

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Brian S. Dempsey

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 Wind Energy Siting Reform.

PETITION OF:

NAME:

Brian S. Dempsey

DISTRICT/ADDRESS:

3rd Essex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO COMPREHENSIVE WIND ENERGY SITING REFORM.

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. Section 10 of chapter 25A of the General Laws, as amended by section 22 of chapter 169 of
2 the Acts of 2008, is hereby amended by adding the following new paragraph:-

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4 (g) There shall be within the department a full-time employee who shall provide technical assistance to
5 municipalities with respect to the siting of wind energy facilities.

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7 SECTION 2. Section 69H of chapter 164 of the General Laws, as appearing in the 2006 Official Edition,
8 is hereby amended by inserting in line 18 after the words "or his designee," the following words:- the
9 commissioner of the department of fish and game,

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11 SECTION 3. Said section 69H of said chapter 164, as so appearing, is hereby further amended by
12 striking out the word "three" in line 18, and inserting in place thereof the following:- four

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14 SECTION 4. Said section 69H of said chapter 164, as so appearing, is hereby further amended by
15 inserting in line 20 after the words "consumer matters" the following:- , one of whom shall be a municipal
16 official with experience in land use planning,

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18 SECTION 5. Chapter 164 of the General Laws is hereby amended by adding after section 69S the
19 following three new sections:-

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21 Section 69T. The board shall appoint a director of wind energy facility siting, who shall be responsible for
22 ensuring that the siting standards established in section 96U of this chapter are timely issued, and that the
23 procedures for the siting of wind energy facilities established in section 69V result in timely and
24 predictable permitting decisions.

25

26 Section 69U. No later than 9 months after the effective date of this act, the board shall promulgate
27 regulations containing standards for the siting of electric generating plants that are: (1) powered by wind
28 energy and (b) have the capacity to generate 5 or more megawatts. The criteria shall be established for
29 wind energy facilities that are inland. Facilities are not required to comply with such criteria, but
30 compliant facilities shall be entitled to state agency fast-track permitting under section 69V of this chapter
31 and municipal fast-track permitting under chapter 40T.

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33 The standards shall include, but not be limited to, the following: wind speeds; proximity to transmission
34 or distribution lines; appropriate distances from residences to minimize noise and safety impacts;
35 appropriate distances from recreational areas of special federal or state significance; performance
36 standards to protect rare species if a wind energy facility is located within habitats for rare species;
37 performance standards to minimize impact upon wetland resources or other ecologically sensitive areas;
38 and such other factors as the board determines to be relevant to foster the development of wind energy in
39 a manner that minimizes environmental impact.

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41 The board shall empanel an advisory group to assist in developing the standards. The advisory group
42 shall include the secretary of energy and environmental affairs, the commissioner of the department of
43 energy resources, a commissioner of the department of public utilities, the commissioner of the
44 department of environmental protection, the commissioner of the department of conservation and
45 recreation, the commissioner of the department of fish and game, the commissioner of the department of
46 public safety, the secretary of the executive office of housing and economic development, or the
47 designees of any of the foregoing. The advisory group shall also include the following individuals to be
48 selected by the secretary of the executive office of energy and environmental affairs: a representative of
49 the wind power generation industry, a representative of the electric power generation industry, a
50 representative of a non-profit environmental organization with experience in wind energy facility siting, a
51 representative of the Berkshire Regional Planning Council, a representative from the Cape Cod
52 Commission, a municipal official with experience in wind energy facility siting, and such other
53 representatives as the secretary deems advisable.

54

55 Section 69V. Notwithstanding any general or special law to the contrary, any person that seeks to
56 construct a wind energy facility with a capacity of five or more megawatts may elect to follow the
57 procedures established by this section. As used in this section, the term “wind energy facility” or “the
58 facility” includes turbines, foundations, and ancillary facilities such as roadways, transmission or
59 distribution lines, substations, and any other buildings, structures or equipment needed to generate and
60 deliver electricity powered by wind.

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62 A person seeking to construct a wind energy facility that complies with the siting standards established
63 pursuant to section 69U shall be eligible for the following fast-track permitting procedures under this
64 subsection.

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66 After the local wind energy board renders a final decision pursuant to chapter 40T or the time for decision
67 has passed, the project applicant shall file an application with the board, together with such supporting
68 materials as are necessary to demonstrate that the facility complies with the siting standards. The
69 application shall include a complete list of state agency permits that are needed for the facility. The
70 applicant shall file a notice of the application with the municipal wind energy permitting board
71 established pursuant to chapter 40T, any state agencies that have been identified as permit granting
72 authorities in the application, abutters to the site of the facility, and the office of the Massachusetts
73 Environmental Policy Act, which shall publish the notice in the Environmental Monitor.

74

75 Within two months of publication of the application in the environmental monitor, siting board staff shall
76 hold a non-adjudicatory public hearing to take comment on the application, and shall allow written
77 comments to be filed within two months of the publication of the notice. State permit granting agencies
78 shall file comments with the staff that include recommended conditions within each agency’s regulatory
79 purview.

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81 Within two months of the close of the public comment period, the board shall render a decision on
82 whether the facility meets the siting standards. If the board finds that the facility meets the siting
83 standards, it shall approve the facility and may impose conditions to its approval.

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85 Should the board find that the facility does not meet the siting standards, it may hold additional hearings
86 to take additional evidence, if necessary, and approve the facility and impose conditions to its approval if
87 it finds that that the benefits of the facility outweigh the detriments, taking into account impact on
88 ecologically sensitive areas, rare species, recreational areas of special federal or state significance; noise
89 and public safety. A decision under this subparagraph shall be issued no later than nine months after the
90 publication of the notice in the environmental monitor.

91

92 Notwithstanding the provisions of any other law to the contrary, if the Board issues an approval under this
93 section, no state agency or local government shall require any approval, consent, permit, certificate or
94 condition for the construction, operation or maintenance of the facility with respect to which the
95 certificate is issued and no state agency or local government shall impose or enforce any law, ordinance,
96 by-law, rule or regulation nor take any action nor fail to take any action which would delay or prevent the
97 construction, operation or maintenance of such facility; provided, however, that the board shall not issue a
98 certificate the effect of which would be to grant or modify a permit, approval or authorization which, if so
99 granted or modified by the appropriate state or local agency, would be invalid because of a conflict with
100 applicable federal water or air standards or requirements. The approval, if issued, shall be in the form of a
101 composite of all individual permits, approvals or authorizations which would otherwise be necessary for
102 the construction and operation of the facility and that portion of the certificate which relates to subject
103 matters within the jurisdiction of a state or local agency shall be enforced by said agency under the other
104 applicable laws of the commonwealth as if it had been directly granted by the said agency.
105 Notwithstanding the foregoing, if the local wind energy permitting board grants a permit pursuant to
106 section 40T, the board's decision shall not supersede the local wind energy permitting board's permit
107 except as to any locally-imposed conditions that the board finds would significantly impair the ability of
108 the applicant to construct or operate the facility.

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110 The board shall combine the review and approval process under this section with any appeal of a local
111 wind energy permitting board decision brought by an applicant or aggrieved person pursuant to chapter
112 40T.

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114 An application filed by a person seeking to construct a wind energy facility that does not comply with the
115 siting standards shall be governed by the same procedures as above, except that: (a) the board shall hold a
116 hearing within four months and close the public comment period within six months from the date of
117 publication of the notice of the application in the environmental monitor; and (b) the board shall issue an
118 approval within nine months of the date of publication if it finds that the benefits of the facility outweighs
119 the detriments, taking into account adverse impact on ecologically sensitive areas, rare species,
120 recreational areas of special federal or state significance; noise and public safety.

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122 The board shall promulgate regulations governing the procedures for permitting under this section and
123 appeals brought pursuant to chapter 40T.

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125 SECTION 6. The General Laws are hereby amended by adding after Chapter 40S, the following new
126 chapter:-

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128 Chapter 40T: Municipal Wind Energy Permitting Board.

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130 Section 1. A municipality with significant wind resources areas as determined by the Department of
131 Energy Resources shall establish a wind energy permitting board to conduct local permitting of a wind
132 energy facility. As used in this chapter, the term “wind energy facility” or “the facility” includes turbines,
133 foundations and ancillary facilities such as roadways, transmission or distribution lines, substations, and
134 any other buildings, structures or equipment needed to generate and deliver electricity powered by wind.

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136 Section 2. In the case of towns, the board of selectmen, and in the case of cities, the mayor, shall
137 establish and appoint the wind energy permitting board, to be composed of either three or five members,
138 at the discretion of the board of selectmen or mayor. A three member board shall consist of one
139 representative from the conservation commission, one member from the zoning board of appeals, and one
140 member from the planning board. A five member board shall consist of two members of the conservation
141 commission, one member from the zoning board of appeals, and two members from the planning board.

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143 Section 3. Permitting Procedure. Any person that seeks to construct a wind energy facility with a capacity
144 of five or more megawatts may elect to follow the procedure established herein.

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146 A person seeking to construct a wind energy facility that complies with the siting standards established
147 pursuant to section 69U of chapter 164 shall be eligible for fast-track permitting procedures under this
148 subsection.

149 The applicant shall file an application with the wind energy permitting board and the town or city clerk in
150 lieu of separate applications to the applicable local boards. The application shall identify any provisions
151 of local laws or regulations from which a waiver is sought.

152 The wind energy permitting board shall forthwith notify each such local board, as applicable, of the filing
153 of such application by sending a copy thereof to such local boards for their recommendations and shall,
154 within sixty days of the receipt of such application and in compliance with the notice and publication
155 provisions of section 11 of chapter 40A, hold a public hearing on the application. The wind energy
156 permitting board shall request the recommendations of said local boards as are deemed necessary or
157 helpful in making its decision upon such application and shall have the same power to issue a permit or
158 other approval as any local board or official who would otherwise act with respect to such application,
159 including but not limited to the power to attach to said permit or approval conditions as are consistent
160 with the terms of this section.

161 The wind energy permitting board, in making its decision on the application, shall take into consideration
162 the recommendations of the local boards and shall have the authority to assess fees to retain consultants
163 pursuant to the provisions of section 53G of chapter 44. The board shall have the authority to waive
164 zoning and non-zoning requirements of the municipality’s local bylaw.

165 The board shall file with the city or town clerk a written decision, based upon a majority vote of said
166 board, within 120 days from the filing of the application, unless the time period is extended by mutual

167 agreement by the board and the applicant, and the agreement is filed with the city or town clerk prior to
168 the expiration of the 120 day period. Failure to file a written decision or extension within the 120 day
169 period shall result in a constructive approval of the application.

170 A wind energy facility that does not comply with the siting standards established under section sixty-nine
171 U of chapter 164 shall be governed by the same procedures as in subsection 1 above, except that the
172 deadline for a decision shall be 180 days, rather than 120 days.

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174 The wind energy permitting board is authorized to assess an impact fee upon the applicant in accordance
175 with a fee schedule to be promulgated by the Department of Energy Resources. Notwithstanding the
176 foregoing, the wind energy permitting board may accept other forms of mitigation, including but not
177 limited to a purchase and sale agreement for electricity, and is authorized to enter into a legally
178 enforceable agreements with the applicant for alternative mitigation.

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180 Notwithstanding any general or special law to the contrary, a municipality in which the wind energy
181 permitting board has issued an approval pursuant to this chapter shall be deemed to have met the green
182 community eligibility standards set forth in subsections (2) and (3) of section 10(c) of chapter 25A, and if
183 the municipality seeks a waiver of any of the other eligibility requirements, shall be entitled to a finding
184 that the municipality has committed to alternative measures that advance the purposes of the green
185 communities program as effectively as adherence to the requirements.

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187 Any person aggrieved by a decision of the wind energy permitting board may appeal the decision to the
188 Energy Facilities Siting Board and this appeal shall be the exclusive means of review of the board's
189 decision. The appeal shall be filed with the siting board no later than thirty days after the wind energy
190 permitting board's decision is filed with the city or town clerk.