HOUSE DOCKET, NO. 1615 FILED ON: 1/15/2015

HOUSE . . . . . No. 2910

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:
Frank I. Smizik	*15th Norfolk*	*1/15/2015*
James B. Eldridge	*Middlesex and Worcester*	*2/4/2015*
Paul R. Heroux	*2nd Bristol*	*2/4/2015*

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HOUSE . . . . . No. 2910

By Mr. Smizik of Brookline, a petition (accompanied by bill, House, No. 2910) of Frank I. Smizik, James B. Eldridge and Paul R. Heroux relative to comprehensive siting reform for certain land based wind projects. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *2980* OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

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:

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

SECTION 2. Subsection (a) of section 10 of chapter 25A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following sentence:- The director shall identify an employee of the department who shall work within the department

and collaborate with regional planning authorities to provide technical assistance to municipalities with respect to the siting of wind energy facilities.

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

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

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

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

CHAPTER 25D.

WIND ENERGY PERMITTING

DEFINITIONS:

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

"Department", the department of energy resources established in chapter 25A.

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

"Facility", a wind energy facility.

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

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

"Person", a natural person, corporation, association, partnership or other legal entity.

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

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

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

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

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

LOCAL PERMIT PROCESS:

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

Section 3. A local wind energy permitting board established under section 2 may be composed of 3 or 5 members appointed by the city manager in the case of a city under a Plan E form of government, the mayor in the case of all other cities or the board of selectmen in the case of a town. A 3- member board shall consist of 1 member of the zoning board of appeals, 1 representative of the conservation commission, if any, and 1 member of the planning board. A 5-member board shall consist of 2 members of the conservation commission, 1 member from the

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

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

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

(c) The project proponent shall file an application with the local wind energy permitting board and the clerk of the host municipality in lieu of separate applications to the local boards. The proponent shall also file the application with the clerk of any abutting municipality. The application shall identify all local laws, rules or regulations from which a waiver is sought. Within 60 days of receipt, the chair of the local wind energy permitting board, or the chair's

designee, shall determine whether the application is complete and inform the proponent of that decision. If the application is incomplete, the proponent shall be allowed 30 days or such longer time as may be mutually agreed upon to complete the application. After the expiration of this period, the proponent may elect to go forward with the information provided, and the procedures and timelines in this section shall apply.

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

(e) The local wind energy permitting board, in making its decision on the application, shall apply all applicable local by-laws and ordinances, including by-laws regulating construction in and around and the disturbance of, wetlands and other environmentally sensitive areas. The local wind energy permitting board shall consider the recommendations of the local boards and may assess fees on wind energy facility applicants to retain consultants under section

53G of chapter 44. The board may waive zoning and nonzoning requirements of the municipality's local laws, regulations, policies or other regulatory requirements.

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

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

180 day period shall result in a constructive approval of the application, unless a municipal board has made a timely referral of an application to a regional planning agency under subsection (l).

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

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

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

alternative measures that advance the purposes of the green communities program as effectively as adherence to the requirements.

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

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

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

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

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

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

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

STATE PERMIT PROCESS:

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

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

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

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

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

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

"Facility", a wind energy facility.

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

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

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

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

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

(b) The standards for wind energy facilities shall include, but not be limited to: (1) lighting; (2) appropriate setbacks from residences to prevent significant sound, health and safety impacts; (3) performance standards and appropriate setbacks to avoid impacts, and to the extent impacts cannot be avoided, to minimize or mitigate impacts to scenic or recreational areas of special federal, state or regional significance, regional cultural facilities, historic resources, properties listed or eligible for listing in the National Register of Historic Places or the state register, priority or estimated habitats for plant and animal species listed in chapter 131A, populations of bird and bat species that are considered by the department of fish and game as being vulnerable to impacts from the operation of wind turbines, large unfragmented habitat blocks, wetland resources or other ecologically sensitive areas subject to protection under federal or state law or as identified by the department of environmental protection, department of conservation and recreation or the department of fish and game; and (4) such other factors as the

board determines to be relevant to foster the development of wind energy in a manner that avoids, minimizes or mitigates material adverse environmental impact. Mitigation may include, but not be limited to, the preservation, enhancement, restoration or establishment of resources of greater or equal value to those being impacted, as compensation for unavoidable impacts.

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

(c) The energy facilities siting board shall empanel an advisory group to develop recommended standards under the direction of the chair of the board. The advisory group may utilize the resources and staff of the energy facilities siting board. The advisory group shall include the commissioner of conservation and recreation, the chair of the Massachusetts historical commission, the commissioner of public safety and the commissioner of public health, or their designees. The advisory group shall also include the following individuals to be appointed by the governor: a representative of the wind energy industry; a representative of the electric transmission and distribution industry; 2 representatives from non-profit environmental organizations with experience in wind energy facility siting policy, 1 of whom shall represent a land and water conservation organization; 1 representative of the Berkshire regional planning commission; 1 representative of the Berkshire natural resources council; 1 representative from the metropolitan area planning council; 1 representative of southeastern regional planning and

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

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

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

(c) After a local wind energy permitting board or planning board authorized under section 3 of chapter 25D files a written decision with the city or town clerk, or constructive approval results under subsection (f) of section 4 of chapter 25D, the project applicant may file an

application with the energy facilities siting board, together with such supporting materials as are necessary to demonstrate that the facility complies with the standards established in section 69U.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) energy reliability;

(iii) security and diversification; and

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

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

(i) ecologically sensitive areas;

(ii) large unfragmented habitat blocks;

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

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

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

(vi) noise; and

(vii) public safety.

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

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

(h) The construction, maintenance and operation of a facility which receives an approval under this chapter shall conform with such approval and any terms and conditions contained in such approval. Notwithstanding any general or special law to the contrary, if the energy facilities siting board issues an approval under this section, no state agency shall require any approval, consent, permit, certificate or condition for the construction, operation or maintenance of the facility for which the approval is issued and no state agency shall impose or enforce any law, ordinance, by-law, rule or regulation, nor take any action, nor fail to take any action which would delay or prevent the construction, operation or maintenance of such facility; provided, however, that the energy facilities siting board shall not issue an approval the effect of which would be to grant or modify a permit, approval or authorization which, if so granted or modified by the appropriate state agency, would be invalid because of a conflict with applicable federal water, air, historic or threatened and endangered species standards or requirements. The approval, if issued, shall be in the form of a composite of all state individual permits, approvals or authorizations which would otherwise be necessary for the construction and operation of the

facility and that portion of the approval which relates to subject matters within the jurisdiction of a state agency shall be enforced by said agency under the other applicable laws of the commonwealth as if it had been directly granted by the agency.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9. Notwithstanding any general or special law to the contrary, the energy facilities siting board shall promulgate rules and regulations under sections 69U and 69V of chapter 164 of the General Laws on or before March 1, 2016.

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

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

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