Energy Infrastructure Siting and Permitting Commission Recommendations

Frequently Asked Questions

Acronym Key

DPU – Department of Public Utilities

EFSB – Energy Facilities Siting Board

DOER – Department of Energy Resources

MW – Megawatt

MWh – Megawatt hour

What was the goal of the Commission on Clean Energy Infrastructure Siting and Permitting?

A critical component to combatting climate change is electrification – using electricity to power electric heat pumps for heating and cooling, electric vehicles to get around, and induction stoves to cook. To do so without expanding the use of fossil fuels, Massachusetts must develop more clean energy sources like solar and wind, as well as the infrastructure to deliver this energy to homes and businesses, like transmission lines, battery storage, and substations. The Commission was tasked with identifying ways to accelerate the construction of clean energy infrastructure more efficiently, equitably, and urgently.

Why is reform needed this session?

Without reform, Massachusetts will not meet its legally-mandated clean energy, building, and transportation decarbonization targets, nor will it meet its greenhouse gas emission reduction limits.

Under the state's clean energy and climate plan, electricity demand is projected to grow considerably, by as much as 50 percent in 2035 compared to today. Similarly, Massachusetts' ability to attract and grow businesses is heavily dependent on a supportive, reliable electric grid. To meet this demand with clean energy, Massachusetts needs to more than double its supply of electricity from solar energy and install more than 3,000 MW of wind by 2030. Massachusetts must build and upgrade additional electrical grid infrastructure, including distribution and transmission lines, electrical substations, and energy storage.

Currently, these clean energy infrastructure projects can take up to a decade to build and sometimes lack critical community input from those most impacted as they move through the siting and permitting process. Massachusetts cannot afford to wait to build badly needed clean energy infrastructure.

What do we mean by "permitting"?

To build projects like solar, battery storage, substations, and transmission, you need to get a range of state, local, and sometimes federal permits. On the local level, you may need to go through a

municipal zoning process or get approval from your local conservation commission to minimize impacts to wetlands. At the state level, you may need permits to build adjacent to the ocean or near a state roadway. Many projects need to be approved by the EFSB, a state board that reviews proposed large energy facilities including power plants, electric transmission lines, intra-state natural gas pipelines, and natural gas storage tanks. These permits are important to ensure projects are properly vetted for their impacts on public health, the environment, and the overall community. But each permit must be obtained individually and many of them take an unnecessarily long time to secure. In the race against climate change, we don't have much time.

How do these recommendations affect local control?

Not significantly. Municipalities would retain all permitting authority for clean energy generation facilities smaller than 25 MW and energy storage facilities smaller than 100 MWh – that's more than 99% of all clean generation and energy storage projects proposed in Massachusetts over the last 15 years. Municipalities would also retain permitting authority for any utility infrastructure that is not required to be reviewed by the Energy Facilities Siting Board (EFSB) and chooses not to opt-into an EFSB review.

Municipalities would still be able to conduct separate permitting and engagement processes through their different boards and commissions (e.g., conservation commission, zoning board of appeals, etc.), and would then need to issue one consolidated local permit decision that includes each of these approvals within 12 months of the receipt of a complete application. By consolidating permits, municipalities will also be spared the cost of lengthy separate appeals processes. That is the primary goal of these recommendations – speeding up permitting timelines while preserving municipal powers and reducing the number of appeals, which will save time and money for all parties involved.

An added benefit to municipalities is the possibility for greater flexibility in regulating solar and storage facilities. Today, many municipalities have seen their bylaws that attempt to regulate land use and tree clearing associated with solar and storage facilities preempted by state law. Included among the recommendations is a requirement for DOER to establish municipal permitting standards that are protective of public health, safety, and welfare, but that may also help communities set limits related to land clearing, noise, and other environmental concerns that are not currently allowed today.

How much will these recommendations shorten permitting timelines?

Right now, there is no deadlines with respect to clean energy permitting and projects can take up to a decade to fully permit. These recommendations would consolidate permitting into a single state or local process and set 12 to 15 month limits for the issuance of all final permitting decisions.

To be specific, current timelines to receive approval to construct from the EFSB range from about one to four years, with projects needing to obtain other state permits separately after they receive approval to construct from the EFSB. Similarly, due to the absence of deadlines, timelines to receive local permits can vary from a few months to several years. Following issuance of permits, appeals are processed individually for each permit and can also take years to complete. The recommendations would streamline the permitting process by establishing deadlines of up to 15 months for EFSB permitting decisions and 12 months for local permitting decisions. Appeals would

also be more streamlined. Consolidated permits from the EFSB would be appealed directly to the Supreme Judicial Court, while local consolidated permits would first be reviewed by the EFSB, then the Supreme Judicial Court.

How will community engagement and environmental justice be enhanced?

For the first time, developers will be mandated to engage with communities early in the development process, including requirements for the number and types of meetings, a 60-day public comment period, efforts to involve community organizations, and efforts to develop a community benefit agreement. The Healey-Driscoll Administration also put forward a proposal to require all projects that submit an application to the EFSB for a consolidated permit to complete a cumulative impacts analysis, which would analyze whether there are any inequitable environmental and public health burdens borne by the community in which the project would be built, such as polluting industrial or fossil fuel facilities or health impacts caused by pollution. The Commission also recommended financial and technical support for under-resourced communities to participate in state permitting processes. The Office of Public Participation at the DPU would provide aid to communities and project applicants in navigating pre-filing engagement for EFSB proceedings. The Division of Clean Energy Siting and Permitting at DOER would provide aid to communities and project applicants in navigating the local permitting process. The Commission also recommended that the Office of Environmental Justice and Equity create statewide Community Benefits Agreement guidance through a stakeholder engagement process.

How would the cumulative impact analysis work?

Under the Healey-Driscoll Administration's proposal, energy infrastructure projects (both clean energy and fossil fuel-based projects) that submit applications to the EFSB would be subject to cumulative impact analyses for the first time to ensure that existing environmental and public health burdens are considered in the permitting process.

A cumulative impact analysis for proposed energy infrastructure projects would assess whether there are any inequitable environmental and public health burdens borne by the community in which the project would be built, such as existing polluting industrial or fossil fuel facilities or health impacts caused by pollution. If these burdens are found to be present in a community, the cumulative impact analysis would look at whether the proposed project would result in environmental, public health, or climate-related impacts on the community and whether the project can be completed through less harmful means.

What qualifies as "large energy infrastructure" and what qualifies as "small energy infrastructure"?

The jurisdictions of municipalities and the EFSB will mostly remain the same.

Municipalities will retain permitting authority over smaller, less complex clean energy infrastructure projects, such as:

- Solar, wind, and anaerobic digestion facilities less than 25 MW;
- Energy storage systems of less than 100 MWh; and
- All non-EFSB jurisdictional clean transmission and distribution infrastructure.

Clean energy infrastructure under EFSB jurisdiction would generally be larger, more complex projects, defined as

- Solar, wind, and anaerobic digestion facilities 25 MW and greater;
- Energy storage systems 100 MWh and greater;
- Most new transmission lines and their ancillary facilities (e.g., substations); and
- Facilities needed to interconnect offshore wind facilities to the electric grid.

For context, all solar projects built in Massachusetts to date have been under 25 MW, and most are less than 5 MW. So, municipalities would still permit projects such as:

- A 25 MW solar project that would cover about 125 to 250 acres and power about 5,000 homes.
- A 5 MW solar project that would cover about 25 to 50 acres and power about 1,000 homes.

Only onshore wind projects would likely be covered by these reforms, as offshore wind projects are typically located in federal waters and therefore permitted by the federal government. Only 3 onshore wind projects with a combined capacity of less than 5.5 MW have been built in Massachusetts in the past decade. For context, a 25 MW onshore wind project would almost certainly comprise fewer than 10 turbines.

Anaerobic digesters that have been constructed in Massachusetts have generally been small, with all 8 projects built in the last decade sized smaller than 3.2 MW, so such a facility would be primarily permitted at the local level but may also need to obtain certain state permits (e.g., MassDEP air permit). Massachusetts has never seen and is unlikely to see an anaerobic digestion facility proposed that is larger than 25 MW.

Energy storage allows energy to be stored for later use, using batteries, thermal, or mechanical systems. A 100 MWh battery storage project can store 100 MWh of energy at maximum. Energy storage facilities have previously not been EFSB jurisdictional at all as existing state law did not contemplate the emergency of large-scale battery storage facilities. The commission recommended to change this by expanding the EFSB's jurisdiction to include very large energy storage facilities but continue to require the bulk of permitting for smaller scale storage facilities at the local level.

How would these recommendations balance developing clean energy with protecting natural lands, including forests?

The Commission heard extensive public comment about the need to protect our forests and other open spaces, which also play an important role in lowering emissions. To minimize impacts on natural lands, the Commission recommended the state develop a site suitability methodology and guidance to help to avoid, minimize and mitigate environmental impacts.

Which permits would be consolidated under these recommendations?

Permits that would be consolidated into a single decision issued at the state and/or local level include, but are not necessarily limited to, the following:

Local

- Board of Selectmen / City Council Review
- Cape Cod Commission Review
- Conservation Commission Review
- Martha's Vineyard Commission Review
- Planning Board Review
- Tree Warden Review
- Zoning Board Review

State

- Massachusetts Department of Environmental Protection Permits
    - Wetlands
    - Waterways (Chapter 91)
    - Air
    - Post Closure Use
    - Other
- Massachusetts Department of Conservation Permits
- Massachusetts Department of Fish and Game Permits
    - MassWildlife Natural Heritage and Endangered Species Program
- Massachusetts Department of Transportation Permits
    - Non-vehicular Access
    - Vehicular Access
- Massachusetts Historical Commission Review
- Other State Agency Permits or Approvals

How were these recommendations developed?

The recommendations were developed by a diverse group of representatives from municipalities, environmental justice organizations, environmental advocacy groups, electric utilities, agriculture, energy siting practitioners, clean energy industry, labor, housing, and real estate. Supported by an Interagency Siting and Permitting Task Force and a Siting Practitioner Advisory Group, the Commission met thirteen times since October 2023 to identify the barriers to clean energy development and develop recommendations on the strategies and policies necessary to address these challenges. In February, the Commission released a summary of discussions to date and a list of questions for public input and in March, the Commission held two public listening sessions.

The Commission voted on the recommendations on March 27, 2024. Every recommendation had a majority support of the Commission, and the votes of each Commission member on each recommendation are listed in the report.

Many of the recommendations would go through an additional public process should they be implemented, allowing them to be shaped further by stakeholders and residents.

When would these recommendations go into effect?

Under the Healey-Driscoll Administration's proposal, the state would promulgate regulations to enact the primary reforms by March 1, 2026. The regulatory process would include opportunities for public engagement during the development of the regulations.

The recommendations would not impact any projects that are currently going through siting and permitting processes. Most recommendations that do not require legislative action may be implemented earlier.

How would the municipal standards developed by the Department of Energy Resources work?

The Commission heard concerns from municipal representatives that many municipal officials do not feel they have the expertise necessary to be able to make informed permitting decisions on energy infrastructure projects. They have challenges in responding to questions from residents and requested more guidance from the state on the health, safety, technical, and environmental aspects of energy infrastructure. Additionally, municipalities are currently not allowed under state law to enact local bylaws restricting solar or storage development, except to protect public health, safety, or welfare.

Under the recommendations, the new Division of Siting and Permitting at DOER would develop a standard application and a uniform set of baseline health, safety, and environmental standards to be used by local decisionmakers when permitting clean energy infrastructure. The standards could help communities set limits related to land clearing, noise, and other environmental concerns that are not currently allowed today.

What is the Energy Facilities Siting Board (EFSB)?

The Energy Facilities Siting Board is an independent state board that reviews proposed large energy facilities including power plants, electric transmission lines, intra-state natural gas pipelines, and natural gas storage tanks. The Department of Public Utilities administratively supports the work of the EFSB and its staff, but the nine-member EFSB makes its decisions independently. EFSB staff also conducts DPU siting-related cases that do not fall within the EFSB's jurisdiction.

Who sits on the EFSB?

Secretary Rebecca Tepper
Chair, EFSB
Secretary, Executive Office of Energy and Environmental Affairs

James Van Nostrand
Chair, Department of Public Utilities

Staci Rubin
Commissioner, Department of Public Utilities

Elizabeth Mahony
Commissioner, Department of Energy Resources

Bonnie Heiple
Commissioner, Department of Environmental Protection

Yvonne Hao
Secretary, Executive Office of Economic Development

Joseph C. Bonfiglio
Public Member, Labor

Greg Watson
Public Member, Energy

Vacant
Public Member, Environment

What is "intervenor status" and why does it matter?

There are three ways to participate in an EFSB proceeding: as an intervenor, a limited participant, or speaking at a public comment hearing.

An intervenor has the most involvement in the proceeding and has the ability to issue information requests to the project proponents and receive responses, present written testimony and witnesses, cross-examine witnesses, file a brief, and appeal an Order or Final Decision. Under this proposal, a municipality in which an energy infrastructure project would be located would have automatic intervenor status. The municipality would simply need to file its request to be an intervenor.

How would small, under-resourced municipalities be able to participate as intervenors on EFSB proceedings?

To ensure all communities have the opportunity to meaningfully participate in EFSB proceedings, the Commission recommended that technical and financial support be made available to communities, including municipalities and community groups, that can demonstrate a need to participate in EFSB proceedings.

Under the Administration's proposal, any municipalities or community groups that do not have the financial or staff resources to be able to participate in an EFSB proceeding regarding a project in their community would apply to the Office of Public Participation at the DPU for funding. This funding would come from a DPU trust fund that is financed through an initial assessment of electric utilities and project application fees.

How would these recommendations impact solar projects that involve tree clearing?

Municipalities are currently not allowed under state law to enact local bylaws restricting solar development, including bylaws that restrict tree clearing. Under the recommendations, the new Division of Siting and Permitting at DOER would develop a standard application and a uniform set of baseline health, safety, and environmental standards to be used by local decisionmakers when

permitting clean energy infrastructure. The standards could help communities set limits related to land clearing.

Additionally, the Commission recommended development of site suitability methodology and guidance to inform state and local permitting processes, and help developers to avoid, minimize and mitigate environmental impacts.

Should the recommendations be enacted, the new legislative framework would not be retroactive to any project.

How would these recommendations impact substations proposed in urban areas?

The recommendations make no changes to the jurisdiction of permitting substations. Depending on what the project entails, some substations would need to apply for a consolidated permit at the EFSB, while some would apply for a consolidated local permit. Any utility owned project that is not automatically required to be reviewed by the EFSB would have the option of seeking a consolidated permit review by the EFSB.

Under the Administration's proposal, any EFSB-jurisdictional substation projects would have to undergo a cumulative impact analysis that would look at whether there are any inequitable environmental and public health burdens borne by the community in which the substation would be built, whether the substation would result in impacts on that community, and whether the project can be completed through less harmful means.

Should the recommendations be enacted, the new legislative framework would not be retroactive to any project.

How would these recommendations impact offshore wind landing facilities?

Facilities needed to interconnect offshore wind to the grid are defined as clean energy infrastructure and would be EFSB-jurisdictional under the recommendations. Project applicants would apply to the EFSB for a consolidated permit that encompasses all necessary state and local permits. Prior to applying the EFSB, the project applicant would be required to meaningfully engage with the host community early in the development process. The host community would have automatic standing to receive intervenor status in the EFSB proceeding. Site suitability guidance developed by EEA would also inform the proceeding regarding the suitability of the proposed site for energy infrastructure development.

Should the recommendations be enacted, the new legislative framework would not be retroactive to any project.

How would these recommendations impact large battery storage facilities proposed in rural areas?

Under the recommendations, energy storage projects larger than 100 MWh would now be EFSB-jurisdictional and would be required to apply for a consolidated permit at the EFSB. Host communities would have automatic standing to receive intervenor status in the EFSB proceeding.

Energy storage projects under 100 MWh would continue to be permitted at the local level, and would apply for a consolidated local permit that covers all of their local permits. Should the project also require any state permits, the project applicant could also apply separately for a consolidated state permit at the EFSB that includes all state permits needed.

Should the recommendations be enacted, the new legislative framework would not be retroactive to any project.