



Legislative Affairs

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Testimony:

An Act Relative to Comprehensive Wind Siting Reform (language provided by the Executive Office of Energy and Environmental Affairs in substitution of **S. 1504** and **H. 3065**)

Sponsored by: The Executive Office of Energy and Environmental Affairs, Senator Michael Morrissey, Representative Brian Dempsey

Before the Joint Committee on Telecommunication, Utilities and Energy
May 20, 2009

Mass Audubon thanks the Joint Committee on Telecommunication, Utilities and Energy for providing the opportunity to comment on *An Act Relative to Comprehensive Wind Siting Reform* (language provided by the Executive Office of Energy and Environmental Affairs in substitution of **S. 1504** and **H. 3065**).

As responsible citizens, stewards, and advocates, Mass Audubon strongly supports public policies and private projects that advance energy conservation and efficiency. We also support the development of wind power generation as a renewable energy source that can, through reducing climate change emissions, begin to address global climate change brought about by the burning of fossil fuels. Mass Audubon is **supportive** of the language developed by the Executive Office of Energy and Environmental Affairs (EEA), which takes the necessary steps not outlined in the original legislation to develop and provide an environmentally protective structure in which to site and permit wind energy facilities. *As the final legislation was recently finalized, Mass Audubon urges the Committee to carefully consider testimony from conservation organizations that were not able to attend the hearing.*

We recognize that climate change is the greatest threat that the nature of Massachusetts faces. We support the development of renewable power in an expeditious fashion, but at the same time we are committed to retaining full environmental protections. These protections are becoming even more important as climate change further stresses our environment. It has been our experience through our involvement in wind permitting that the current lack of clear siting standards and regulations leads, in part, to undue delays in project development. There is also a lack of protections for at-risk birds and bats and large forested habitats which are ever more sensitive and important from a global conservation perspective as the climate changes. The proposed bill calls for standards to be developed which would be as protective as current environmental laws and regulations, protect all birds and bats which are at risk from the operation of turbines, and bring the values of large scale forest conservation into the siting discussion. The standards would also provide clear guidelines and a greater degree of certainty to wind developers.

HISTORY: On July 2 of 2008, the *Green Communities Act* (Chapter 169 of the Acts of 2008) was signed into law, creating sweeping reforms to Massachusetts energy policy including the promotion of renewable energy development. Section 89 of the *Act* required EEA to establish a commission to study the siting of energy facilities, including making recommendations if needed for changes to siting and permitting processes that would facilitate the development of renewable power. As wind is considered to be the renewable power source with the greatest potential at this time, and off-shore wind development is being

considered under the *Ocean Management Act* (Chapter 114 of the Acts of 2008), the commission's work focused solely on land-based wind power. Mass Audubon was not appointed to the commission, but was included along with other interested organizations. We participated in the Siting Standards and State Permitting Subcommittees and provided suggestions and comments throughout. We appreciate the administration's inclusiveness and believe that the proposed legislation was improved by the broadened input.

BILL SUMMARY: This legislation represents a significant change in the siting and permitting process for land-based wind energy facilities including the development of environmentally protective siting standards. It also contains provisions for overrides of local and state agency authority through the granting of a consolidated permit by the Energy Facilities Siting Board (EFSB), but environmental protections must be applied to the maximum extent practicable and unavoidable impacts mitigated. Under current law (M.G.L. Ch164 s. 69G-Q), all power generating facilities that produce greater than 100 megawatts (MW) can obtain a consolidated permit from the EFSB, meaning the EFSB makes the final determination regarding both local and state permitting concerns. Appeal of EFSB decisions are made directly to the Supreme Judicial Court. In contrast, those that generate under 100 MW are subject to all relevant state and local permits and appeals. The legislation would allow wind energy facilities that generate more than two megawatts to go through a consolidated, expedited permitting process before the EFSB. This is a similar permit track to the facilities that generate greater than 100 MW but with better articulated environmental standards and safeguards for state and local considerations. The legislation does not change the process for facilities that generate greater than 100 MW.

THE BILL:

- **Establishes a Division of Wind Energy Facilities Siting** within the Department of Public Utilities (DPU) to oversee permitting and staff to provide guidance to communities.
- **Expands and improves the Energy Facilities Siting Board** by adding the Department of Fish and Game (DFG) and a municipal official with land use planning experience. Mass Audubon has advocated for the addition of DFG to the board for several years, as they are the permitting agency overseeing rare species and wildlife that are impacted by the siting and operation of energy generating facilities and transmission lines. A municipal official representing local interests is also of great importance, bringing a municipal voice to the table. These appointments apply to the entire purview of the board, not just to the review of wind projects.
- **Establishes an optional permitting fast-track with a limited appeals process for all wind generating facilities that generate two or more megawatts.** Facilities are defined as the turbines themselves and all ancillary facilities whose primary purpose is to support wind power. The process would be set within the context of protective environmental standards. Facilities are not required to meet state standards, but if they are compliant with all standards they are entitled to state and local permit fast-tracking. If a facility meets standards, a permit is guaranteed but can be subject to conditions. If it does not meet standards, the permit is discretionary. The final decision is made by the Energy Facilities Siting Board, which balances many factors, including the need for clean power and environmental impacts of construction and operation. It is important to note that if the facility did not meet the state standards, and was denied at the local level, the EFSB could *not* override the municipal denial. The EFSB would have the authority to override all state agency and local permitting decisions if the standards are met, but the EFSB must include all state and local permitting conditions to the maximum extent practicable and explain why if they are not included. Agencies and applicants can request a hearing if there is a dispute regarding matters within the state agencies regulatory purview.
- **Designates high-wind areas and sets in place an opt-in process for local review.** In areas designated as high wind areas by the Department of Energy Resources, the municipality would empanel a wind energy permitting board composed of a representative of the conservation

commission, planning board, and zoning board. In non high-wind zones, the planning board will conduct all local permitting in consultation with the conservation commission. These boards would issue a consolidated local permit and are the first stop for the applicant.

- **Requires the development of protective siting, operation and decommissioning standards within six months of the effective date of the bill.** *Standards would be developed by the EFSB and an advisory board, and Mass Audubon is committed to ensuring that the protective intent of the legislation is realized.* The EFSB, with an advisory board including the Departments of Conservation and Recreation, Fish and Game, and Environmental Protection, would be required to promulgate siting, operation, and decommissioning standards that would be *as protective as* current environmental laws and regulations. The advisory board would also seat two environmental organizations, and a representative from the Berkshire Regional Planning Council, the Cape Cod Commission, and the Massachusetts Municipal Association. Standards for appropriate setbacks from residences and that address noise and public health concerns would be developed. Standards would also be protective of birds and bats which are at risk from the operation of turbines, and take into consideration large scale forest conservation. Large blocks of forest provide important habitat for a host of wildlife species, including various species of birds such as certain warblers and thrushes. Many of these interior nesting migratory (neotropical) songbirds are experiencing severe population declines throughout their ranges, and habitat fragmentation is a particular concern for these species. Finally, standards for recreational and scenic values as well as wetlands and other ecological resources would be drafted. Standards would be based upon best available science and updated as needed but not less than once every five years.
- **EFSB decisions cannot conflict with federal authority, including water, air quality, and endangered species.**
- **Projects must first avoid environmental impacts, and if they cannot, they must minimize and mitigate.** Options for mitigation, including restoration and preservation, are identified.
- **MEPA would still apply, including mitigation.** The provisions of the Massachusetts Environmental Policy Act (MEPA) would continue to apply to projects presently subject to MEPA.
- **Limits appeals.** There would be one route for appeal of an EFSB decision which would be via the Supreme Judicial Court. An aggrieved person, including an entity, can appeal. The EFSB would not have jurisdiction over appeals of a Regional Planning Agency (RPA) decision if the RPA established wind siting standards which were approved by DOER prior to the project application.
- **Allows for collection of impact fees at the local level.** Municipalities can assess impact fees or collect other forms of mitigation.
- **Allows for zoning exemptions.** Classified wind power facilities as “public service corporations” making them eligible to apply to the DPU for a zoning exemption.
- **State Conservation Lands held to a higher standard.** Higher performance standards for projects proposed on state owned Article 97 lands would be established. Note that although appropriately not specified in the bill, Article 97 approval through a two thirds vote of the legislature would continue to be required as projects would involve a change of use of dedicated conservation lands. EEA is directed to undertake a review process with the Departments of Conservation and Recreation, Fish and Game, and Energy Resources to identify state Article 97 lands both suitable and unsuitable for wind power generation. Areas identified as unsuitable would not be eligible for wind development. Change of use or land transfers would be required by statute to have an alternatives analysis and mitigation for *any* ecological, recreational, or scenic resources lost.

WIND POWER ON STATE CONSERVATION LAND: During the development of the proposed legislation, the administration released a report identifying capacity for renewable power on state lands. The report is available online www.mass.gov/Eoeea/docs/eea/press/publications/022409_renew_potential_study.pdf. The report finds up to 946 MW of wind power potential on state properties, the majority of which are owned by the Department of Conservation and Recreation and are protected under Article 97 of the Massachusetts Constitution. Although there may be some sites appropriate for wind turbines, the majority of state owned Article 97 lands have important wildlife and ecological values which would be compromised by the siting of industrial scale power generation. The proposed legislation requires EEA to further analyze the potential for wind power generation on state conservation lands, identifying unsuitable areas and ensuring that those areas would not be proposed for development. The public has invested substantial resources over many decades to protect these lands. Many of these properties contain high quality intact ecosystems that, in addition to their inherent ecological and public values, are important for biodiversity resilience in the face of climate change. Any conversion in use that affects the primary purpose for which these lands were acquired should not be undertaken lightly. As Article 97 lands are public lands, we feel strongly that the vetting process should be public.

Thank you again for providing the opportunity to make these comments. Mass Audubon is committed to working with the Committee, and continuing to work with the administration, as the legislative process unfolds.

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Mass Audubon works to protect the nature of Massachusetts for people and wildlife. Together with more than 100,000 members, we care for 33,000 acres of conservation land, provide educational programs for 200,000 children and adults annually, and advocate for sound environmental policies at local, state, and federal levels. Mass Audubon's mission and actions have expanded since our beginning in 1896 when our founders set out to stop the slaughter of birds for use on women's fashions. Today we are the largest conservation organization in New England. Our statewide network of 45 wildlife sanctuaries welcomes visitors of all ages and serves as the base for our conservation, education, and advocacy work. To support these important efforts, call 800-AUDUBON (283-8266) or visit www.massaudubon.org

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