

SUMMARY OF WIND ENERGY SITING REFORM ACT

SECTION 1 . Describes the purpose of the Act: to encourage the development wind energy generating plants and ancillary facilities by establishing clear siting standards, one-stop permitting at the local and state level, and streamlined appeals of such permits.

SECTION 2. Provides for an employee of the Department of Energy Resources to provide technical assistance to municipalities with respect to the siting of wind energy facilities.

SECTIONS 3-5. Adds the Commissioner of the Department of Fish and Game to the Energy Facilities Siting Board (EFSB), and increases the number of public members on the EFSB from three to four by adding to the Board a municipal/land use planning representative.

SECTION 6 . Adds 4 new sections to G.L. c. 164:

New Section 69T.

The DPU establishes a new division of wind energy facility siting, and appoints a director of the division who is responsible for streamlining the siting of wind energy facilities and ensuring predictable permitting decisions.

New Section 69U.

Requires the EFSB, with the assistance of an advisory commission of stakeholders, to promulgate siting standards for land-based wind electric generating plants and ancillary facilities of 2 or more megawatts (MW). Facilities are not required to comply with standards in the regulation, but compliant facilities will be entitled to state agency fast-track permitting pursuant to section 69V of this chapter and municipal fast-track permitting pursuant to chapter 40T. The standards shall protect residential neighborhoods, significant scenic and recreational resources, and environmentally sensitive areas, and must be as protective as existing state laws. The standards may vary from region to region to take into account material differences in the natural resources. The standards shall be based upon best available science, and shall be reviewed and updated not less than once every five years.

New Section 69V.

Subsections (a)-(f) .

Creates fast track permitting at the state level for wind farms of 2 MW or more which a developer may, but is not required, to utilize. The process is as follows:

After the developer obtains a decision at the local level, the developer applies to the siting board, which has the authority to issue a composite permit that includes all other state and local permits (except the permit issued by the local wind energy permitting board). The process is non-adjudicatory, consisting of a public hearing and a written comment period where anyone can file comments. State agencies would be tasked to include in their comments recommendations for permit conditions addressing matters in their regulatory purview. If there is a factual dispute, an evidentiary hearing may be held no later than 3 months following the close of the initial public comment period.

Within 2 months of the close of the public hearing or evidentiary hearings if scheduled, the board must render a written decision on whether the facility meets the siting standards. If the facility meets the siting standards, it must be approved, but can be subject to conditions. The EFSB is required to include conditions proposed by state agencies or municipalities to the maximum extent practicable.

Subsection (g). For facilities that do not comply with the siting standards, the board may hold additional hearings and issue a decision within 9 months; the decision is based on a finding that the facility has complied with the siting standards to the maximum extent feasible, has mitigated the impacts, and the benefits outweigh the detriments. This is a discretionary approval.

Subsection (h)-(i). If the EFSB issues an approval, the approval takes the place of all other state and local permits that would otherwise be needed, with three exceptions:

- If a municipal permitting board grants a permit pursuant to chapter 40T (see below), the EFSB decision shall not supersede the municipal permit except as to any locally-imposed conditions that the board finds would significantly impair the ability of the applicant to develop, construct, own, or operate the facility.
- If a municipal permitting denies a permit and the facility does not meet the siting standards, the EFSB cannot override that denial.
- If a regional planning agency denies or grants a permit, the EFSB has no jurisdiction over that decision if the regional planning agency has established comprehensive wind energy siting standards that have been approved by the Department of Energy Resources.

Subsection (j). The EFSB is required to combine its one-stop permit procedure with any appeals of local decisions brought to the EFSB under chapter 40T (below)

Subsection (k). Specifies procedures for facilities that do not comply with the siting standards

Subsection (l) Authorizes EFSB to issue regulations for application procedures

Subsection (m). Authorizes EFSB to collect and retain an application fee, and share portions of the fee with other state agencies that would otherwise grant permits.

Subsection (n). Provides for any aggrieved person to appeal the EFSB decision to the Supreme Judicial Court, consistent with existing law.

New Section 69(w). Clarifies that the procedures do not supersede the procedures in existing law for wind generation facilities that are 100 megawatts or larger.

SECTION 7 adds a new chapter 40T to establish a streamlined local permitting process for wind energy facilities. This process is voluntary—the proponent may utilize it or elect to follow existing permitting procedures.

New Chapter 40T, Subsections 1-2: Municipalities in high wind areas designated by the department of energy resources, consultation with the massachusetts municipal association, must empanel a wind energy permitting board composed of representatives of the conservation commission, planning board, and zoning board. In all other municipalities, the municipality's planning board will be conduct local permitting of a wind energy facility.

Subsection 3: Once the board receives a complete application, this board would take comments from the public and other local boards, and issue one composite permit that includes local law and regulation. The board has the authority to waive any local requirements needed to permit the facility, including, e.g., use limits and height limits in local zoning bylaws. The board also has the authority to hire technical consultants and charge a fee so that the board is reimbursed by the applicant.

For applications which meet the siting standards, the local board must act within 120 days, or the application is constructively approved. For noncompliant applications, the deadline is 180 days. Also, the board is not required to await a decision by a regional agency prior to acting on an application.

This section also authorizes municipalities to impose an impact fee capped by DOER regulations. In addition, it authorizes the board to accept other forms of mitigation, including ability to enter into a power purchase agreement with a project proponent. This section also states that approval of a wind facility qualifies a community for some of the criteria needed to be designated as a green community.

The section also provides that the applicant and aggrieved persons may appeal a decision of the wind permitting board or a regional planning agency to the siting board

and this is the sole method of review. However the siting board will not have jurisdiction over appeals of decisions of any regional planning agency if such agency established comprehensive wind energy siting standards approved by DOER in writing prior to the date of an application. In addition, the EFSB will not have the authority to override a municipal denial unless the facility meets all of the wind siting criteria established under new section 69U of chapter 164.

SECTION 8. Codifies into law rulings by the Department of Public Utilities that a wind-powered generating plant qualifies as a “public service corporation” and therefore may apply to the DPU for a zoning exemption under chapter 40A, section 3.

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SECTION 10. Requires EOEEA, DCR, DFG, and DOER develop a planning process to identify state lands protected under Article 97 of the Amendments to the State Constitution that are suitable and unsuitable for wind power facilities.