

980 CMR: ENERGY FACILITIES SITING BOARD

980 CMR 2.00: GENERAL INFORMATION AND CONDUCT OF BOARD BUSINESS

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2.01: Purpose and Scope

- (1) Purpose. 980 CMR 2.00 describes the Energy Facilities Siting Board and establishes rules for the conduct of Board business.
- (2) Scope. 980 CMR 2.00 is of general applicability and applies, whenever appropriate, to all other sections of 980 CMR.
- (3) Effective Date. 980 CMR 2.00 shall take effect on March 1, 2026, and shall apply to proceedings initiated July 1, 2026, and afterwards.

2.02: Purpose and Functions of the Board

- (1) Purpose of the Board. The Board has been established by M.G.L. c. 164, § 69H. The powers and duties of the Board are enumerated in M.G.L. c. 164, § 69H. The Board shall implement the provisions contained in M.G.L. c. 164, §§ 69H through 69Q, inclusive, and §§ 69S through 69W, inclusive, to:
 - (a) provide a reliable, resilient and clean supply of energy consistent with the commonwealth's climate change and greenhouse gas reduction policies and requirements;
 - (b) ensure that CEIFs, 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;
 - (c) ensure that CEIFs, 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
 - (d) ensure CEIFs, Facilities and oil facilities are constructed in a manner that avoids or minimizes costs.
- (2) Primary Functions of the Board. The Board reviews matters pursuant to M.G.L. c. 164, §§ 69G through 69W, §§ 72, 72A, 75C, M.G.L. c. 166, § 28, M.G.L. c. 40A, § 3, and St. 1956, c. 665, § 6. Matters reviewed by the Board include petitions for:
 - (a) electric transmission lines
 - (b) electric Generating Facilities
 - (c) Gas pipelines and storage Facilities
 - (d) oil refining, storage, and transportation Facilities
 - (e) hydropower Generation Facilities
 - (f) CEIFs.

The Board also has the authority to issue certificates of environmental impact and public interest, exemptions from local zoning bylaws, to approve the promulgation, amendment or repeal of the Board's regulations at 980 CMR; and to issue civil penalties to any applicant, or successor in interest, who violates an order of the Board.

2.02: continued

(3) Scope of Review. The Board shall review:

- (a) the need for, cost of and environmental and public health impacts of transmission lines, natural gas pipelines, Facilities for the manufacture and storage of Gas, oil Facilities, CEIFs; and
- (b) the environmental and public health impacts of Generating Facilities, LCEGFs, SCEGFs, LCEFs, and SCESFs.

The Board shall also consider the Applicant's reasonable efforts to engage in discussions with municipalities hosting such infrastructure and affected stakeholders regarding avoidance, minimization, and mitigation of impacts, including discussions regarding a community benefits plan or community benefits agreement, as defined in 980 CMR 16.00.

The Board review shall be conducted consistent with M.G.L. c. 164, § 69J¼ for Generating Facilities, M.G.L. c. 164, § 69T for LCEIFs, M.G.L. c. 164, §§ 69U through 69W, inclusive, for SCEIFs, M.G.L. c. 164, § 69J for all other types of Facilities, M.G.L. c. 40A, § 3 and St. 1956, c. 665, § 6 for zoning exemption petitions, and the substantive standards of applicable permitting statutes, regulations, and guidance of the PEAs.

(4) Adjudicatory Proceedings. The Board reviews the following matters which shall be resolved through adjudicatory proceedings in accordance with M.G.L. c. 30A and 980 CMR 1.00: *Rules for the Conduct of Adjudicatory Proceedings* a hearing on a petition to construct a facility pursuant to M.G.L. c. 164, § 69J or § 69J¼; a hearing on an initial petition pursuant to M.G.L. c. 164, § 69K or § 69K½; a hearing on an application for a certificate pursuant to M.G.L. c. 164, § 69L or § 69L½; a hearing on appeal pursuant to M.G.L. c. 164, § 69H½, a hearing on an Application for a Consolidated Permit pursuant to M.G.L. c. 164, §§ 69T, 69U, and 69V; a De Novo Adjudication pursuant to M.G.L. c. 164, § 69W; an eminent domain proceeding pursuant to M.G.L. c. 164, §§ 69R, 69S, 72, 75C; a grant of location proceeding pursuant to M.G.L. c. 166, § 28; and a zoning exemption proceeding pursuant to M.G.L. c. 40A, § 3 or St. 1956, c. 665, § 6.

(5) Mailing List. The Board shall maintain a mailing list, shall place upon the list the name and address of any Person or group so requesting, and shall give to such Persons and groups electronic notice of activities of the Board for which notice may be appropriate. Failure to give notice to any Person or group on the list shall not, in itself, render any act of the Board invalid. The Board may from time to time remove from the list Persons or groups no longer expressing interest in receiving notices.

(6) MEPA exemption. M.G.L. c. 30, §§ 62A through 62L, inclusive, shall not apply to actions of the Board. Neither the Board nor any other Person shall, in taking any action pursuant to M.G.L. c. 164, §§ 69J through 69J¼, inclusive, or M.G.L. c. 164, §§ 69T through 69W, inclusive, be subject to M.G.L. c. 30, §§ 61 through 62L, inclusive. This exemption shall apply to any state agency issuing, in relation to an application or petition under said M.G.L. c. 164, §§ 69T through 69V inclusive, a federal permit that is delegated to that agency and determined by the Board to be excluded from the definition of Consolidated Permit.

Though the Board and the Applicant are not required to comply with M.G.L. c. 30, §§ 62A through 62L, inclusive, an Applicant is required to consult with the MEPA Office during the pre-filing stage of a proceeding in accordance with 980 CMR 16.00: *Pre-filing Consultation and Engagement Requirements*.

2.03: Board Membership

(1) Description of the Board. Pursuant to M.G.L. c. 164, § 69H, the Board shall be composed of: the Secretary of Energy and Environmental Affairs or a designee, who shall serve as Chair; the Secretary of Economic Development or a designee; the Commissioner of the Department of Environmental Protection or a designee; the Commissioner of the Department of Energy Resources or a designee; the chair of the Department of Public Utilities or a designee; the Commissioner of Fish and Game or a designee; the Commissioner of Public Health or a designee; and four public members to be appointed by the Governor for a term coterminous with that of the Governor, one of whom shall be a representative of the Massachusetts Association of Regional Planning Agencies, one of whom shall be a representative of the Massachusetts Municipal Association, Inc. with expertise in municipal permitting matters, one of whom shall be experienced in environmental justice issues or indigenous sovereignty, and one of whom shall be experienced in labor issues.

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(2) Chair. In accordance with M.G.L. c. 164, § 69H, the Secretary of Energy and Environmental Affairs, or the Secretary's designee, shall serve as Chair of the Board. In the event of the absence, recusal, or disqualification of the Chair, the Commissioner of the Department of Energy Resources shall appoint an acting chair from the remaining members of the Board.

(3) Designees. A Board member other than a public member may nominate a designee to serve in his or her stead. Nomination shall be made by a letter addressed to the Chair and signed by the nominating official. The nominating letter shall state whether the nomination is general or limited. The nominating official may revoke a nomination at any time by letter to the Chair.

Once nominated, a general designee shall assume all responsibilities of the nominating official for matters over which the Board has jurisdiction. The nominating official may temporarily suspend a general nomination by appearing personally at a Board meeting or proceeding and performing the responsibilities of a Board member.

A limited designee shall assume only those responsibilities set forth in the nominating letter. The nominating official may retain and perform or may further name another designee to perform all other responsibilities.

(4) Replacement of Public Members. In the event of the resignation of a public member, the Board Chair shall notify the Governor in writing within 15 days and shall request the appointment of a new public member.

(5) Compensation. Any public member appointed by the Governor shall receive compensation for his or her services in the amount allowable by law, and shall be reimbursed by the State for all reasonable expenses actually and necessarily incurred in the performance of his or her official duties.

(6) Effect of Board Actions. No action taken by the Board pursuant to 980 CMR 2.00 shall bind any member of the Board or any designee for the purposes of any responsibilities of such member or designee not solely related to the operation of the Board.

(7) Disclosure. Where an ex officio Board Member's agency is also a Party to a proceeding, the Board member shall file a disclosure with the Chair of the Board and the service list of the proceeding. Parties to the proceeding may file an objection along with the basis of the objection, to the Board Member's participation in the decision on the matter within ten business days of the disclosure. The Chair of the Board will make a determination whether participation of the Board Member would likely compromise the integrity of the decision of the Board, or whether the Board Member may participate in the matter.

2.04: Meetings; Voting

(1) Public Meetings. All meetings of the Board shall be open to the public to the extent required by M.G.L. c. 30A, §§ 18 through 25. All meetings of the Board shall be open to the press to the extent required by law. The Board may establish specific policies regarding the use of video cameras and other recording devices as necessary. Each calendar year, the Board shall schedule a standing monthly meeting or meetings to ensure timely consideration of Applications and petitions.

(2) Notice of Public Meetings. Except in an emergency as provided by 980 CMR 2.04(3), as required by M.G.L. c. 30A, §§ 18 through 25, a notice of each meeting of the Board shall be filed with the Secretary of State, and a copy thereof posted in the public office of the Executive Office for Administration and Finance, at least 48 hours, not including Saturdays, Sundays, or legal holidays, prior to the time of such meeting or session.

(3) Emergencies. The Board may conduct a public meeting or executive session without giving notice as required by 980 CMR 2.04(2), if it determines that an emergency exists and that immediate, undelayed action by the Board is imperative.

(4) Executive Sessions. The Board may in the course of a public meeting vote to go into executive session. An executive session may be held only as authorized by M.G.L. c. 30A, §§ 18 through 25.

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(5) Records of Meetings. The Board shall maintain accurate records of its meetings, setting forth the action taken at each meeting, including executive sessions. Either a full transcript of the meeting or a summary of all matters voted shall be made available with reasonable promptness after each meeting; provided, however, that votes taken in executive session may be withheld from public disclosure for so long as their publication would defeat the lawful purposes of the executive session, but no longer.

(6) Quorum; Voting.

(a) A quorum consisting of five Board members shall be required to conduct any meeting of the Board held for the purpose of considering and voting upon an adjudicatory decision, or a proposal to adopt, amend or rescind regulations, or any other matter requiring a vote of the Board. A majority of members in attendance at a meeting shall be sufficient to dispose of any question properly before the Board during the meeting at which the question is taken up.

(b) Each Board member or designee in attendance at a meeting shall be entitled to vote on any matter which is properly before the Board at that meeting.

(7) Remote Participation. Board Members may attend meetings virtually in accordance with 940 CMR 29.10: *Remote Participation*. At the start of any meeting during which a member of a public body will participate remotely, the Chair must announce the name of any member who is participating remotely; such information must also be recorded in the transcript. Members of a public body who participate remotely and all Persons present at the meeting location must be clearly audible to each other. All votes taken during a meeting in which a member participates remotely must be by roll call vote.

2.05: Delegation of Duties; Board Staff

(1) Delegation of Duties. The Board may delegate Board-specific responsibilities other than responsibility for the final decision in any matter to the Board Chair or to the Board staff. The staff of the Siting Division of the Department of Public Utilities shall serve as Board staff.

(2) Director. The Director of the Board shall be appointed by the Chair of the Department of Public Utilities pursuant to M.G.L. c. 25, § 12N to direct the work of the Board staff and to conduct the day-to-day business of the Board. The Board, the Chair, or the Chair of the Department of Public Utilities may delegate to the Director Board-specific responsibilities other than the responsibility for the final decision in any matter. The Director shall have authority to issue decisions in De Novo Adjudications pursuant to 980 CMR 14.00: *De Novo Adjudications of Consolidated Local Permit Applications*.

(3) Board Staff. The Chair of the Department of Public Utilities may appoint Board staff to assist the Board in performing its functions. Staff functions shall include, among others: conducting adjudicatory, rulemaking, or public comment hearings; rendering tentative decisions; and intervening in the proceedings of other agencies. The Chair of the Department of Public Utilities may authorize the Director to appoint a Presiding Officer for an adjudicatory or other proceeding conducted under 980 CMR.

2.06: Board Decisions

(1) Issuance by the Board of a final decision in an adjudicatory proceeding shall be governed by 980 CMR 1.08: *Rendering of Decisions in Adjudicatory Proceedings*.

(2) Every final decision shall be in writing, and shall contain a statement of the reasons therefore, including a determination of the facts or law necessary to the decision. A signature page shall be attached to each final decision. The signature page shall be signed by the Board Chair and shall indicate the vote of each Board member.

(3) Required Findings. Any determination made by the Board shall describe the environmental and public health impacts, if any, of the CEIF, Facility or oil Facility and shall include findings, including, but not be limited to, findings that:

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- (a) efforts have been made to avoid or minimize or, if impacts cannot be avoided or minimized, mitigate environmental impacts;
- (b) due consideration has been given to the findings and recommendations of Local Governments;
- (c) in the case of LCTDIFs, SCTDIFs and natural Gas pipelines, due consideration has been given to advanced conductors, advanced transmission technologies, grid enhancement technologies, non-wires or non-pipeline alternatives, the repair or retirement of pipelines and other alternatives in an effort to avoid or minimize expenditures;
- (d) in the case of LCTDIFs and SCTDIFs, the infrastructure or Project will increase the capacity of the system to interconnect large electricity customers, electric vehicle supply equipment, clean energy generation, clean energy storage, or other clean energy generation sources that qualify under 310 CMR 7.75: *Clean Energy Standard* or will facilitate the electrification of the building and transportation sectors;
- (e) due consideration has been given to any cumulative burdens on host communities and efforts that must be taken to avoid or minimize or, if impacts cannot be avoided or minimized, efforts to mitigate such burdens; and
- (f) reasonably foreseeable climate change impacts, including additional greenhouse gas or other pollutant emissions known to have negative health impacts, predicted sea level rise, flooding, and any other disproportionate adverse effects on a specific geographical area.

(4) Constructive Approval. The Board shall issue a Constructive Approval as defined in 980 CMR 1.00: *Rules for the Conduct of Adjudicatory Proceedings* and described in 980 CMR 17.00: *Constructive Approvals*. A Constructive Approval is deemed a final decision.

2.07: Action by Consent

(1) Scope. Any decision of the Board, except the final decision in any adjudicatory proceeding, may be made by action by consent pursuant to the procedures of 980 CMR 2.07. These procedures shall be used only when the Board, in its discretion, determines that expeditious action is necessary.

(2) Procedure. The Chair shall prepare a document entitled "Action by Consent" which sets forth the decision proposed to be taken by the Board. The document or copies thereof shall be presented to each member of the Board for review. A member may indicate consent by affixing his signature to the document or copy. The proposed action by consent shall be deemed to have been taken when the document and copies bearing the signatures of all Board members are returned to the Chair. A proposed action by consent shall become void if it does not receive all required signatures before the beginning of any meeting of the Board held pursuant to 980 CMR 2.04.

(3) Notice.

(a) Except in an emergency, a notice of each proposed "Action by Consent" shall be filed with the Secretary of State, and a copy thereof posted in the public office of the Executive Office for Administration and Finance at least 48 hours, not including Saturdays, Sundays and legal holidays, prior to the circulation of such proposed decision to Board members for signature.

(b) The notice shall state:

1. that the notice is for an action proposed to be taken by unanimous written consent of the Board rather than by meeting;
2. that the proposed action by consent shall become void if not signed by all Board members prior to the next meeting of the Board; and
3. the full and complete text of the proposed action by consent, or, if the proposed action by consent consists of more than 200 words, a summary of its terms and a statement that the full text may be obtained at the offices of the Board.

(c) For the purpose of 980 CMR 2.07, "emergency" shall mean a situation in which immediate action without delay is deemed by the Board to be imperative.

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(4) Records of Actions by Consent. The Board shall maintain accurate records of all proposed actions by consent. A record of the Board's action on a proposed action by consent shall be made available with reasonable promptness after its approval by all Board members or after it becomes void.

2.08: Advisory Rulings

In accordance with M.G.L. c. 30A, § 8, any Person may at any time request, *via* written petition, an advisory ruling with respect to the applicability of any statute or regulation enforced or administered by the Board to any Person, property or factual situation. A petition shall be signed by the petitioner, contain the petitioner's address, state clearly and concisely the substance or nature of the request, and contain an affidavit or attestation that all of the facts presented are true to the best of the petitioner's knowledge. The petition shall be accompanied by any supporting data, views or arguments. Upon receipt of the petition, the Board shall consider it and shall, within 60 days after the receipt of the request, notify the petitioner either that the request is denied or that the Board will render an advisory ruling. In order to assist the Board in considering the request, the Director may require additional information as they deem appropriate. At any time before issuance of an advisory ruling, the Board may rescind a decision to render an advisory ruling. If the advisory ruling is rendered, a copy of the ruling shall be sent to the petitioner. A complete record of every advisory ruling shall be maintained by the Board. No advisory ruling shall bind or otherwise stop the Board in any pending or future matter. There shall be no obligation to render an advisory ruling. An advisory ruling proceeding is not an adjudicatory proceeding.

2.09: Determination of Board Jurisdiction

(1) A petitioner may at any time petition the Board for a determination of whether construction, expansion, or other modification of a proposed electric Generating Facility, electric transmission line, ancillary structure, Gas pipeline, Gas storage facility, oil pipeline, oil refinery, oil storage facility, oil transshipment facility, or other facility is subject to Board jurisdiction, is not subject to Board jurisdiction, or may qualify for a certificate pursuant to 980 CMR 6.00: *Certification of Environmental Impact and Public Need*.

(2) The petition shall state the name of the petitioner and describe the nature of the facility for which a determination is being sought. The petition shall be accompanied by a draft legal notice for publication and such written legal argument or other information as the petitioner may consider appropriate. The Board may require that the petitioner provide additional information after the petition is filed.

(3) The petitioner shall give notice of the petition by publishing the legal notice approved by the Presiding Officer in at least one newspaper of general circulation and as otherwise ordered by the Presiding Officer. The notice shall specify that any Person may submit written legal argument or other information regarding the petition. The notice shall specify the deadline for such submissions, which shall be not less than 14 days after the initial date of publication.

(4) Within four months of the petition filing date, the Board shall issue a final determination of jurisdiction. The final determination shall address only those issues necessary to decide the extent to which a proposed facility is within Board jurisdiction, is not subject to Board jurisdiction, or may qualify for a certificate pursuant to 980 CMR 6.00: *Certification of Environmental Impact and Public Need*. A determination of jurisdiction proceeding is not an adjudicatory proceeding. The Board's decision shall be final.

2.10: Dashboard.

The Board shall maintain a real-time, online dashboard. The Board shall collect and report data in the aggregate on: the number of CEIF applications filed, decided or pending information, including, but not limited to:

- (a) the number of applications deemed incomplete;
- (b) the number of applications constructively approved;
- (c) the average duration of application review; and

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(d) average staffing levels delineated by job classification. The Board shall ensure that comprehensive data and information are publicly available in a machine-readable format. The Board may add or remove additional data, metrics, or information to the dashboard at its discretion.

REGULATORY AUTHORITY

980 CMR 2.00: M.G.L. c. 30A and c. 164, § 69H.