



**MASSACHUSETTS
MUNICIPAL
ASSOCIATION**

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December 3, 2013

The Honorable John Keenan, House Chair
The Honorable Benjamin Downing, Senate Chair
Joint Committee on Telecommunications, Utilities and Energy
State House
Boston, MA 02133

Dear Chairman Keenan, Chairman Downing, and Members of the Committee,

On behalf of the towns and cities of the Commonwealth, the MMA extends our appreciation to you and the members of your Committee for your efforts to carefully review and develop an effective framework for the siting of land-based wind energy projects across Massachusetts. However, we are testifying today to express our serious reservations and opposition to two bills before you for a hearing (S. 1591 and H. 2980), as these measures fall short in critical areas.

The bills do address some issues of concern that have been raised by municipalities, which we sincerely appreciate, yet several major problems remain, and we ask you to not support the bills as written until the problems outlined below have been fully addressed.

First, earlier drafts of the legislation added a long-overdue municipal voice on the Energy Facilities Siting Board (EFSB), and that provision was one of the primary reasons why the MMA was able to generally support much of the framework initially passed by the Senate in 2010 (S. 2260). Until now, the EFSB has included no representation from the municipal sector. A municipal representative would finally ensure that the EFSB adequately considers the impact on land use planning and municipal development, as well as energy considerations, in *all* facility siting matters.

However, S. 1591, and H. 2980 would prohibit the municipal representative from participating in any non-wind matter. We strongly oppose this restriction. There is no compelling justification for splitting the Board into wind and non-wind categories. The addition of a municipal representative to the Board was one of the earliest agreed-upon provisions of the legislation and was publicly acknowledged as a key element of siting reform. We therefore respectfully ask that you restore the language regarding the Board's composition such that a municipal representative with land-use planning experience be a full participant on the Board, irrespective of whether the Board is reviewing a wind project or any other energy facility.

Second, these bills are significantly flawed because they would allow developers to file incomplete applications with cities and towns, even after a 30-day notice period during which developers would be allowed to complete their applications. After the 30 days, the clock would start ticking on the local permitting process, even if a developer chooses to file an incomplete application. This is unacceptable, because there is no way that community officials can make responsible decisions based on incomplete information and insufficient submissions, especially when the decisions would be required on an expedited basis. The time period should commence only *after a complete* application is filed. Local officials are only looking for the same authority that the state has in other sections of this same legislation. In the bills before you, the state's siting process before the EFSB only starts after the EFSB informs developers that they have submitted a complete application. There is simply

no justification for this double standard, especially since allowing incomplete applications at the local level would only serve to stall and delay siting decisions by forcing denials due to inadequate applications. No project should be eligible for expedited permitting without a complete application.

Third, the MMA has supported and continues to support wind energy siting reform legislation that would maintain strong local control over wind facility permitting by using a responsible streamlined permitting process that maintains local flexibility. The MMA strongly supported language in a 2010 bill (H. 4886) that would give local municipalities with significant wind resources the option of establishing a wind energy permitting board of up to five members or designating this authority to the local planning board. H. 4886 stated that "a local government with significant wind resources may establish a wind energy permitting board." This has been changed to "shall" in this year's legislation. As you know, this is era where one size misfits all, which is why the imposition of one model is unwise. Cities and towns must have the ability to determine which structure will work best for their communities. We ask you to restore the optional language as outlined above.

Fourth, there have been concerns raised in the past regarding the ability of the Energy Facilities Siting Board to overturn a denial by a local wind permitting board. In fact, *past legislation included specific language to prevent this occurrence*, but a similar (and essential) provision is *nowhere to be found* in the two bills before you today. Cities and towns support the efforts that have been made to establish a streamlined permitting process that preserves an appropriate appeals process – for local officials, this means all appeals of local board decisions generated by developers must continue to go to the Superior Court, while the appeals that would go to the Energy Facilities Siting Board would concern other third-party objections. We strongly believe that any legislation reported out by your committee must include language such as "no project permit denied by the local board may be appealed to or filed with the EFSB" to alleviate this concern. We also ask you to remedy the related concern that arises if developers are allowed to advance permit applications with the EFSB even if a local building permit has not yet been issued, or has been denied and the matter is before the Superior Court. It is fundamentally important that any permit application with the EFSB be determined to be incomplete until the local building permit has been issued.

The MMA and its member communities support the need for clean, reliable energy production to ensure a future of affordable, abundant and clean energy for the citizens of the Commonwealth. We look forward to working with the Joint Committee on Telecommunications, Utilities and Energy on a bill that will fully protect local home rule and local interests as part of a reasonable and balanced approach to the siting of wind facilities throughout the Commonwealth. Unfortunately, the bills that have been filed must be improved in order to meet this standard. Indeed, S. 1591, and H. 2980 go backward, because these measures have cast aside and ignored important municipal provisions that were included in previous versions of the legislation. We respectfully ask you to safeguard the vital and productive role that cities and towns have in the siting process, and only report out a bill that fully addresses the major concerns that have been outlined above. We look forward to working with you and the full Committee on this important issue.

Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read "Geoffrey C. Beckwith".

Geoffrey C. Beckwith
Executive Director