

HOUSE No. 01775

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 passage of the accompanying bill:

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

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|--------------------------------|--------------------------------|
| <i>Frank I. Smizik</i> | <i>15th Norfolk</i> |
| <i>Kevin G. Honan</i> | <i>17th Suffolk</i> |
| <i>Tom Sannicandro</i> | <i>7th Middlesex</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> |
| <i>William N. Brownsberger</i> | <i>24th Middlesex</i> |
| <i>Alice K. Wolf</i> | <i>25th Middlesex</i> |
| <i>Jonathan Hecht</i> | <i>29th Middlesex</i> |
| <i>Jay Kaufman</i> | <i>15th Middlesex</i> |

HOUSE No. 01775

By Mr. Frank I. Smizik of Brookline, petition (accompanied by bill, House, No. 01775) of James Eldridge and others relative to comprehensive siting reform for land based wind projects. Joint Committee on Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
 HOUSE
 , NO. 4955 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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

Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to establish clear standards and timely and predictable permitting procedures to encourage wind energy development in the commonwealth, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

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

5 the permitting of such facilities at the state and local level and reduce delays associated with
6 appeals of such permits.

7 SECTION 2. Subsection (a) of section 10 of chapter 25A of the General Laws, as appearing in
8 the 2008 Official Edition, is hereby amended by adding the following sentence:- The director
9 shall identify an employee of the department who shall work within the department and
10 collaborate with regional planning authorities to provide technical assistance to municipalities
11 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 striking
13 out, in lines 22 and 23, the words “or other local governmental body” and inserting in place
14 thereof the following words:- , other local governmental body or other local governmental bodies
15 acting jointly on a regional basis.

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

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

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

26 CHAPTER 25D.

27 WIND ENERGY PERMITTING

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

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

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

34 “Facility”, a wind energy facility.

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

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

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

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

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

48 “Wind energy facility”, a facility including blades, turbines, towers, supports, foundations and
49 any ancillary facilities such as roadways, transmission or distribution lines, substations and any
50 other buildings, structures or equipment whose primary purpose is to support the generation,
51 transmission and delivery of at least 2 megawatts of electricity powered by wind; provided,
52 however, that “wind energy facility” shall not include structures or buildings whose primary
53 purpose is unrelated to the generation, transmission and delivery of electricity powered by wind.

54 “Wind energy permitting board”, a municipal board appointed under section 3 or if no board has
55 been appointed, the planning board in the city or town of the proposed facility.

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

65 Section 3. A wind energy permitting board established under section 2 may be composed of 3 or
66 5 members appointed by the city manager in the case of a city under a Plan E form of

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

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

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

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

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

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

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

125 (g) A wind energy facility that does not comply with the standards established under section 69U
126 of chapter 164 shall be governed by subsections (a) to (f), inclusive, except that the deadline for
127 a decision shall be within 180 days of the wind energy permitting board's determination that an
128 application is complete or the expiration of the additional information period described in
129 subsection (c). If the applicant states that the project complies with the standards in said section
130 69U of said chapter 164, but the wind energy permitting board determines through a vote or
131 interim written decision within the 120 day period that the application does not comply with
132 those standards, the deadline for a decision shall be extended so that the deadline is 180 days

133 from the wind energy permitting board's determination that an application is complete or the
134 expiration of the additional information period described in subsection (c), unless a municipal
135 board has made a timely referral of an application to a regional planning agency under
136 subsection (l). Failure to file a written decision or extension within the 180 day period shall
137 result in a constructive approval of the application, unless a municipal board has made a timely
138 referral of an application to a regional planning agency under subsection (l).

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

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

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

155 municipality or municipalities acting jointly on a regional basis seeks a waiver of any of the
156 other eligibility requirements under said subsection (c) of said section 10 of said chapter 25A, the
157 municipality or municipalities acting jointly on a regional basis shall be entitled to a finding that
158 the municipality or municipalities acting jointly on a regional basis has committed to alternative
159 measures that advance the purposes of the green communities program as effectively as
160 adherence to the requirements.

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

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

174 A wind energy permitting board shall file its written decision with the city or town clerk within
175 60 days of the date on which a regional planning agency issues its final decision of approval or
176 approval with conditions. Failure of the wind energy permitting board to file a written decision

177 or an agreed upon extension within the 60 day period shall result in a constructive approval of
178 the application by the wind energy permitting board. If a regional planning agency denies a
179 development of regional impact permit to a proposed wind energy facility, the wind energy
180 permitting board shall not issue any permits for such a facility and no constructive approval shall
181 result.

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

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

200 conditions shall be governed by the enabling statute of the applicable regional planning agency
201 and this appeal shall be the exclusive means of review of such decisions of a regional planning
202 agency.

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

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

210 There is hereby established an energy facilities siting board within the department, but not
211 under the supervision or control of the department. The board shall implement sections 69H to
212 69Q, inclusive, so as to provide a reliable energy supply for the commonwealth with a minimum
213 impact on the environment at the lowest possible cost. To accomplish this, the board shall
214 review the need for, cost of and environmental impacts of transmission lines, natural gas
215 pipelines, facilities for the manufacture and storage of gas and oil facilities; provided, however,
216 that the board shall review only the environmental impacts of generating facilities, consistent
217 with the commonwealth's policy of allowing market forces to determine the need for and cost of
218 such facilities. Such reviews shall be conducted consistent with section 69J $\frac{1}{4}$ for generating
219 facilities and with section 69J for all other facilities. The board shall also implement sections
220 69U and 69V, so as to provide for the development of clean, renewable, electric generating

221 plants and ancillary facilities powered by wind, sited in appropriate locations based on clear,
222 predictable and protective environmental, cultural and historic resource standards.

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

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

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

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

250 “Facility”, a wind energy facility.

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

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

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

263 structures or buildings whose primary purpose is unrelated to the generation, transmission and
264 delivery of electricity powered by wind.

265 “Wind energy permitting board”, a municipal board appointed under section 3 of chapter 25D or
266 if no board has been appointed, the planning board in the city or town of the proposed facility.

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

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

285 as identified by the department of environmental protection, department of conservation and
286 recreation or the department of fish and game; and (4) such other factors as the board determines
287 to be relevant to foster the development of wind energy in a manner that avoids, minimizes or
288 mitigates material adverse environmental impact. Mitigation may include, but not be limited to,
289 the preservation, enhancement, restoration or establishment of resources of greater or equal value
290 to those being impacted, as compensation for unavoidable impacts.

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

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

308 commission; 1 representative of the Berkshire natural resources council; 1 representative from
309 the metropolitan area planning council; 1 representative of southeastern regional planning and
310 economic development district; 1 representative of the Franklin regional council of governments;
311 1 representative from the Cape Cod commission; 1 representative from the Martha's Vineyard
312 commission; 1 representative from the Nantucket planning and economic development
313 commission; 1 municipal official with experience in energy siting drawn from a list of not fewer
314 than 3 candidates prepared by the Massachusetts Municipal Association; provided, however, that
315 the same municipal official may not serve on the energy facilities siting board and the advisory
316 group established in this subsection; a scientist who is an expert in ecology and conservation; a
317 scientist or engineer who is an expert in wind energy; a public health official with expertise in
318 audiology; and not more than 2 other representatives, appointed by the chair, as the chair deems
319 advisable. Prior to submitting the recommended standards to the energy facilities siting board,
320 the advisory group shall hold not less than 2 regional public hearings to solicit public comments.
321 Prior to adopting the rules and regulations, the energy facilities siting board shall hold a public
322 hearing and follow the additional procedures established in section 2 of chapter 30A.

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

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

329 (c) After a wind energy permitting board or planning board authorized under section 3 of chapter
330 25D files a written decision with the city or town clerk, or constructive approval results under
331 subsection (f) of section 4 of chapter 25D, the project applicant may file an application with the
332 energy facilities siting board, together with such supporting materials as are necessary to
333 demonstrate that the facility complies with the standards established in section 69U.

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

347 Within 45 days of receipt of the application, the energy facilities siting board shall review the
348 application, notify all relevant permitting agencies and inform the applicant in writing whether
349 the application is complete. The applicant shall make the full application readily available to all
350 relevant agencies and municipalities and the energy facilities siting board shall establish a

351 procedure to ensure that the application and supporting materials are available for timely local
352 and statewide public access, including electronic access.

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

360 Based on the comments that are submitted, if the hearing officer determines that there are
361 genuine disputes of material fact as to whether the facility meets the standards, the hearing
362 officer shall schedule at least 1 evidentiary hearing for the limited purpose of taking further
363 evidence upon the issues for which there is a genuine dispute of material fact. If there is a
364 factual dispute between the applicant and a state agency regarding matters within the state
365 agency's regulatory authority, an evidentiary hearing shall be held as to that dispute at the
366 request of the applicant or the state agency. Evidence may be presented at such hearing by the
367 applicant, the municipality in which the proposed facility is located, state permit granting
368 authorities and by any interested party; provided, however, that such party submitted comments
369 during the initial public comment period described in this section. The evidentiary hearing shall
370 be completed on or before 90 days following the close of the initial public comment period. The
371 evidentiary hearing shall include written or oral testimony under oath, the opportunity for cross-
372 examination and the compilation of a record of admissible evidence; provided, however, that the

373 hearing officer and the energy facilities siting board shall not be subject to paragraph (7) of
374 section 11 of chapter 30A.

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

380 (f) Within 60 days of the close of the public hearing or evidentiary hearings, if scheduled, the
381 energy facilities siting board shall determine, in writing, whether the proposed facility meets the
382 standards. If the energy facilities siting board finds that the proposed facility meets the
383 standards, it shall approve the facility and may impose conditions to its approval. The energy
384 facilities siting board shall, to the maximum extent practicable, adopt conditions recommended:

385 (i) by state environmental agencies regarding issues within their permitting authority; (ii) by state
386 environmental agencies with respect to biological resources identified under section 69U, but not
387 within their permitting authority; (iii) by any other state agency, as defined in section 1 of
388 chapter 29; or (iv) by host municipalities or their constituent boards or regional planning
389 agencies with regulatory authority. The energy facilities siting board shall explain the reasons
390 for not including any such conditions in its written decision.

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

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

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

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

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

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

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

404 (ii) energy reliability;

405 (iii) security and diversification; and

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

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

409 (i) ecologically sensitive areas;

410 (ii) large unfragmented habitat blocks;

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

412 (iv) populations of bird and bat species considered by the department of fish and game to be

413 vulnerable to impacts from the operation of wind turbines;

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

415 (vi) noise; and

416 (vii) public safety.

417 (3) If the energy facilities siting board finds that the facility meets the standards in this

418 subsection, it may approve the facility and may impose conditions to its approval.

419 (4) A decision under this subsection shall be issued not later than 275 days after the energy

420 facilities siting board determines in writing that the application is complete, if no evidentiary

421 hearings are held, or within 365 days after such determination if evidentiary hearings are held.

422 (h) The construction, maintenance and operation of a facility which receives an approval under

423 this chapter shall conform with such approval and any terms and conditions contained in such

424 approval. Notwithstanding any general or special law to the contrary, if the energy facilities

425 siting board issues an approval under this section, no state agency shall require any approval,

426 consent, permit, certificate or condition for the construction, operation or maintenance of the

427 facility for which the approval is issued and no state agency shall impose or enforce any law,

428 ordinance, by-law, rule or regulation, nor take any action, nor fail to take any action which would

429 delay or prevent the construction, operation or maintenance of such facility; provided, however,

430 that the energy facilities siting board shall not issue an approval the effect of which would be to

431 grant or modify a permit, approval or authorization which, if so granted or modified by the

432 appropriate state agency, would be invalid because of a conflict with applicable federal water,

433 air, historic or threatened and endangered species standards or requirements. The approval, if

434 issued, shall be in the form of a composite of all state individual permits, approvals or

435 authorizations which would otherwise be necessary for the construction and operation of the

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

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

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

451 (1) the hearing officer shall hold a public hearing and close the public comment period within
452 120 days from the date that the energy facilities siting board determines that the application is
453 complete;

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

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

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

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

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

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

484 (n) Any interested party aggrieved by a decision of the energy facilities siting board under this
485 section shall have a right to judicial review in the manner provided by section 5 of chapter 25.
486 The scope of such judicial review shall be limited to whether the decision of the energy facilities
487 siting board conforms with the constitutions of the commonwealth and the United States, was
488 made in accordance with the procedures and application of standards established under sections
489 69U and 69V, and with the rules and regulations of the board with respect to such sections, was
490 supported by substantial evidence in the record of the board's proceedings and was arbitrary,
491 capricious or an abuse of the board's discretion.

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

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

497 SECTION 9. Notwithstanding any general or special law to the contrary, the energy facilities
498 siting board shall promulgate rules and regulations under sections 69U and 69V of chapter 16A
499 of the General Laws on or before March 1, 2011.

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

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

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