

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

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The Commonwealth of Massachusetts

PRESENTED BY:

***Frank I. Smizik***

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

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

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>	<i>1/18/2013</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/30/2013</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	<i>1/30/2013</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>	<i>1/30/2013</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>1/25/2013</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.