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Local Activists Critique Proposed Energy and Siting Reform

The following letter was sent to Senator Michael Barrett and Representative Jeffrey Roy, Chairs of the Joint Committee on Telecommunications, Utility & Energy from Wendell's No Assault & Batteries coordinating committee. In it, the group details why H. 5049 falls short of meeting local goals for siting and permitting reform. They urge inclusion of "a prominent role for municipalities in any energy permitting legislation, and work with advocates to develop community aggregation proposals that use distributed end users to shape demand in a locally-controlled network."

The letter reads in full:

Dear Chairman Barrett and Chairman Roy,

On September 11, 2024, Governor Maura Healey inserted Outside Sections into a supplemental budget request to the General Court, comprising nearly 23,000 words on energy permitting policy. "While a final bill has not yet reached my desk," the Governor wrote, "I respectfully ask that you consider advancing these items in the coming weeks so that we can capitalize on the potential to grow our clean energy sector and advance our climate goals."

We are writing to you as citizen activists in Wendell, MA and greater Western Massachusetts who are deeply concerned about the state's clean energy and climate goals. We have seen first-hand how small populations with large unprotected environmental resources can be overwhelmed by what passes today for energy siting and permitting.

Here are some reasons why H. 5049 falls short of meeting our goals for siting and permitting reform:

- “Small” solar or wind facilities of less than 25 megawatts, and battery storage facilities of less than 100 megawatts, will be reviewed by cities and towns. But the state controls “uniform sets of public health, safety, environmental and other standards” that local governments must follow to issue small permits. Local energy zoning has, in effect, been nullified.
- Large solar projects of 25 megawatts or over, and battery storage of 100 megawatt hours or more, will be reviewed by an updated 8-member state Energy Facility Siting Board (EFSB), with 4 members appointed by the Governor. If a city or town has a large project located within its borders, it’s granted “intervenor status,” and can “submit statements” about permit conditions – but the EFSB reviews the big projects and makes the final decision in all cases.
- If a local government “lacks the resources, capacity or staffing” to review a small application, it has 60 days to request that the state takeover the review. For years, rural communities have felt locked out of DPU and EFSB dockets because of lack of funding to retain legal representation and independent experts. We want the power to process land use reviews within our borders. Kicking the can over to the state does not solve our need for local permitting.
- Developers must try “to avoid or minimize environmental impacts,” and mitigate negative impacts on the environment” – but mitigation is limited to this: “only to the extent practicable.” Many projects have proceeded by insisting that true mitigation was simply not “practicable.”
- A new division of clean energy siting will promulgate regulations and criteria for small clean energy projects – but the state law that exempts solar and batteries from local zoning--Chapter 40A, s. 3, is not repealed.
- The local site approval process is narrowed to a “single permit consolidating all necessary local approvals to be issued.” A developer of a small clean energy facility can submit a request for a consolidated permit to a city or town. Local governments get only 30 days to decide if an application is complete and must follow all state requirements. It must issue a consolidated “final decision” within 12 months--or the project automatically receives “constructive approval” to proceed. This is unrealistic for a town that has no in-house expertise to study the benefits and drawbacks of some very technical clean energy projects.
- Within 30 days of a “final” consolidated permit, a developer of a small project can file a petition to the state EFSB seeking a “de novo” adjudication of a permit application. Developers can go over the heads of locals for their permit. Local government needs to have a collaborative role in the final decision-making at the state level.

- Any large energy storage project that has been exempted from local zoning by-laws, can petition the EFSB for a “certificate of environmental impact and public interest,” and once such a certificate has been issued, “no state agency or local government shall impose or enforce any law...that would delay or prevent the construction, operation or maintenance of such energy storage system.” Local communities do not seek to "delay or prevent" projects, they simply want to make sure they are done safely for the area residents and are compatible with local zoning and general bylaws.
- The state is mandating that every distribution company enter into long-term contracts for energy storage systems for a total of up to 5,000 megawatts of energy storage by July 31, 2027. That’s 50 times larger than the battery storage proposal that imploded in Wendell. Our concerns about the dangers of industrial-scale lithium-ion battery storage have not been addressed. A major expansion of this technology is imprudent and ill-advised.
- There are some useful provisions in the Governor’s bill, like providing \$3.5 million for an intervenor support fund to help public and private groups pay for legal and expert witnesses at public utility or EFSB hearings, and we support “site suitability” regulations to help developers avoid inappropriate energy sites. But our communities feel that we have been "written out" of clean energy permitting, with the control usurped by the state. There is a gaping hole at the center of this legislation: the lack of any municipal program that stimulates customer investment in community-based energy. Most Massachusetts residents and businesses already have their electricity procured by their municipalities under Community Choice Aggregation (CCA) programs. Locally-owned renewable energy systems reduce carbon, and lower peak demand for grid power. Customers should be encouraged to build renewable microgrid cooperatives. Cities and towns must be leaders, not back benchers, in local energy planning and development.

We urge you include a prominent role for municipalities in any energy permitting legislation, and work with advocates to develop community aggregation proposals that use distributed end users to shape demand in a locally controlled network. We would be pleased to work with your committee to explore how to integrate these ideas into any legislation being considered.

Yours sincerely,

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