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Massachusetts Permitting and Siting Reform Is On The Way! What Does That Mean For Your Projects?

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Agenda for Today

- Brief Background on Permitting and Siting Reform
- Key Timelines and the Importance of Engagement
- Permitting and Siting Reform Implementation (per Senate, No. 2967)
  - Executive office of Energy and Environmental Affairs ("EEA") guidance process
  - The new processes for siting and permitting small projects
  - The new process for siting and permitting large projects
  - Other significant changes
- Changes to Massachusetts Procurement Authorities
  - Energy Storage Procurement ("Section 83E")
  - Regional Clean Energy Generation Procurement ("Section 82")
- Note – We are not covering everything in this bill!

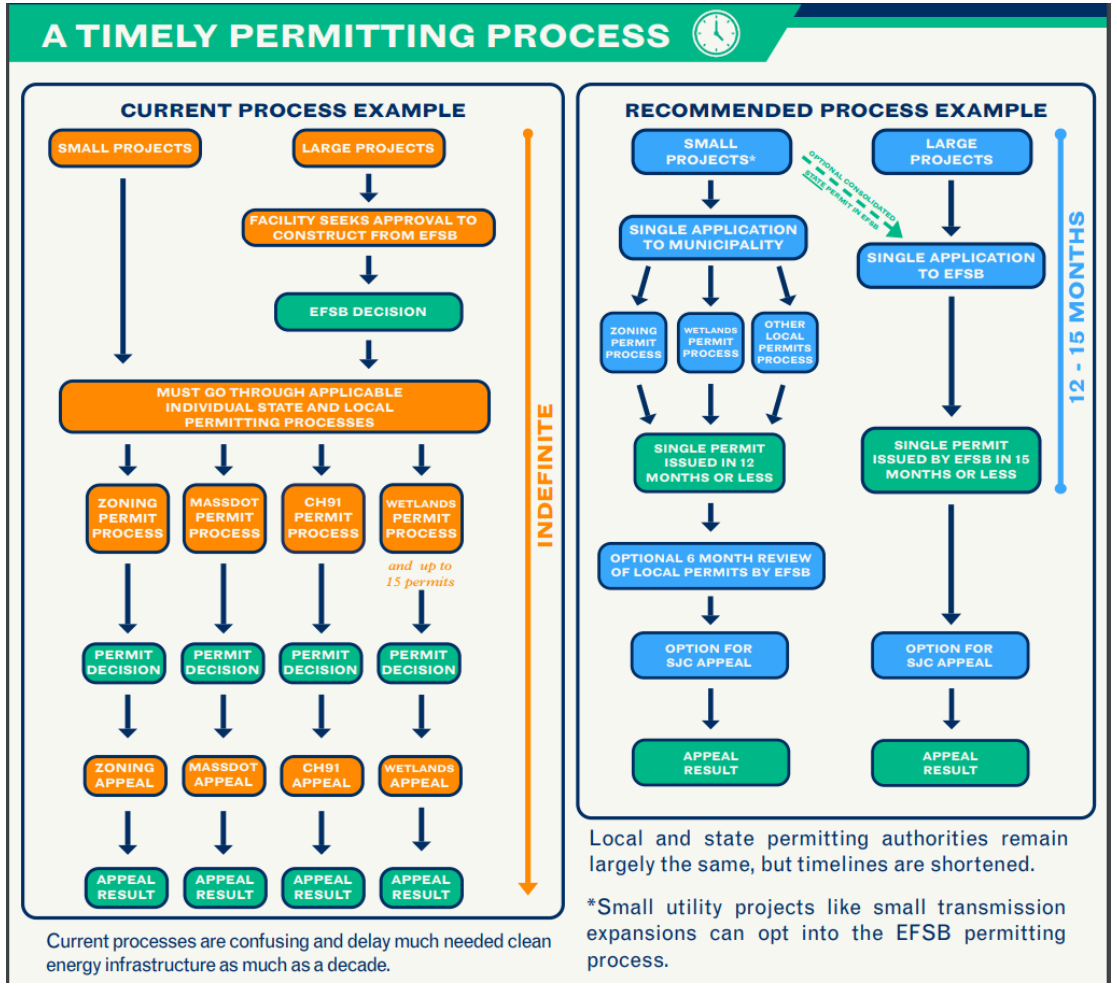
Please send us any questions you have during the presentation by using the Q&A feature at the bottom of your screen. We will hold time at the end to address questions.

Background: Why are we getting reform now?

- Frustration has been growing with current siting and permitting process, including:
  - Worries that long and uncertain timelines for siting and permitting of energy infrastructure (along with duplicative burdens) were increasingly a threat to meeting the Commonwealth's goals for clean energy;
  - Realization of gaps for siting authority over energy storage projects (May 2023 EFSB Decisions in *Cranberry Point* and *Medway Grid*);
  - Concerns that existing processes were not satisfactory for community and municipal participation; and
  - Desires to incorporate equity and environmental justice more explicitly in siting processes.
- In Sept. 2023, Governor Healey established a Commission on Energy Infrastructure Siting and Permitting.
  - That Commission produced a report in March 2024 recommending specific changes.
  - Legislation has largely followed the core themes of those recommendations.

Background: Core Purpose of Reforms

- Consolidate siting and permitting processes at the state and local level into fewer, more streamlined processes: i.e., one EFSB approval at the state level for “large” projects and a single municipal approval for “small” projects
- Establish binding timelines
- Make sure these processes allow for effective community engagement
- Provide more support to municipalities and other stakeholders for the siting and permitting process



Key Timelines (a busy year ahead)

Action	Deadline
Provisions on siting and permitting for “small clean energy infrastructure facilities” go into effect	Theoretically 90 days after the Governor’s signature (but see below on regulations)
First Section 83E Energy Storage Procurement	July 31, 2025
DOER determination on a Section 82 procurement	December 31, 2025
EEA must issue guidance on “cumulative impacts analyses” prior to DPU/EFSB regulations on point	Prior to March 1, 2026
EEA must establish “standards and guidelines” for community benefit plans and agreements	March 1, 2026
EEA must establish a “methodology for determining site suitability and associated guidance”	March 1, 2026
DOER must promulgate regulations on siting and permitting for “small clean energy infrastructure facilities”	March 1, 2026
EFSB must promulgate regulations on siting and permitting of “large clean energy infrastructure facilities”	March 1, 2026 to apply to petitions on and after July 1, 2026
DPU and EFSB must issue intervenor funding regulations	March 1, 2026
Provisions on siting and permitting for “large clean energy infrastructure facilities” go into effect	March 1, 2026
Intervenor Funding provisions become effective	March 1, 2026

Permitting and Siting Reform: EEA Processes

- The Bill tasks EEA with creating guidance on some of the more difficult aspects of the permitting and siting reform.
- An “office of environmental justice and equity” is formally created and tasked with working with stakeholders to develop standards and guidelines governing the potential use and applicability of:
  - **community benefit plans and agreements**; and
  - **cumulative impact analyses** in developing energy infrastructure
- EEA is also directed to:
  - establish and periodically update **a methodology for determining the suitability of sites** for clean energy generation facilities, clean energy storage facilities and clean transmission and distribution infrastructure facilities in newly established public rights of way. The methodology shall include multiple geospatial screening criteria to evaluate sites for: (i) development potential; (ii) climate change resilience; (iii) carbon storage and sequestration; (iv) biodiversity; and (v) social and environmental benefits and burdens. The executive office shall require facility development project proponents to avoid or minimize or, if impacts cannot be avoided or minimized, mitigate siting impacts and environmental and land use concerns.
  - develop and periodically update **guidance to inform state, regional and local regulations, ordinances, by-laws and permitting processes** on ways to avoid, minimize or mitigate impacts on the environment and people to the greatest extent practicable.
- EEA’s methodology for determining site suitability will be taken into account by both DOER’s standards and requirements for siting and permitting small clean energy facilities and the EFSB’s criteria governing siting and permitting for large clean energy facilities.
- EEA’s cumulative impacts analysis guidance will be incorporated into requirements for large clean energy facilities that seek approvals from the EFSB.

Siting and Permitting Small Projects

- Siting and permitting for “small” projects is consolidated, but kept at the local level in the first instance.
  - “Small clean energy generation facilities” are solar, anaerobic digestion, or wind facilities with **less than 25 MW of capacity**.
  - “Small” clean energy storage facilities are ESS with a **rated capacity of less than 100 MW hours**.
  - “Small clean transmission and distribution” facilities have a more detailed but flexible definition.
- The Bill creates a new division within DOER, the “division of clean energy siting and permitting,” which is charged with establishing “standard conditions, criteria and requirements for the siting and permitting of small clean energy infrastructure facilities by local governments.”
- DOER, in consultation with other agencies, is to issue regulations implementing this process **by March 1, 2026**.

Siting and Permitting Small Projects

- DOER's standards, requirements and procedures must include specific elements:
  - Uniform sets of **public health, safety, environmental and other standards, including zoning criteria**, that local governments shall require for the issuance of permits for small clean energy facilities;
  - a common **standard application**;
  - **Uniform pre-filing requirements**, including specific requirements for public meetings and other forms of outreach that must occur in advance of an applicant submitting an application;
  - **standards for applying site suitability guidance** developed by the executive office of energy and environmental affairs, which are to include a mitigation hierarchy to be applied during the permitting process to avoid or minimize or, if impacts cannot be avoided or minimized, mitigate negative impacts of siting on the environment, people and the commonwealth's goals and objectives for climate mitigation, resilience, biodiversity and protection of natural and working lands, to the extent practicable;
  - **Means of handling constructive approvals resulting from timing requirements -- common conditions and requirements for a single permit** consolidating all necessary local approvals to be issued for different types of small clean energy infrastructure facilities;
  - guidance for procedures and potential extensions of time should an applicant fail to respond to a request for information within a specified timeframe or proposes a significant revision to a proposed project; and
  - responsible **parties subject to enforcement actions**, including in the event of sale of small clean energy infrastructure facilities after permitting.

Siting and Permitting Small Projects

- The Bill, and DOER's implementing regulations, will set up a process with a single application that results in a single local approval for a project **within 12 months**.
  - Compliance with established pre-filing and outreach requirements.
  - Application is filed with local government authority.
  - Application completeness determined within 30 days.
  - A municipality could have separate boards, commissions, etc. run their own processes, as long as there is a single final decision that incorporates them all.
  - Approval covering all local decisions necessary for a project to proceed **must be issued within 12 months, or there is a constructive approval using common conditions established by DOER.**
  - The consolidated decision is the only appealable decision from the local level, and it can be appealed to the **Director** of the EFSB for a *de novo* adjudication (a fresh look), which must be decided within six months.
  - A municipality lacking resources can elect to have the EFSB Director conduct the review in the first instance.
- Applications must include certifications and disclosures related to workforce and labor practices, including wage bonds – these requirements are potentially onerous and out of place.
- Local governments acting in accordance with DOER's standards will be considered to be acting consistently with G.L. c. 40A, § 3 (which limits restrictions that can be applied through zoning).

Siting and Permitting Small Projects

Program Implementation

Bill signed into law → EEA develops guidance on site suitability by March 1, 2026 → DOER rule making process to implement the reforms concludes by March 1, 2026 → Municipalities set up compliant processes → Projects begin to apply

Application Process

Applicant complies with pre-filing requirements → Single application submitted → Determination of completeness (application +30 days) → Municipal review (process may vary) → Single and final municipal approval issued within 12 months or project obtains a constructive approval → Appeal to the EFSB Director (decided within 6 months)

Municipality has 60 days to request that the EFSB Director adjudicate the application

Siting and Permitting Large Projects

- For “large” projects, the Bill sets up a consolidated state permit process, under which an EFSB approval **replaces** all local, regional, and state permits that would otherwise be required (federal approvals are not consolidated).
  - “Large clean energy generation facilities” are defined to include anaerobic digestion, solar, and wind with a nameplate capacity of 25 MW or more (down from 100 MW). Additional resources can be added by regulation.
  - “Large clean energy storage facilities” are defined as ESS with a rated capacity of 100 MW hours or more.
  - “Large clean energy transmission and distribution facilities” have a more complex definition, which explicitly includes facilities needed to interconnect offshore wind.
- While an EFSB process currently exists for some large projects, its jurisdiction is more limited and it does not currently replace other permits and approvals, it is additional.
- The EFSB must establish rules and regulations for the consolidated process, including for cumulative impact analyses and site suitability criteria (which must be informed by the standards and guidelines developed by EEA) **by March 1, 2026**.

Siting and Permitting Large Projects

- Before the new process can be put in place, the EFSB is tasked with establishing:
  - pre-filing outreach requirements (including consultations with permitting agencies and the MEPA Office);
  - common applications;
  - common baseline standards for approvals (which could vary for project types);
  - standards for applying EEA's site suitability criteria;
  - standards for applying EEA's cumulative impacts analysis;
  - standard permit conditions; and
  - criteria for the entities responsible for compliance with permit conditions.
- **The Bill amends the MEPA statute to exempt projects going through an EFSB processes but requires pre-filing MEPA consultations.**

Siting and Permitting Large Projects

- Projects will now require a “cumulative impact analysis” as part of their petition:
  - A written report produced by the applicant assessing impacts and burdens, including but not limited to any existing environmental burden and public health consequences impacting a specific geographical area in which a facility, large clean energy infrastructure facility or small clean energy infrastructure facility is proposed **from any prior or current private, industrial, commercial, state or municipal operation or project**; provided, that **if the analysis indicates that such a geographical area is subject to an existing unfair or inequitable environmental burden or related health consequence**, the analysis shall identify any: (i) environmental and public health impact from the proposed project that would likely result in a disproportionate adverse effect on such geographical area; (ii) potential impact or consequence from the proposed project that would increase or reduce the effects of climate change on such geographical area; and (iii) proposed potential remedial actions to address any disproportionate adverse impacts to the environment, public health and climate resilience of such geographical area that may be attributable to the proposed project.
- The Bill requires the EFSB to establish “**pre-filing requirements**” that include specific requirements for consultations with permitting agencies and the MEPA Office, public meetings, and other forms of outreach, that **must occur prior to filing with the EFSB.**
- The Bill changes the makeup of the EFSB, expanding it to include additional agency heads and an additional public member, and the Bill specifies that one member must be a representative of the Mass. Association of Regional Planning Agencies, one must be a representative of the Massachusetts Municipal Association, one must have EJ experience, and one must have labor experience.

Siting and Permitting Large Projects

- The Bill changes the EFSB's mandate – the lens through which it reviews petitions. The new mandate would be to:
  - (i) provide a reliable, resilient and clean supply of energy consistent with the commonwealth's climate change and greenhouse gas reduction policies and requirements;
  - (ii) ensure that large clean energy infrastructure facilities, small clean energy infrastructure facilities, facilities and oil facilities avoid or minimize or, if impacts cannot be avoided or minimized, mitigate environmental impacts and negative health impacts to the extent practicable;
  - (iii) ensure that large clean energy infrastructure facilities, small clean energy infrastructure facilities, facilities and oil facilities are, to the extent practicable, in compliance with energy, environmental, land use, labor, economic justice, environmental justice and equity and public health and safety policies of the commonwealth, its subdivisions and its municipalities; and
  - (iv) ensure large clean energy infrastructure facilities, small clean energy infrastructure facilities, facilities and oil facilities are constructed in a manner that avoids or minimizes costs.

Siting and Permitting Large Projects

- Once the new process is in place, it will include:
  - Compliance with pre-filing requirements, which are yet to be established.
  - Petition is filed.
  - 30-day period to determine completeness of an application.
  - Adjudicatory review.
  - At least one public hearing.
  - All municipal, regional, and state bodies that would otherwise issue a permit or approval may appear as a party in the proceeding, and can submit **statements of recommended permit conditions.**
  - The EFSB can set timelines for its review, but **cannot take more than 15 months from completeness to issue a decision**.
  - The EFSB can approve, approve with conditions, or reject an application.
  - If no decision is issued within the established deadline, the EFSB must issue an approval with the common conditions and requirements it has set for the relevant type of facility.
  - The consolidated permit is a composite of, and replaces, all otherwise required permits, approvals, and authorizations.
  - Appeals go directly to the Supreme Judicial Court (as they do now).

Siting and Permitting Large Projects

Program Implementation

Bill signed into law → EEA develops guidance on site suitability and cumulative impact analyses by March 1, 2026 → EFSB rule making process to implement the reforms concludes by March 1, 2026 → Projects begin to apply

Application Process

Applicant complies with pre-filing requirements → Single application submitted → Determination of completeness (application +30 days) → EFSB adjudication with at least one hearing → Other agencies and bodies submit recommendations → EFSB Decision within 15 months or constructive approval

Appeals are to the Supreme Judicial Court

Siting and Permitting Large Projects

- Some additional features:
  - Small T&D that would otherwise go through the local process can elect the EFSB process instead, with a 12-month review period.
  - Small clean energy generation and storage facilities may get a consolidated state approval through a similar EFSB process (12-month time limit), but must still go through the local process for local approvals.
  - The Bill states that large clean energy storage facilities that petition for permits prior to the relevant regulations for the EFSB process being promulgated do not need to follow the newly created approval system.
  - The Bill clarifies that Section 72 petitions (previously used for many projects including electric lines) are not necessary unless a taking is proposed.

Siting and Permitting Large Projects

The Bill also creates a funding mechanism for intervenors in DPU and EFSB proceedings.

- It establishes a new funding mechanism for this purpose, which is assessed on electric distribution companies based on operating revenues to initially generate $3,500,000.
- It creates a “division of public participation” within the DPU to assist potential proceeding participants and make decisions on funding.
- This funding could be used by advocacy organizations, low-income advocates, EJ advocates, governmental bodies and tribes.
- The DPU and EFSB will establish criteria to determine eligibility, which must include lack of financial resources and prior participation in proceedings without support, but municipalities with a population less than 7,500 do not need to show these things.
- Awards are limited to $150,000 absent a showing of good cause and further limited to $500,000 per proceeding absent an exercise of discretion.
- 90% of funds must be used for consultants and lawyers.
- Decisions are supposed to be unappealable.
- Regular reports are to be made on the use of these funds.
- The DPU and EFSB are to issue regulations to implement this process by March 1, 2026.

Other Siting and Permitting changes

The Bill also makes less sweeping, but still significant, changes:

- It clarifies eligibility for zoning exemptions – making explicit that any entity proposing a generation, storage, transmission, or distribution facility is an eligible entity.
- It temporarily amends Land Court Jurisdiction to include claims relating to permits for RPS and energy storage projects, but provides that jurisdiction only from March 1, 2026 to March 1, 2027.
- It allows ESS with a capacity over 100 MW hours that has received a zoning exemption (and petitioned for such an exemption prior to July 1, 2026) to obtain a "certificate of environmental impact and public interest" until the new permitting processes go into effect.
- It includes a provision (Section 119, which is not effective until March 1, 2026??) that appears intended to extend permits for clean energy projects to August 1, 2029. But is drafted to have limited applicability and somewhat unclear eligibility. There are efforts to address these issues.

Procurement: Energy Storage, Section 83E

- The Bill creates a new "Section 83E" procurement that follows the form of prior "Section 83" procurements, as recently conducted for offshore wind.
- Some important new definitions:
  - "Energy services", operation of infrastructure that increases the deliverability or reliability of clean energy generation or reduces the cost of clean energy generation. Such infrastructure shall include, but not be limited to, transmission, energy storage systems, as defined in section 1 of chapter 164 of the General Laws, and demand response technologies.
  - **"Environmental attributes"**, all present and future attributes under any and all international, federal, regional, state or other law or market, including, but not limited to, all **credits or certificates that are associated**, either now or by future action, **with clean energy generation, including, but not limited to, those attributes authorized and created by programs developed under subsection (c) section 3 of chapter 21N of the General Laws, and section 11F and section 17 of chapter 25A of the General Laws**.
    - G.L. c. 21N, § 3 provides for setting statewide emission limits; G.L. c. 25A, § 11F establishes the RPS; **G.L. c. 25A, § 17 establishes the Clean Peak Standard**.
  - "Long-duration energy storage system", an energy storage system, as defined in section 1 of chapter 164 of the General Laws, that is capable of dispatching energy at its full rated capacity for a period greater than 10 hours and less than or equal to 24 hours.
  - "Long-term contract", a contract for a period of 15 to 30 years for offshore wind energy generation pursuant to section 83C or for clean energy generation pursuant to section 83D, or **a contract for a period of up to 30 years for energy storage systems pursuant to section 83E**; provided, however, that a contract for offshore wind energy generation pursuant to said section 83C may include terms and conditions for renewable energy credits associated with the offshore wind energy generation that exceed the term of generation under the contract.
  - "Mid-duration energy storage system", an energy storage system, as defined in section 1 of chapter 164 of the General Laws, that is capable of dispatching energy at its full rated capacity for a period equal to or greater than 4 hours and up to 10 hours.
  - "Multi-day energy storage system," an energy storage system, as defined in section 1 of chapter 164 of the General Laws, that is capable of dispatching electricity at its full rated capacity for greater than 24 hours.

Energy Storage Procurement

- DOER shall propose a timetable and method of solicitation, in coordination with the EDCs and in consultation with the AGO, which may include one or more solicitations, and **which must be approved by the DPU**.
- EDCs must coordinate with DOER to "jointly and competitively solicit proposals for energy storage systems."
- Assuming that reasonable proposals are received, the EDCs "shall enter into cost-effective long-term contracts equal to, in the aggregate, **approximately 5,000 MW of energy storage" by July 2030.**
  - 3,500 MW shall be mid-duration
  - 750 MW shall be long-duration
  - If commercially available at a reasonable cost, 750 MW shall be multi-day storage
- Further timing requirements – the schedule "shall ensure that the [EDCs] "enter into" contract for:
  - Approximately 1,500 MW of mid-duration storage by **July 31, 2025 (environmental attributes only)**
  - Approximately 1,000 MW of mid-duration storage by **July 31, 2026**
  - Approximately 1,000 MW of mid-duration storage by **July 31, 2027**
  - All remaining ESS capacity by **July 31, 2030**
- Existing ESS are eligible to participate.
- A solicitation may be coordinated with other New England states.

Energy Storage Procurement

- ESS procurements (other than the first) may be for environmental attributes, energy services, or both.
- DOER and the Executive Office of Economic Development, in consultation with an "independent evaluator" (selected by DOER and the AGO) pick the winning bids or terminate the solicitation if reasonable proposals are not received.
- DOER can give preference to proposals that provide additional benefits (generally resiliency and economic benefits).
- The EDCs have an out if the contracts would "place an unreasonable burden" on their balance sheets but need DPU approval to take this route.
- The EDCs may file with the DPU contracts that are solicited under the existing Clean Peak program (Chapter 25A, § 17) to satisfy the Section 83E requirements.
  - NOTE – DOER recently revised its regulations to require a CPEC Procurement, with a schedule to be set by Nov. 12.
- The EDCs must file resulting contracts with the DPU for approval, which is to be provided within 6 months.
- Section 83E provides 2.25% remuneration to the EDCs.
- The DPU is directed to issue regulations to implement these procurements.

Procurement: Regional Clean Energy Generation

- The Bill sets up regional clean energy procurement using the “Section 82” approach previously used to participate in the procurement of clean energy resources selected through a Maine process.
- This authority includes far less detail and explicit structure:
  - DOER is empowered to coordinate with one or more New England States to “consider competitive solicitations for long-term clean energy generation [i.e., generation that contributes to achieving Massachusetts emission limits], including nuclear power generation that is located in the ISO-NE control area and commenced commercial operation before January 1, 2011, associated environmental attributes, transmission or capacity for the benefit of residents of the commonwealth and the region.”
  - DOER, in consultation with the EDCs and the AGO, is to determine **by December 31, 2025** whether a project will:
    - provide cost-effective clean energy generation to electric ratepayers in the commonwealth and the region over the term of the contract;
    - provide the benefits of clean energy and associated transmission towards meeting the commonwealth’s decarbonization goals;
    - where possible, avoid, minimize or mitigate, to the maximum extent practicable, environmental impacts and impacts to low-income populations; and
    - reduce ratepayer costs in winter months and improve energy security during winter months.
  - If DOER finds that a project does so, DOER is to direct the EDCs to enter into cost effective long-term contracts of 10-20 years.
  - Those contracts must be approved by the DPU following a determination that they are, indeed, “cost-effective.”

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QUESTIONS?

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