or municipalities acting  
155 jointly on a regional basis, within which at least 1 local wind energy permitting board has  
156 approved an application under this section, shall be deemed to have met the green community  
157 eligibility requirements in clauses (2) and (3) of subsection (c) of section 10 of chapter 25A and  
158 if the municipality or municipalities acting jointly on a regional basis seeks a waiver of any of  
159 the other eligibility requirements under said subsection (c) of said section 10 of said chapter 25A,  
160 the municipality or municipalities acting jointly on a regional basis shall be entitled to a finding  
161 that the municipality or municipalities acting jointly on a regional basis has committed to  
162 alternative measures that advance the purposes of the green communities program as effectively  
163 as adherence to the requirements.

164  (k) If a project proponent proposes a single wind energy facility in more than 1 municipality,  
165 the local wind energy permitting boards, or planning boards, if applicable, may hold joint  
166 hearings in 1 or more municipalities.

167  (l) In areas where regional planning agencies have regulatory authority, a local wind energy  
168 permitting board or planning board shall refer an application to the regional planning agency in  
169 accordance with the special act establishing the regional planning agency. Prior to the regional  
170 planning agency's final determination on the application, the local wind energy permitting board  
171 may review and hold public hearings and meetings on the application; provided, however, that  
172 no final determination shall be made until the regional planning agency has issued an approval or  
173 approval with conditions within 60 days of receiving the application. Notwithstanding any  
174 general or special law to the contrary, in areas where regional planning agencies have regulatory  
175 authority, a local wind energy permitting board and regional planning agency may hold joint  
176 hearings concerning a proposed facility so that both boards may review a project simultaneously.

177  A local wind energy permitting board shall file its written decision with the city or town clerk  
178 within 60 days of the date on which a regional planning agency issues its final decision of  
179 approval or approval with conditions. Failure of the local wind energy permitting board to file a  
180 written decision or an agreed upon extension within the 60 day period shall result in a  
181 constructive approval of the application by the local wind energy permitting board. If a regional  
182 planning agency denies a development of regional impact permit to a proposed wind energy  
183 facility, the local wind energy permitting board shall not issue any permits for such a facility and  
184 no constructive approval shall result.

185  (m) An interested party who is substantially and specifically aggrieved by a decision of the

186 local wind energy permitting board or a regional planning agency granting a permit or permit  
187 with conditions to the applicant, or constructively approving such a permit may appeal the  
188 decision to the energy facilities siting board and this appeal shall be the exclusive means of  
189 review of such decisions of a local wind energy permitting board or a regional planning agency.  
190 The appeal shall be filed with the energy facilities siting board not later than 30 days after the  
191 local wind energy permitting board's decision is filed with the city or town clerk or rendered by  
192 a regional planning agency and shall be governed by section 69V of chapter 164.

193 □ An appeal of a decision of the local wind energy permitting board denying a permit or granting  
194 a permit with conditions, brought by the applicant or by any other proponent of a wind energy  
195 facility shall be filed with superior court or the permit session of the land court under section 3A  
196 of chapter 185 within 30 days of the filing of the decision with the city or town clerk and this  
197 appeal shall be the exclusive means of review of such decisions of a local wind energy  
198 permitting board. The court shall hear all evidence pertinent to the authority of the local wind  
199 energy permitting board and determine the facts. The court shall annul such decision if it finds  
200 that the local wind energy permitting board exceeded its authority or make such other decree as  
201 justice and equity may require. An appeal brought by the applicant or by any other proponent of  
202 a wind energy facility of a decision of a regional planning agency denying a permit or granting a  
203 permit with conditions shall be governed by the enabling statute of the applicable regional  
204 planning agency and this appeal shall be the exclusive means of review of such decisions of a  
205 regional planning agency.

206 □ (n) The energy facilities siting board, the local wind energy permitting board issuing the  
207 permit or municipality in which a wind energy project is to be developed may move to revoke  
208 any permit or authorization given to a wind energy facility under this chapter if the person or  
209 entity holding the permit fails to perform as prescribed by the permit.

210 □ STATE PERMIT PROCESS:

211 □ SECTION 7. Section 69H of chapter 164, as appearing in the 2008 Official Edition, is hereby  
212 amended by striking out the first 2 paragraphs and inserting in place thereof the following 2  
213 paragraphs:-

214 □ There is hereby established an energy facilities siting board within the department, but not  
215 under the supervision or control of the department. The board shall implement sections 69H to  
216 69Q, inclusive, so as to provide a reliable energy supply for the commonwealth with a minimum  
217 impact on the environment at the lowest possible cost. To accomplish this, the board shall  
218 review the need for, cost of and environmental impacts of transmission lines, natural gas  
219 pipelines, facilities for the manufacture and storage of gas and oil facilities; provided, however,  
220 that the board shall review only the environmental impacts of generating facilities, consistent  
221 with the commonwealth's policy of allowing market forces to determine the need for and cost of  
222 such facilities. Such reviews shall be conducted consistent with section 69J ¼ for generating  
223 facilities and with section 69J for all other facilities. The board shall also implement sections  
224 69U and 69V, so as to provide for the development of clean, renewable, electric generating  
225 plants and ancillary facilities powered by wind, sited in appropriate locations based on clear,

226 predictable and protective environmental, cultural and historic resource standards.

227 □The board shall be composed of the secretary of energy and environmental affairs, who shall  
228 serve as chair, the secretary of housing and economic development, the commissioner of  
229 environmental protection, the commissioner of fish and game, the commissioner of energy  
230 resources, 2 commissioners of the commonwealth utilities commission, or the designees of any  
231 of the foregoing and 4 public members to be appointed by the governor for a term coterminous  
232 with that of the governor, 1 of whom shall be experienced in environmental issues, 1 of whom  
233 shall be experienced in labor issues, 1 of whom shall be a municipal official with experience in  
234 land use planning and 1 of whom shall be experienced in energy issues; provided, however that  
235 the commissioner of fish and game and the public member who is a municipal official with  
236 experience in land use planning shall only be present and serve as members of the board for the  
237 implementation, administration and enforcement of said sections 69U and 69V and shall not be  
238 present or serve as members of the board for the implementation, administration and  
239 enforcement of sections 69H to 69Q, inclusive. The board shall not include as a public member  
240 any person who receives or who has received during the past 2 years a significant portion of such  
241 person's income directly or indirectly from the developer of an energy facility or an electric, gas  
242 or oil company. The public members shall serve on a part-time basis, receive \$100 per diem of  
243 board service and shall be reimbursed by the commonwealth for all reasonable expenses actually  
244 and necessarily incurred in the performance of official board duties. Upon the resignation of a  
245 public member, a successor shall be appointed in a like manner for the unexpired portion of the  
246 member's term. No person shall be appointed to serve more than 2 consecutive full terms.

247 □SECTION 8. Said chapter 164 is hereby further amended by inserting after section 69S the  
248 following 4 sections:-

249 □Section 69T. As used in sections 69U to 69W, inclusive, the following words shall, unless the  
250 context clearly requires otherwise, have the following meanings:-

251 □“Expedited permitting”, the expedited procedure established in section 69V that a person  
252 proposing to construct a wind energy facility with a capacity of at least 2 megawatts may follow  
253 to receive a permit from the energy facilities siting board.

254 □“Facility”, a wind energy facility.

255 □“Host municipality”, a city or town in which a facility is located.

256 □“Interested party”, an abutter; abutting municipality; a lawfully established trust, corporation,  
257 partnership, sole proprietorship, firm, franchise, association, organization, holding company,  
258 joint stock company, receivership, business or real estate trust or any other legal entity organized  
259 for profit or charitable purposes that is substantially and specifically affected by a proposed  
260 facility; or any group consisting of not fewer than 10 residents of the municipality in which the  
261 facility is proposed.

262 □“Wind energy facility”, a land based facility including blades, turbines, towers, supports,  
263 foundations and any ancillary facilities such as roadways, transmission or distribution lines,  
264 substations and any other buildings, structures or equipment whose primary purpose is to support  
265 the generation, transmission and delivery of at least 2 but fewer than 100 megawatts of

266 electricity, powered by wind; provided, however, that “wind energy facility” shall not include  
267 structures or buildings whose primary purpose is unrelated to the generation, transmission and  
268 delivery of electricity powered by wind.

269 □“Local wind energy permitting board”, a municipal board appointed under section 3 of chapter  
270 25D or if no board has been appointed, the planning board in the city or town of the proposed  
271 facility.

272 □Section 69U. (a) The energy facilities siting board shall, with the approval of the secretary of  
273 energy and environmental affairs, promulgate rules and regulations pursuant to chapter 30A  
274 containing standards for the land-based siting, operation and decommissioning of wind energy  
275 facilities. A wind energy facility shall not be required to comply with the standards established in  
276 this section; provided, however, that a wind energy facility that complies with this section shall  
277 be eligible for expedited permitting under section 69V and section 4 of chapter 25D. The siting  
278 of offshore wind facilities shall be governed by the integrated ocean management plan  
279 established under section 4C of chapter 21A.

280 □(b) The standards for wind energy facilities shall include, but not be limited to: (1) lighting; (2)  
281 appropriate setbacks from residences to prevent significant sound, health and safety impacts; (3)  
282 performance standards and appropriate setbacks to avoid impacts, and to the extent impacts  
283 cannot be avoided, to minimize or mitigate impacts to scenic or recreational areas of special  
284 federal, state or regional significance, regional cultural facilities, historic resources, properties  
285 listed or eligible for listing in the National Register of Historic Places or the state register,  
286 priority or estimated habitats for plant and animal species listed in chapter 131A, populations of  
287 bird and bat species that are considered by the department of fish and game as being vulnerable  
288 to impacts from the operation of wind turbines, large unfragmented habitat blocks, wetland  
289 resources or other ecologically sensitive areas subject to protection under federal or state law or  
290 as identified by the department of environmental protection, department of conservation and  
291 recreation or the department of fish and game; and (4) such other factors as the board determines  
292 to be relevant to foster the development of wind energy in a manner that avoids, minimizes or  
293 mitigates material adverse environmental impact. Mitigation may include, but not be limited to,  
294 the preservation, enhancement, restoration or establishment of resources of greater or equal value  
295 to those being impacted, as compensation for unavoidable impacts.

296 □The standards may vary from region to region to take into account material differences in the  
297 natural resources, available wind resources or other characteristics of regions; provided,  
298 however, that all applicable standards shall be at least as protective as existing state  
299 environmental statutes and regulations. The standards shall be: (i) based upon best available  
300 science; (ii) drafted in consultation with the relevant agencies and the advisory group established  
301 in subsection (c); and (iii) reviewed and updated as necessary; provided, however, that the  
302 standards shall be updated every 5 years.

303 □(c) The energy facilities siting board shall empanel an advisory group to develop recommended  
304 standards under the direction of the chair of the board. The advisory group may utilize the  
305 resources and staff of the energy facilities siting board. The advisory group shall include the

306 commissioner of conservation and recreation, the chair of the Massachusetts historical  
307 commission, the commissioner of public safety and the commissioner of public health, or their  
308 designees. The advisory group shall also include the following individuals to be appointed by  
309 the governor: a representative of the wind energy industry; a representative of the electric  
310 transmission and distribution industry; 2 representatives from non-profit environmental  
311 organizations with experience in wind energy facility siting policy, 1 of whom shall represent a  
312 land and water conservation organization; 1 representative of the Berkshire regional planning  
313 commission; 1 representative of the Berkshire natural resources council; 1 representative from  
314 the metropolitan area planning council; 1 representative of southeastern regional planning and  
315 economic development district; 1 representative of the Franklin regional council of governments;  
316 1 representative from the Cape Cod commission; 1 representative from the Martha's Vineyard  
317 commission; 1 representative from the Nantucket planning and economic development  
318 commission; 1 municipal official with experience in energy siting drawn from a list of not fewer  
319 than 3 candidates prepared by the Massachusetts Municipal Association; provided, however, that  
320 the same municipal official may not serve on the energy facilities siting board and the advisory  
321 group established in this subsection; a scientist who is an expert in ecology and conservation; a  
322 scientist or engineer who is an expert in wind energy; a public health official with expertise in  
323 audiology; and not more than 2 other representatives, appointed by the chair, as the chair deems  
324 advisable. Prior to submitting the recommended standards to the energy facilities siting board,  
325 the advisory group shall hold not less than 2 regional public hearings to solicit public comments.  
326 Prior to adopting the rules and regulations, the energy facilities siting board shall hold a public  
327 hearing and follow the additional procedures established in section 2 of chapter 30A.

328 □Section 69V. (a) A person proposing to construct a wind energy facility with a capacity of at  
329 least 2 megawatts or related test towers may follow the expedited permitting procedures  
330 established in this section.

331 □(b) A proposal to develop a wind energy facility or related test towers that complies with the  
332 standards established under section 69U shall be eligible for the expedited permitting procedures  
333 established in this section and section 4 of chapter 25D.

334 □(c) After a local wind energy permitting board or planning board authorized under section 3 of  
335 chapter 25D files a written decision with the city or town clerk, or constructive approval results  
336 under subsection (f) of section 4 of chapter 25D, the project applicant may file an application  
337 with the energy facilities siting board, together with such supporting materials as are necessary to  
338 demonstrate that the facility complies with the standards established in section 69U.

339 □The application shall include, in such form and detail as the energy facilities siting board shall  
340 from time to time prescribe, the following information: (i) a description of the proposed wind  
341 energy generating facility, including any ancillary structures and related facilities; (ii) a  
342 description of the project's positive and negative environmental impacts; (iii) a statement of  
343 whether the project complies with the standards established in section 69U and if it does not, a  
344 listing of the standards for which the project does not comply and an explanation as to why  
345 compliance is not practicable; (iv) a complete list of state agency permits that would otherwise

346 be needed for the facility; and (v) any other information requested by the energy facilities siting  
347 board. The applicant shall simultaneously file a notice of the application with the local wind  
348 energy permitting board or planning board established in chapter 25D, any state or regional  
349 agencies that have permitting authority over the proposed facility, abutters to the site of the  
350 facility and the office of the Massachusetts Environmental Policy Act, which shall publish the  
351 notice, as soon as possible, in the Environmental Monitor.

352  Within 45 days of receipt of the application, the energy facilities siting board shall review the  
353 application, notify all relevant permitting agencies and inform the applicant in writing whether  
354 the application is complete. The applicant shall make the full application readily available to all  
355 relevant agencies and municipalities and the energy facilities siting board shall establish a  
356 procedure to ensure that the application and supporting materials are available for timely local  
357 and statewide public access, including electronic access.

358  (d) Within 60 days of the energy facilities siting board notifying the applicant that the  
359 application is complete, a hearing officer of the energy facilities siting board shall take written  
360 public comment and hold a non-adjudicatory public hearing to take oral comment on the  
361 application. The hearing shall be held in the host community or, if no appropriate locations are  
362 available in a host community, in the nearest available appropriate location. The hearing officer  
363 shall allow at least 45 days from the energy facilities siting board determination that the  
364 application is complete for public comments to be submitted.

365  Based on the comments that are submitted, if the hearing officer determines that there are  
366 genuine disputes of material fact as to whether the facility meets the standards, the hearing  
367 officer shall schedule at least 1 evidentiary hearing for the limited purpose of taking further  
368 evidence upon the issues for which there is a genuine dispute of material fact. If there is a  
369 factual dispute between the applicant and a state agency regarding matters within the state  
370 agency's regulatory authority, an evidentiary hearing shall be held as to that dispute at the  
371 request of the applicant or the state agency. Evidence may be presented at such hearing by the  
372 applicant, the municipality in which the proposed facility is located, state permit granting  
373 authorities and by any interested party; provided, however, that such party submitted comments  
374 during the initial public comment period described in this section. The evidentiary hearing shall  
375 be completed on or before 90 days following the close of the initial public comment period. The  
376 evidentiary hearing shall include written or oral testimony under oath, the opportunity for cross-  
377 examination and the compilation of a record of admissible evidence; provided, however, that the  
378 hearing officer and the energy facilities siting board shall not be subject to paragraph (7) of  
379 section 11 of chapter 30A.

380  (e) State permit granting agencies shall file, and any other state agency, as defined in section 1  
381 of chapter 29, may file, written comments with the hearing officer during the initial 45 day  
382 public comment period to assist the energy facilities siting board in determining whether the  
383 standards have been met and may include recommended conditions within each agency's  
384 regulatory purview.

385  (f) Within 60 days of the close of the public hearing or evidentiary hearings, if scheduled, the

386 energy facilities siting board shall determine, in writing, whether the proposed facility meets the  
387 standards. If the energy facilities siting board finds that the proposed facility meets the  
388 standards, it shall approve the facility and may impose conditions to its approval. The energy  
389 facilities siting board shall, to the maximum extent practicable, adopt conditions recommended:  
390 (i) by state environmental agencies regarding issues within their permitting authority; (ii) by state  
391 environmental agencies with respect to biological resources identified under section 69U, but not  
392 within their permitting authority; (iii) by any other state agency, as defined in section 1 of  
393 chapter 29; or (iv) by host municipalities or their constituent boards or regional planning  
394 agencies with regulatory authority. The energy facilities siting board shall explain the reasons  
395 for not including any such conditions in its written decision.

396  (g)(1) If the energy facilities siting board finds that the facility does not meet the siting  
397 standards, it may hold additional hearings to obtain additional evidence from both the applicant  
398 and interested parties, if necessary, and approve the facility and impose conditions to its approval  
399 if it finds that:

400  (A) the facility has complied to the maximum extent practicable with the siting standards  
401 established in section 69U;

402  (B) the facility has mitigated the impact arising out of the non-compliance with the siting  
403 standards; and

404  (C) the benefits of the facility outweigh the detriments.

405  (2) To determine whether the benefits of the facility outweigh the detriments, the energy  
406 facilities siting board shall take into account:

407  (A) benefits, including, but not limited to:

408  (i) the avoidance or reduction of greenhouse gases and other pollutants;

409  (ii) energy reliability;

410  (iii) security and diversification; and

411  (iv) public ownership of the facility or reduction of electric rates to the community that will be  
412 affected by the facility; and

413  (B) detriments, including, but not limited to the impact on:

414  (i) ecologically sensitive areas;

415  (ii) large unfragmented habitat blocks;

416  (iii) priority or estimated habitats for all plant and animal species listed under chapter 131A;

417  (iv) populations of bird and bat species considered by the department of fish and game to be  
418 vulnerable to impacts from the operation of wind turbines;

419  (v) historic, cultural or scenic or recreational areas of special federal or state significance;

420  (vi) noise; and

421  (vii) public safety.

422  (3) If the energy facilities siting board finds that the facility meets the standards in this  
423 subsection, it may approve the facility and may impose conditions to its approval.

424  (4) A decision under this subsection shall be issued not later than 275 days after the energy  
425 facilities siting board determines in writing that the application is complete, if no evidentiary

426 hearings are held, or within 365 days after such determination if evidentiary hearings are held.  
427  (h) The construction, maintenance and operation of a facility which receives an approval under  
428 this chapter shall conform with such approval and any terms and conditions contained in such  
429 approval. Notwithstanding any general or special law to the contrary, if the energy facilities  
430 siting board issues an approval under this section, no state agency shall require any approval,  
431 consent, permit, certificate or condition for the construction, operation or maintenance of the  
432 facility for which the approval is issued and no state agency shall impose or enforce any law,  
433 ordinance, by-law, rule or regulation, nor take any action, nor fail to take any action which would  
434 delay or prevent the construction, operation or maintenance of such facility; provided, however,  
435 that the energy facilities siting board shall not issue an approval the effect of which would be to  
436 grant or modify a permit, approval or authorization which, if so granted or modified by the  
437 appropriate state agency, would be invalid because of a conflict with applicable federal water,  
438 air, historic or threatened and endangered species standards or requirements. The approval, if  
439 issued, shall be in the form of a composite of all state individual permits, approvals or  
440 authorizations which would otherwise be necessary for the construction and operation of the  
441 facility and that portion of the approval which relates to subject matters within the jurisdiction of  
442 a state agency shall be enforced by said agency under the other applicable laws of the  
443 commonwealth as if it had been directly granted by the agency.

444  (i) The energy facilities siting board shall combine the review and approval process under this  
445 section with any additional review of a local wind energy permitting board decision approving,  
446 approving with conditions or constructively approving an application if such an appeal is brought  
447 by a person or entity other than the applicant under subsection (m) of section 4 of chapter 25D.  
448 If the energy facilities siting board approves the facility under section (f) or (g), it shall affirm the  
449 decision of the local wind energy permitting board, but may strengthen conditions imposed by  
450 the local wind energy permitting board or impose additional conditions upon the approval to  
451 address claims brought by the party seeking additional review of the local wind energy  
452 permitting board's decision.

453  (j) An application filed by a person proposing to construct a wind energy facility that does not  
454 comply with the standards established under section 69U shall also be governed by subsections  
455 (d) to (g), inclusive; provided that:

456  (1) the hearing officer shall hold a public hearing and close the public comment period within  
457 120 days from the date that the energy facilities siting board determines that the application is  
458 complete;

459  (2) the hearing officer shall hold evidentiary hearings as needed to resolve genuine disputes of  
460 material facts within 240 days from the date the energy facilities siting board determines that the  
461 application is complete; and

462  (3) the energy facilities siting board shall issue a decision within 120 days of the close of the  
463 public comment period or evidentiary hearing.

464  (k) Approval by the energy facilities siting board under this section shall not authorize the  
465 applicant to begin construction until the applicant obtains a building permit.

466 □(l) The regulations promulgated under section 69U shall include clear and concise application  
467 requirements including, but not limited to, pre-application survey requirements developed by the  
468 energy facilities siting board in consultation with the department of fish and game and the  
469 department of environmental protection and may provide for pre-application consultation and  
470 site visits. No application shall be considered complete until surveys, if required, are determined  
471 by the department of fish and game or the department of environmental protection to be  
472 complete. Sufficient data shall be required from the applicant by these regulations to enable the  
473 energy facilities siting board to determine whether the facility meets the standards established  
474 under section 69U and if it does not, whether it meets the standards set forth in subsection (g).

475 □(m) The energy facilities siting board shall promulgate rules and regulations governing the  
476 procedures for permitting under this section and appeals brought under chapter 25D. The rules  
477 and regulations shall also provide for a reasonable fee for wind energy facility applications  
478 subject to this section to defray the energy facilities siting board's reasonable costs of processing  
479 the application; a fee set under such rules and regulations may be adjusted according to project  
480 size or other objective criteria. The rules and regulations shall also ensure that a reasonable  
481 portion of the application fee charged shall be allocated to state agencies that would otherwise be  
482 issuing permits for the facility under a fee schedule to be adopted concurrently with the rules and  
483 regulations. The energy facilities siting board may retain the fees for the purpose of reviewing  
484 applications to construct wind energy facilities. Any remaining balance of the fees at the end of a  
485 fiscal year shall not revert to the General Fund, but instead shall be available to the energy  
486 facilities siting board during the following fiscal year for the purposes set forth in sections 69U  
487 to 69X, inclusive. Nothing in this section shall change the level or use of siting fees for any  
488 other type of facility subject to section 69J ½ of this chapter.

489 □(n) Any interested party aggrieved by a decision of the energy facilities siting board under this  
490 section shall have a right to judicial review in the manner provided by section 5 of chapter 25.  
491 The scope of such judicial review shall be limited to whether the decision of the energy facilities  
492 siting board conforms with the constitutions of the commonwealth and the United States, was  
493 made in accordance with the procedures and application of standards established under sections  
494 69U and 69V, and with the rules and regulations of the board with respect to such sections, was  
495 supported by substantial evidence in the record of the board's proceedings and was arbitrary,  
496 capricious or an abuse of the board's discretion.

497 □(o) This section shall not be deemed to exempt wind energy facilities from sections 61 and 62A  
498 to 62I, inclusive, of chapter 30.

499 □Section 69W. Sections 69U and 69V shall not preclude or obligate an applicant for a facility  
500 from seeking and obtaining board approvals and certificates under sections 69K to 69O ½,  
501 inclusive.

502 □SECTION 9. Notwithstanding any general or special law to the contrary, the energy facilities  
503 siting board shall promulgate rules and regulations under sections 69U and 69V of chapter 164  
504 of the General Laws on or before March 1, 2011.

505 □SECTION 10. Notwithstanding any general or special law to the contrary, no application may

506 be submitted to or reviewed through the streamlined permitting process established in this act  
507 until all necessary rules and regulations are promulgated.

508 □SECTION 11. The department of energy resources shall notify each municipality with a  
509 significant wind resource area, as determined by the department, within 30 days of the effective  
510 date of this act of the terms and provisions of this act.

511 □SECTION 12. Notwithstanding any general or special law to the contrary, nothing in this act  
512 shall be construed to allow the permitting process contained in chapter 25D of the General Laws  
513 or sections 69U to 69W, inclusive, of chapter 164 of the General Laws to apply to land that is  
514 under protection pursuant to Article XLIX, as appearing in Article XCVII of the Amendments to  
515 the Constitution of the Commonwealth.