SENATE DOCKET, NO. 1418 FILED ON: 2/16/2021

SENATE . . . . . No. 2135

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph A. Boncore

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 energy facilities siting reform to address environmental justice, climate, and public health.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Joseph A. Boncore	*First Suffolk and Middlesex*	
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*2/24/2021*
Jason M. Lewis	*Fifth Middlesex*	*3/1/2021*
James B. Eldridge	*Middlesex and Worcester*	*3/8/2021*
Carmine Lawrence Gentile	*13th Middlesex*	*3/8/2021*
Patrick M. O'Connor	*Plymouth and Norfolk*	*3/8/2021*
Erika Uyterhoeven	*27th Middlesex*	*3/8/2021*
John F. Keenan	*Norfolk and Plymouth*	*3/8/2021*
Walter F. Timilty	*Norfolk, Bristol and Plymouth*	*3/10/2021*
Patricia D. Jehlen	*Second Middlesex*	*3/25/2021*
Adam G. Hinds	*Berkshire, Hampshire, Franklin and Hampden*	*3/25/2021*
Thomas M. Stanley	*9th Middlesex*	*4/1/2021*
Joan B. Lovely	*Second Essex*	*4/1/2021*
Sal N. DiDomenico	*Middlesex and Suffolk*	*4/29/2021*
Lori A. Ehrlich	*8th Essex*	*5/12/2021*
David Henry Argosky LeBoeuf	*17th Worcester*	*5/12/2021*

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SENATE . . . . . No. 2135

By Mr. Boncore, a petition (accompanied by bill, Senate, No. 2135) of Joseph A. Boncore, Joanne M. Comerford, Jason M. Lewis, James B. Eldridge and other members of the General Court for legislation relative to energy facilities siting reform to address environmental justice, climate, and public health. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act relative to energy facilities siting reform to address environmental justice, climate, and public health.

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. Chapter 69J¼ of Section 164 is amended by inserting the following two paragraphs after the first paragraph:-

Prior to an applicant submitting a petition to construct a generating facility pursuant to this section or petition for construction pursuant to Section 69J or petition for construction of transmission lines pursuant to Section 71, a petitioner must develop a preliminary project statement about the facility that includes detailed information about the need, public health, environmental, and climate risks and burdens, environmental, energy, economic, and health benefits for communities within two miles of the facility. As part of this statement, the applicant must identify the location of all environmental justice populations within five miles of the facility. The project statement shall include a statement of reasonable alternatives.

Prior to filing an environmental notification form or environmental impact report pursuant to chapter 30, sections 61 through 62H or submitting a petition to the siting board, the preliminary project statement shall be shared with the director of environmental justice at the executive office of energy and environmental affairs, energy facilities siting board director, posted to a public website, and translated into multiple languages, as relevant to the local populations. Within 30 days of submitting that statement, the project proponent shall invite community-based organizations, local elected officials, the director of environmental justice at the executive office of energy and environmental affairs, and director of the energy facilities siting board to a meeting to review the proposed project. An applicant shall make adjustments to the project that address community concerns or abandon plans to file its petition to the board.

SECTION 2. Section 69H of chapter 164 shall be amended by striking the first paragraph and replacing it with the following three paragraphs:-

There is hereby established an energy facilities siting board within the department, but not under the supervision or control of the department. Said board shall implement the provisions contained in sections 69H to 69Q, inclusive, so as to provide a reliable energy supply for the commonwealth with a minimum impact on the environment and public health, and with a minimum impact on the overall wellbeing of residents in proximity to the project at the lowest possible cost after these impacts are considered. To accomplish this, the board shall review the historic impacts of nearby facilities on environmental justice populations, environmental, climate, and public health impacts, the need for and the cost of transmission lines, natural gas pipelines, facilities for the manufacture and storage of gas, and oil facilities; provided, however, that the board shall review the environmental impacts of generating facilities, along with the local need, and cost impacts of such facilities. Such reviews shall be conducted consistent with

section 69J1/4 for generating facilities and with section 69J for all other facilities. Before approving the construction, operation and/or alteration of major energy facilities, the board shall determine whether cost effective efficiency and conservation opportunities provide an appropriate alternative to the proposed facility.

All petitions shall a) demonstrate to the board that the planning, design, engineering and specifications for the project include adaptation measures sufficient to address climate risks that will arise over the economic life of the project or the term of financing, whichever is longer, based on the best available climate science; and (b) disclose in all design engineering, architectural, or other drawings and analyses the climate assumptions used in evaluating and addressing climate risks. It shall be the policy of the Commonwealth to minimize the negative impacts of climate change and the energy transition on environmental justice populations and prioritize renewable energy and climate adaptation investment in these areas.

SECTION 3. Section 69H of chapter 164 shall be amended by removing the second paragraph and replacing it with the following paragraph:-

The board shall be composed of the secretary of energy and environmental affairs, who shall serve as chairman, the secretary of housing and economic development, the commissioner of the department of environmental protection, the commissioner of the division of energy resources, 2 commissioners of the commonwealth utilities commission, or the designees of any of the foregoing, and 5 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 experienced in energy issues, and 2 of whom shall be experienced in community issues associated with the siting of energy facilities

with at least of one these members who resides in an environmental justice population and has experience with environmental justice principles and at least one of these members who is a tribal representative or representative of an Indigenous organization. The board shall not include as a public member any person who receives, or who has received during the past two years a significant portion of his or her 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 any public member, the governor shall appoint a successor, following consultation with the environmental justice council, for the unexpired portion of the term. No person shall be appointed to serve more than two consecutive full terms.

SECTION 4. Section 69J¼ of chapter 164 shall be amended by striking the third paragraph and replacing it with the following paragraph:-

A petition to construct a generating facility shall include, in such form and detail as the board shall from time to time prescribe, the following information: (i) a description of the proposed generating facility, including any ancillary structures and related facilities; (ii) a description of the environmental impacts and the costs associated with the mitigation, control, or reduction of the environmental impacts of the proposed generating facility; (iii) a description of the project development and site selection process used in choosing the design and location of the proposed generating facility; (iv) either (a) evidence that the expected emissions from the facility meet the technology performance standard in effect at the time of filing, or (b) a description of the environmental impacts, costs, and reliability of other fossil fuel generating technologies, and an explanation of why the proposed technology was chosen; (v) an

environmental justice impact statement detailing all potential impacts to environmental justice populations as defined in section 62 of chapter 30 and comparing the proposed site to other potential sites that do not impact environmental justice populations; (vi) impacts of the facility with respect to mitigating climate change; (vii) plans for the facility to adapt to a changing climate including current and future flooding, storm surges, and sea level rise; (viii) public health impacts of the proposed facility; (ix) a cumulative impact assessment that considers an exposure, public health or environmental risk, or other effect occurring in a specific geographical area, including from any environmental pollution emitted or released routinely, accidentally, or otherwise, from any source, and assessed based on the combined past, present, and reasonably foreseeable emissions and discharges affecting the geographical area; and (x) any other information necessary to demonstrate that the generating facility meets the requirements for approval specified in this section.

SECTION 5. Section 69J¼ of chapter 164 shall be amended by striking the fifth and sixth paragraphs and replacing them with the following two paragraphs:-

The board shall approve a petition to construct a generating facility only if the board determines that the petition meets all of the following requirements: (i) the description of the proposed generating facility and its environmental impacts are substantially accurate and complete; (ii) the description of the site selection process used is accurate; (iii) the plans for the construction of the proposed generating facility are consistent with current health, environmental protection, climate, and environmental justice policies of the commonwealth and with such policies as are adopted by the commonwealth for the specific purpose of guiding the decisions of the board; (iv) such plans minimize the environmental impacts consistent with the minimization of costs associated with the mitigation, control, and reduction of the environmental impacts of

the proposed generating facility; (v) the environmental justice impact statement demonstrates a finding of environmental and energy benefits to the impacted environmental justice populations without any environmental or energy burdens; (vi) the cumulative impact assessment demonstrates that there is no adverse public health, environmental, or climate impact to the impacted communities; (vii) construction, operation, and/or alteration of the facility shall only be undertaken when those actions are justified by long term local energy need forecasts; (viii) demonstrate local need for a generating facility and that such need cannot be accomplished through less harmful means; and (ix) if the petitioner was required to provide information on other fossil fuel generating technologies, the construction of the proposed generating facility on balance contributes to a reliable, low-cost, diverse, regional energy supply with minimal environmental impacts. The board may reopen the record to reconsider need for a facility if more than 12 months expire between a project approval and construction. The board may, at its discretion, evaluate alternative sites for a generating facility if the applicant or resident living in proximity to the facility requests such an evaluation, or if such an evaluation is an efficient method of administering an alternative site review required by another state or local agency. Nothing in this chapter shall be construed as requiring the board to make findings regarding alternative generating technologies for a proposed generating facility whose expected emissions meet the technology performance standard in effect at the time of filing.

The board shall, after review of the environmental justice impact statement, deny a petition for a new facility or for the expansion of an existing facility, or apply new conditions to the renewal of an existing facility's approval, upon a finding that approval of the petition, as proposed, would, together with other environmental, climate, or public health stressors affecting the environmental justice population, cause or contribute to adverse cumulative environmental,

climate, or public health stressors in the overburdened community that are higher than those borne by other communities within the Commonwealth or other geographic unit of analysis as determined by the executive office of energy and environmental affairs pursuant to rule, regulation, or guidance. The board and department of public utilities shall have the authority to adopt regulations establishing programs to achieve emissions reductions, climate adaptation, and environmental justice for the locations selected using the most cost-effective measures identified.

SECTION 6. Section 69J of chapter 164 shall be amended by striking the third through sixth paragraphs and replacing it with the following paragraphs:-

A petition to construct a facility shall include, in such form and detail as the board shall from time to time prescribe, the following information: (1) a description of the facility, site and surrounding areas; (2) an analysis of the need for the facility to benefit local energy needs within the commonwealth; (3) a description of the alternatives to the facility, such as other methods of transmitting or storing energy, other site locations, other sources of electrical power or gas, including renewable sources of energy, or a reduction of requirements through load management; (4) a description of the environmental impacts of the facility; (5) an environmental justice impact statement detailing all potential impacts to environmental justice populations as defined in section 62 of chapter 30 and comparing the proposed site to other potential sites that do not impact environmental justice populations; (6) impacts of the facility with respect to mitigating climate change; (7) plans for the facility to adapt to a changing climate including current and future flooding, storm surges, and sea level rise; (8) public health impacts of the proposed facility; and (9) a cumulative impact assessment that considers an exposure, public health or environmental risk, or other effect occurring in a specific geographical area, including from any environmental pollution emitted or released routinely, accidentally, or otherwise, from

any source, and assessed based on the combined past, present, and reasonably foreseeable emissions and discharges affecting the geographical area. The board shall be empowered to issue and revise filing guidelines after public notice and a period for comment. A minimum of data shall be required by these guidelines from the applicant for review concerning land use impact, water resource impact, air quality impact, solid waste impact, radiation impact, public health impact, environmental justice impact, and noise impact.

The board shall conduct a public hearing on every petition to construct a facility or notice of intention to construct an oil facility within six months of the filing thereof. Such hearing shall be an adjudicatory proceeding under the provisions of chapter thirty A. In addition, a public hearing shall be held in each neighborhood in which a facility would be located or in which an oil facility contained in a notice of intention to construct such facility is located, except that a public hearing shall not be required in a locality containing a proposed site if such a hearing has already been held in regard to that particular facility on that particular site in conjunction with a previously filed petition. The public hearing shall ensure language access, including simultaneous language interpretation in the languages spoken by a significant proportion of the population in the neighborhood of the proposed facility, that allows residents and other attendees to understand others' comments and that allows members of the department to understand speakers' comments. The board shall approve a petition to construct a facility only if it determines that it meets the following requirements: all information relating to current activities, environmental impacts, facilities agreements and energy policies as adopted by the commonwealth is substantially accurate, based on information that is no later than three years old, and complete; projections of the demand for electric power, or gas requirements and of the capacities for existing and proposed facilities are based on substantially accurate historical

information and reasonable statistical projection methods and include an adequate consideration of conservation and load management; provided, however, that the department or board shall not require in any gas forecast or hearing conducted thereon the presentation of information relative to the demand for gas; projections relating to service area, facility use and pooling or sharing arrangements are consistent with such forecasts of other companies subject to this chapter as may have already been approved and reasonable projections of activities of other companies in the New England area; plans for expansion and construction of the applicant's new facilities are consistent with current health, environmental protection, and resource use and development policies as adopted by the commonwealth; the environmental justice impact statement demonstrates a finding of environmental and energy benefits to the impacted environmental justice populations without any environmental or energy burdens; the cumulative impact assessment demonstrates that there is no adverse public health, environmental, or climate impact to the impacted communities; are consistent with the policies stated in section sixty-nine H to provide a necessary energy supply for the commonwealth with a minimum impact on the environment at lowest possible cost; and in the case of a notice of intent to construct an oil facility, that all information regarding sources of supply for such facility and financial information regarding the applicant and its proposed facility are substantially accurate and complete; that it is satisfied as to the adequacy of the applicant's capital investment plans to complete its facility; the long term economic viability of the facility; the overall financial soundness of the applicant; in the case of an oil facility, the qualification and capability of the applicant in the transshipment, transportation, storage, refining and marketing of oil or refined oil products; that plans including buffer zones or alternatives thereto for the applicant's new facility

are consistent with current health, environmental protection and resource use and development policies as adopted by the commonwealth.

If the board determines the standards set forth above have not been met, it shall reject in whole or in part the petition, setting forth in writing its reasons for such rejections, or approve the petition subject to stated conditions. In the event of rejection or conditioned approval, the applicant may within six months submit an amended petition. A public hearing on the amended petition shall be held on the same terms and conditions applicable to the original petition. The board shall, after review of the environmental justice impact statement, deny a petition for a new facility or for the expansion of an existing facility, or apply new conditions to the renewal of an existing facility's approval, upon a finding that approval of the petition, as proposed, would, together with other environmental, climate, or public health stressors affecting the environmental justice population, cause or contribute to adverse cumulative environmental, climate, or public health stressors in the overburdened community that are higher than those borne by other communities within the Commonwealth or other geographic unit of analysis as determined by the executive office of energy and environmental affairs pursuant to rule, regulation, or guidance. The board and department of public utilities shall have the authority to adopt regulations establishing programs to achieve emissions reductions for the locations selected using the most cost-effective measures identified.

Prior to constructing an oil facility or commencement of construction of a facility for the refining of oil designed so that more than thirty-five per cent of its output could be gasoline or refined oil products lighter than gasoline and prior to filing an environmental notification form or environmental impact report pursuant to chapter 30, sections 61 through 62H, an applicant must prepare a preliminary project statement that shall be shared with the director of environmental

justice at the executive office of energy and environmental affairs, energy facilities siting board director, posted to a public website, and translated into multiple languages, as relevant to the local population. Within 30 days of submitting that statement, the project proponent shall invite civic, community-based organizations, local elected officials, the director of environmental justice at the executive office of energy and environmental affairs, and director of the energy facilities siting board to a meeting to review the proposed project. An applicant shall make adjustments to the project that address community concerns or abandon plans to file its petition to the board. Subsequent to the preliminary project statement and public outreach, the applicant must file a notice of intention to construct such facility with the board. Such notice shall include in such form and detail as the board shall reasonably prescribe, in addition to a detailed description of the proposed facility and site, the following information for the region expected to be served by the oil facility:

(1) A description of the applicant's current activities involving the transshipment, transportation, storage, or refining of oil or refined oil products and all anticipated impacts to environmental justice populations.

(2) A description of the applicant's qualification and capability in transshipment, transportation, storage, refining and marketing of oil or refined oil products.

(3) An analysis of the proposed facility including but not limited to the description of alternatives to the planned action, such as other site locations, other oil facilities, and no additional oil facilities; a description of the environmental impact of the proposed facility, said description to include buffer zones and other measures to minimize damage to the environment; all potential impacts to environmental justice populations; impacts of the facility with respect to

mitigating climate change; plans for the facility to adapt to a changing climate including current and future flooding, storm surges, and sea level rise; public health impacts of the proposed facility; and a cumulative impact assessment that considers an exposure, public health or environmental risk, or other effect occurring in a specific geographical area, including from any environmental pollution emitted or released routinely, accidentally, or otherwise, from any source, and assessed based on the combined past, present, and reasonably foreseeable emissions and discharges affecting the geographical area; and a facility is required to meet local energy use needs and that such need cannot be accomplished through less harmful means. The board shall after public notice and a period for comment be empowered to issue and revise its own list of guidelines. A minimum of data shall be required by these guidelines from the applicant for review concerning land use impact, water resource impact, air quality impact, solid waste impact, radiation impact, public health impact, environmental justice impact, and noise impact.

(4) A description of proposed sources of supply of crude oil or refined oil products for the oil facility which is the subject of the notice; if such sources are persons not controlled by the applicant, certified copies of any contracts, letters of intent or any other understandings.

(5) A description of the capital investment plan proposed for such facility, and the overall financial soundness of the company and economic viability of the facility, including insurance coverage during construction and operation.

SECTION 7. Section 69I of chapter 164 is hereby amended by adding the following paragraph:-

A project proponent shall publicly disclose energy load forecast data that demonstrates the local need for the facility to ensure reliability. Long-range forecasts must demonstrate local need for a generating facility at particular facility locations.

SECTION 8. Section 69G of chapter 164 shall be amended to include the following definition for “public hearing”:-

“Public hearing” means a hearing to discuss a proposed project that shall ensure language access, including simultaneous language interpretation in the languages spoken by a significant proportion of the population in the neighborhood of the proposed facility, that allows residents and other attendees to understand others’ comments and that allows members of the department, board members, and attendees to understand speakers’ comments.

SECTION 9. Section 69G of chapter 164 shall be amended to strike the existing definition for “generating facility” and replace it with the following definition:-

“Generating facility,” any generating unit designed for or capable of operating at a gross capacity of 35 megawatts or more, including associated buildings, ancillary structures, transmission and pipeline interconnections that are not otherwise facilities, and fuel storage facilities.