

HOUSE No. 2980

The Commonwealth of Massachusetts

PRESENTED BY:

Frank I. Smizik

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

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

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

PETITION OF:

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

HOUSE No. 2980

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

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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

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

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

7 SECTION 2. Subsection (a) of section 10 of chapter 25A of the General Laws, as
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 DEFINITIONS:

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

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

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

35 “Facility”, a wind energy facility.

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

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

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

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

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

49 “Wind energy facility”, a facility including blades, turbines, towers, supports,
50 foundations and any ancillary facilities such as roadways, transmission or distribution lines,
51 substations and any other buildings, structures or equipment whose primary purpose is to support

52 the generation, transmission and delivery of at least 2 megawatts of electricity powered by wind;
53 provided, however, that “wind energy facility” shall not include structures or buildings whose
54 primary purpose is unrelated to the generation, transmission and delivery of electricity powered
55 by wind.

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

58 LOCAL PERMIT PROCESS:

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

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

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

86 (b) A proposal to develop a wind energy facility or related test towers that complies with
87 the standards established in section 69U of chapter 164 shall be eligible for the expedited
88 permitting established in this section and section 69V of said chapter 164. A proposal that does

89 not comply with the standards established in said section 69U of said chapter 164 shall be
90 governed by the procedure established in subsection (g).

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

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

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

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

127 municipal board has made a timely referral of an application to a regional planning agency under
128 subsection (l).

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

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

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

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

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

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

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

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

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

203 justice and equity may require. An appeal brought by the applicant or by any other proponent of
204 a wind energy facility of a decision of a regional planning agency denying a permit or granting a
205 permit with conditions shall be governed by the enabling statute of the applicable regional
206 planning agency and this appeal shall be the exclusive means of review of such decisions of a
207 regional planning agency.

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

212 STATE PERMIT PROCESS:

213 SECTION 7. Section 69H of chapter 164, as appearing in the 2008 Official Edition, is
214 hereby amended by striking out the first 2 paragraphs and inserting in place thereof the following
215 2 paragraphs:-

216 There is hereby established an energy facilities siting board within the department, but
217 not under the supervision or control of the department. The board shall implement sections 69H
218 to 69Q, inclusive, so as to provide a reliable energy supply for the commonwealth with a
219 minimum impact on the environment at the lowest possible cost. To accomplish this, the board
220 shall review the need for, cost of and environmental impacts of transmission lines, natural gas
221 pipelines, facilities for the manufacture and storage of gas and oil facilities; provided, however,
222 that the board shall review only the environmental impacts of generating facilities, consistent
223 with the commonwealth's policy of allowing market forces to determine the need for and cost of
224 such facilities. Such reviews shall be conducted consistent with section 69J ¼ for generating
225 facilities and with section 69J for all other facilities. The board shall also implement sections
226 69U and 69V, so as to provide for the development of clean, renewable, electric generating
227 plants and ancillary facilities powered by wind, sited in appropriate locations based on clear,
228 predictable and protective environmental, cultural and historic resource standards.

229 The board shall be composed of the secretary of energy and environmental affairs, who
230 shall serve as chair, the secretary of housing and economic development, the commissioner of
231 environmental protection, the commissioner of fish and game, the commissioner of energy
232 resources, 2 commissioners of the commonwealth utilities commission, or the designees of any
233 of the foregoing and 4 public members to be appointed by the governor for a term coterminous
234 with that of the governor, 1 of whom shall be experienced in environmental issues, 1 of whom
235 shall be experienced in labor issues, 1 of whom shall be a municipal official with experience in
236 land use planning and 1 of whom shall be experienced in energy issues; provided, however that
237 the commissioner of fish and game and the public member who is a municipal official with
238 experience in land use planning shall only be present and serve as members of the board for the
239 implementation, administration and enforcement of said sections 69U and 69V and shall not be

240 present or serve as members of the board for the implementation, administration and
241 enforcement of sections 69H to 69Q, inclusive. The board shall not include as a public member
242 any person who receives or who has received during the past 2 years a significant portion of such
243 person's income directly or indirectly from the developer of an energy facility or an electric, gas
244 or oil company. The public members shall serve on a part-time basis, receive \$100 per diem of
245 board service and shall be reimbursed by the commonwealth for all reasonable expenses actually
246 and necessarily incurred in the performance of official board duties. Upon the resignation of a
247 public member, a successor shall be appointed in a like manner for the unexpired portion of the
248 member's term. No person shall be appointed to serve more than 2 consecutive full terms.

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

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

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

256 "Facility", a wind energy facility.

257 "Host municipality", a city or town in which a facility is located.

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

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

271 "Local wind energy permitting board", a municipal board appointed under section 3 of
272 chapter 25D or if no board has been appointed, the planning board in the city or town of the
273 proposed facility.

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

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

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

305 (c) The energy facilities siting board shall empanel an advisory group to develop
306 recommended standards under the direction of the chair of the board. The advisory group may
307 utilize the resources and staff of the energy facilities siting board. The advisory group shall
308 include the commissioner of conservation and recreation, the chair of the Massachusetts
309 historical commission, the commissioner of public safety and the commissioner of public health,
310 or their designees. The advisory group shall also include the following individuals to be
311 appointed by the governor: a representative of the wind energy industry; a representative of the
312 electric transmission and distribution industry; 2 representatives from non-profit environmental

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

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

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

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

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

351 agencies that have permitting authority over the proposed facility, abutters to the site of the
352 facility and the office of the Massachusetts Environmental Policy Act, which shall publish the
353 notice, as soon as possible, in the Environmental Monitor.

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

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

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

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

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

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

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

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

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

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

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

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

411 (ii) energy reliability;

412 (iii) security and diversification; and

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

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

416 (i) ecologically sensitive areas;

417 (ii) large unfragmented habitat blocks;

418 (iii) priority or estimated habitats for all plant and animal species listed under chapter
419 131A;

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

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

423 (vi) noise; and

424 (vii) public safety.

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

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

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

448 (i) The energy facilities siting board shall combine the review and approval process under
449 this section with any additional review of a local wind energy permitting board decision
450 approving, approving with conditions or constructively approving an application if such an
451 appeal is brought by a person or entity other than the applicant under subsection (m) of section 4
452 of chapter 25D. If the energy facilities siting board approves the facility under section (f) or (g),

453 it shall affirm the decision of the local wind energy permitting board, but may strengthen
454 conditions imposed by the local wind energy permitting board or impose additional conditions
455 upon the approval to address claims brought by the party seeking additional review of the local
456 wind energy permitting board's decision.

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

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

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

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

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

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

480 (m) The energy facilities siting board shall promulgate rules and regulations governing
481 the procedures for permitting under this section and appeals brought under chapter 25D. The
482 rules and regulations shall also provide for a reasonable fee for wind energy facility applications
483 subject to this section to defray the energy facilities siting board's reasonable costs of processing
484 the application; a fee set under such rules and regulations may be adjusted according to project
485 size or other objective criteria. The rules and regulations shall also ensure that a reasonable
486 portion of the application fee charged shall be allocated to state agencies that would otherwise be
487 issuing permits for the facility under a fee schedule to be adopted concurrently with the rules and
488 regulations. The energy facilities siting board may retain the fees for the purpose of reviewing

489 applications to construct wind energy facilities. Any remaining balance of the fees at the end of a
490 fiscal year shall not revert to the General Fund, but instead shall be available to the energy
491 facilities siting board during the following fiscal year for the purposes set forth in sections 69U
492 to 69X, inclusive. Nothing in this section shall change the level or use of siting fees for any
493 other type of facility subject to section 69J ½ of this chapter.

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

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

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

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

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

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

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