HOUSE DOCKET, NO. 1224 FILED ON: 1/20/2011

HOUSE . . . . . No. 1775

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:
Frank I. Smizik	*15th Norfolk*
Kevin G. Honan	*17th Suffolk*
Tom Sannicandro	*7th Middlesex*
James B. Eldridge	
William N. Brownsberger	
Alice K. Wolf	*25th Middlesex*
Jonathan Hecht	*29th Middlesex*
Jay R. Kaufman	*15th Middlesex*

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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

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:

SECTION 1. This act shall be construed in a manner to achieve its public purposes, which are to encourage the development of clean, renewable, electric generating plants and ancillary facilities powered by wind, ensure that such facilities are sited in appropriate locations based on clear, predictable and protective environmental, cultural and historic resource standards and streamline the permitting of such facilities at the state and local level and reduce 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 or 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.