

**HOUSE . . . . . No. 1775**

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**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 adoption of the accompanying bill:

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

PETITION OF:

| NAME:                          | DISTRICT/ADDRESS:     | DATE ADDED:      |
|--------------------------------|-----------------------|------------------|
| <i>Frank I. Smizik</i>         | <i>15th Norfolk</i>   | <i>1/20/2011</i> |
| <i>Kevin G. Honan</i>          | <i>17th Suffolk</i>   | <i>2/4/2011</i>  |
| <i>Tom Sannicandro</i>         | <i>7th Middlesex</i>  | <i>2/4/2011</i>  |
| <i>James B. Eldridge</i>       |                       | <i>2/4/2011</i>  |
| <i>William N. Brownsberger</i> |                       | <i>2/3/2011</i>  |
| <i>Alice K. Wolf</i>           | <i>25th Middlesex</i> | <i>1/27/2011</i> |
| <i>Jonathan Hecht</i>          | <i>29th Middlesex</i> | <i>2/3/2011</i>  |
| <i>Jay R. Kaufman</i>          | <i>15th Middlesex</i> | <i>2/3/2011</i>  |

**HOUSE . . . . . No. 1775**

By Mr. Smizik of Brookline, a petition (accompanied by bill, House, No. 1775) of Frank I. Smizik and others relative to comprehensive siting reform for land based wind projects. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 4955 OF 2009-2010.]

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Eleven**  
\_\_\_\_\_

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

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to establish clear standards and timely and predictable permitting procedures to encourage wind energy development in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*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  
8 appearing in the 2008 Official Edition, is hereby amended by adding the following sentence:-  
9 The director shall identify an employee of the department who shall work within the department  
10 and collaborate with regional planning authorities to provide technical assistance to  
11 municipalities 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  
17 amended by inserting after the word “locations”, in lines 27 and 28, the following words:- within  
18 the municipality, other local governmental body or other local governmental bodies acting  
19 jointly on a regional basis.

20 SECTION 5. Said section 10 of said chapter 25A, as so appearing, is hereby further  
21 amended by inserting after the word “municipality”, in lines 29, 42 and 43, each time it appears,  
22 the 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           Section 1. As used in this chapter, the following words shall, unless the context clearly  
29 requires otherwise, have the following meanings:-

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

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

34           “Facility”, a wind energy facility.

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

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

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

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

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

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

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

66 Section 3. A wind energy permitting board established under section 2 may be composed  
67 of 3 or 5 members appointed by the city manager in the case of a city under a Plan E form of  
68 government, the mayor in the case of all other cities or the board of selectmen in the case of a  
69 town. A 3- member board shall consist of 1 member of the zoning board of appeals, 1

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

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

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

89           (c) The project proponent shall file an application with the wind energy permitting board  
90 and the clerk of the host municipality in lieu of separate applications to the local boards. The  
91 proponent shall also file the application with the clerk of any abutting municipality. The

92 application shall identify all local laws, rules or regulations from which a waiver is sought.  
93 Within 60 days of receipt, the chair of the wind energy permitting board, or the chair's designee,  
94 shall determine whether the application is complete and inform the proponent of that decision. If  
95 the application is incomplete, the proponent shall be allowed 30 days or such longer time as may  
96 be mutually agreed upon to complete the application. After the expiration of this period, the  
97 proponent may elect to go forward with the information provided, and the procedures and  
98 timelines in this section shall apply.

99 (d) The wind energy permitting board shall immediately notify each local board, as  
100 applicable, of the filing of an application by sending a copy of the application to the applicable  
101 local boards for such board's recommendations and shall, within 60 days of the wind energy  
102 permitting board's determination that an application is complete or the expiration of the  
103 additional information period described in subsection (c), and in compliance with the notice and  
104 publication provisions of section 11 of chapter 40A, hold a public hearing and a written public  
105 comment period of at least 45 days on the application. The wind energy permitting board shall  
106 request the recommendations of the local boards as it deems necessary or helpful in making its  
107 decision upon such application and shall have the same power to issue a permit or other approval  
108 as any local board or official who would otherwise act with respect to such application,  
109 including, but not limited to: the power to attach conditions to said permit or approval as are  
110 consistent with this section and all other laws, rules and regulations.

111 (e) The wind energy permitting board, in making its decision on the application, shall  
112 apply all applicable local by-laws and ordinances, including by-laws regulating construction in  
113 and around and the disturbance of, wetlands and other environmentally sensitive areas. The wind  
114 energy permitting board shall consider the recommendations of the local boards and may assess

115 fees on wind energy facility applicants to retain consultants under section 53G of chapter 44.  
116 The board may waive zoning and nonzoning requirements of the municipality's local laws,  
117 regulations, policies or other regulatory requirements.

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

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



138 planning agency under subsection (l). Failure to file a written decision or extension within the  
139 180 day period shall result in a constructive approval of the application, unless a municipal board  
140 has made a timely referral of an application to a regional planning agency under subsection (l).

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

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

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

160 the municipality or municipalities acting jointly on a regional basis has committed to alternative  
161 measures that advance the purposes of the green communities program as effectively as  
162 adherence to the requirements.

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

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

176 A wind energy permitting board shall file its written decision with the city or town clerk  
177 within 60 days of the date on which a regional planning agency issues its final decision of  
178 approval or approval with conditions. Failure of the wind energy permitting board to file a  
179 written decision or an agreed upon extension within the 60 day period shall result in a  
180 constructive approval of the application by the wind energy permitting board. If a regional  
181 planning agency denies a development of regional impact permit to a proposed wind energy

182 facility, the wind energy permitting board shall not issue any permits for such a facility and no  
183 constructive approval shall result.

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

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

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

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

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

225 The board shall be composed of the secretary of energy and environmental affairs, who  
226 shall serve as chair, the secretary of housing and economic development, the commissioner of

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

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

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

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

252 “Facility”, a wind energy facility.

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

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

260 “Wind energy facility”, a land based facility including blades, turbines, towers, supports,  
261 foundations and any ancillary facilities such as roadways, transmission or distribution lines,  
262 substations and any other buildings, structures or equipment whose primary purpose is to support  
263 the generation, transmission and delivery of at least 2 but fewer than 100 megawatts of  
264 electricity, powered by wind; provided, however, that “wind energy facility” shall not include  
265 structures or buildings whose primary purpose is unrelated to the generation, transmission and  
266 delivery of electricity powered by wind.

267 “Wind energy permitting board”, a municipal board appointed under section 3 of chapter  
268 25D or if no board has been appointed, the planning board in the city or town of the proposed  
269 facility.

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

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

292 but not be limited to, the preservation, enhancement, restoration or establishment of resources of  
293 greater or equal value to those being impacted, as compensation for unavoidable impacts.

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

301 (c) The energy facilities siting board shall empanel an advisory group to develop  
302 recommended standards under the direction of the chair of the board. The advisory group may  
303 utilize the resources and staff of the energy facilities siting board. The advisory group shall  
304 include the commissioner of conservation and recreation, the chair of the Massachusetts  
305 historical commission, the commissioner of public safety and the commissioner of public health,  
306 or their designees. The advisory group shall also include the following individuals to be  
307 appointed by the governor: a representative of the wind energy industry; a representative of the  
308 electric transmission and distribution industry; 2 representatives from non-profit environmental  
309 organizations with experience in wind energy facility siting policy, 1 of whom shall represent a  
310 land and water conservation organization; 1 representative of the Berkshire regional planning  
311 commission; 1 representative of the Berkshire natural resources council; 1 representative from  
312 the metropolitan area planning council; 1 representative of southeastern regional planning and  
313 economic development district; 1 representative of the Franklin regional council of governments;  
314 1 representative from the Cape Cod commission; 1 representative from the Martha's Vineyard



315 commission; 1 representative from the Nantucket planning and economic development  
316 commission; 1 municipal official with experience in energy siting drawn from a list of not fewer  
317 than 3 candidates prepared by the Massachusetts Municipal Association; provided, however, that  
318 the same municipal official may not serve on the energy facilities siting board and the advisory  
319 group established in this subsection; a scientist who is an expert in ecology and conservation; a  
320 scientist or engineer who is an expert in wind energy; a public health official with expertise in  
321 audiology; and not more than 2 other representatives, appointed by the chair, as the chair deems  
322 advisable. Prior to submitting the recommended standards to the energy facilities siting board,  
323 the advisory group shall hold not less than 2 regional public hearings to solicit public comments.  
324 Prior to adopting the rules and regulations, the energy facilities siting board shall hold a public  
325 hearing and follow the additional procedures established in section 2 of chapter 30A.

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

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

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

337           The application shall include, in such form and detail as the energy facilities siting board  
338 shall from time to time prescribe, the following information: (i) a description of the proposed  
339 wind energy generating facility, including any ancillary structures and related facilities; (ii) a  
340 description of the project’s positive and negative environmental impacts; (iii) a statement of  
341 whether the project complies with the standards established in section 69U and if it does not, a  
342 listing of the standards for which the project does not comply and an explanation as to why  
343 compliance is not practicable; (iv) a complete list of state agency permits that would otherwise  
344 be needed for the facility; and (v) any other information requested by the energy facilities siting  
345 board. The applicant shall simultaneously file a notice of the application with the wind energy  
346 permitting board or planning board established in chapter 25D, any state or regional agencies  
347 that have permitting authority over the proposed facility, abutters to the site of the facility and  
348 the office of the Massachusetts Environmental Policy Act, which shall publish the notice, as soon  
349 as possible, in the Environmental Monitor.

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

356           (d) Within 60 days of the energy facilities siting board notifying the applicant that the  
357 application is complete, a hearing officer of the energy facilities siting board shall take written  
358 public comment and hold a non-adjudicatory public hearing to take oral comment on the  
359 application. The hearing shall be held in the host community or, if no appropriate locations are

360 available in a host community, in the nearest available appropriate location. The hearing officer  
361 shall allow at least 45 days from the energy facilities siting board determination that the  
362 application is complete for public comments to be submitted.

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

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

383 (f) Within 60 days of the close of the public hearing or evidentiary hearings, if scheduled,  
384 the energy facilities siting board shall determine, in writing, whether the proposed facility meets  
385 the standards. If the energy facilities siting board finds that the proposed facility meets the  
386 standards, it shall approve the facility and may impose conditions to its approval. The energy  
387 facilities siting board shall, to the maximum extent practicable, adopt conditions recommended:  
388 (i) by state environmental agencies regarding issues within their permitting authority; (ii) by state  
389 environmental agencies with respect to biological resources identified under section 69U, but not  
390 within their permitting authority; (iii) by any other state agency, as defined in section 1 of  
391 chapter 29; or (iv) by host municipalities or their constituent boards or regional planning  
392 agencies with regulatory authority. The energy facilities siting board shall explain the reasons  
393 for not including any such conditions in its written decision.

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

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

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

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

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

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

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

407 (ii) energy reliability;

408 (iii) security and diversification; and

409 (iv) public ownership of the facility or reduction of electric rates to the community that

410 will be affected by the facility; and

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

412 (i) ecologically sensitive areas;

413 (ii) large unfragmented habitat blocks;

414 (iii) priority or estimated habitats for all plant and animal species listed under chapter

415 131A;

416 (iv) populations of bird and bat species considered by the department of fish and game to

417 be vulnerable to impacts from the operation of wind turbines;

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

419 (vi) noise; and

420 (vii) public safety.

421 (3) If the energy facilities siting board finds that the facility meets the standards in this

422 subsection, it may approve the facility and may impose conditions to its approval.

423 (4) A decision under this subsection shall be issued not later than 275 days after the  
424 energy facilities siting board determines in writing that the application is complete, if no  
425 evidentiary hearings are held, or within 365 days after such determination if evidentiary hearings  
426 are held.

427 (h) The construction, maintenance and operation of a facility which receives an approval  
428 under this chapter shall conform with such approval and any terms and conditions contained in  
429 such 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  
445 this section with any additional review of a local wind energy permitting board decision

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

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

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

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

462 (3) the energy facilities siting board shall issue a decision within 120 days of the close of  
463 the 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  
467 application requirements including, but not limited to, pre-application survey requirements  
468 developed by the energy facilities siting board in consultation with the department of fish and  
469 game and the department of environmental protection and may provide for pre-application  
470 consultation and site visits. No application shall be considered complete until surveys, if  
471 required, are determined by the department of fish and game or the department of environmental  
472 protection to be complete. Sufficient data shall be required from the applicant by these  
473 regulations to enable the energy facilities siting board to determine whether the facility meets the  
474 standards established under section 69U and if it does not, whether it meets the standards set  
475 forth in subsection (g).

476 (m) The energy facilities siting board shall promulgate rules and regulations governing  
477 the procedures for permitting under this section and appeals brought under chapter 25D. The  
478 rules and regulations shall also provide for a reasonable fee for wind energy facility applications  
479 subject to this section to defray the energy facilities siting board's reasonable costs of processing  
480 the application; a fee set under such rules and regulations may be adjusted according to project  
481 size or other objective criteria. The rules and regulations shall also ensure that a reasonable  
482 portion of the application fee charged shall be allocated to state agencies that would otherwise be  
483 issuing permits for the facility under a fee schedule to be adopted concurrently with the rules and  
484 regulations. The energy facilities siting board may retain the fees for the purpose of reviewing  
485 applications to construct wind energy facilities. Any remaining balance of the fees at the end of a  
486 fiscal year shall not revert to the General Fund, but instead shall be available to the energy  
487 facilities siting board during the following fiscal year for the purposes set forth in sections 69U



488 to 69X, inclusive. Nothing in this section shall change the level or use of siting fees for any  
489 other type of facility subject to section 69J ½ of this chapter.

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

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

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

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

506 SECTION 10. Notwithstanding any general or special law to the contrary, no application  
507 may be submitted to or reviewed through the streamlined permitting process established in this  
508 act until all necessary rules and regulations are promulgated.

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

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