

HOUSE No. 4955

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 29, 2010.

The committee of conference on the disagreeing votes of the two branches, with reference to the Senate further amendments (in which the House had non-concurred) to the House amendment (striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 4886) of the Senate Bill relative to comprehensive siting reform for land based wind projects (Senate, No. 2260, amended), reports recommending passage of the accompanying bill (House, No. 4955).

For the committee,

On the part of the House:

BARRY R. FINEGOLD

MICHAEL F. KANE

On the part of the Senate:

MICHAEL W. MORRISSEY

BENJAMIN B. DOWNING

The committee of conference on the disagreeing votes of the two branches, with reference to the Senate further amendments (in which the House had non-concurred) to the House amendment (striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 4886) of the Senate Bill relative to comprehensive siting reform for land based wind projects (Senate, No. 2260, amended), reports recommending passage of the accompanying bill (House, No. 4955). July 29, 2010.

The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

AN ACT RELATIVE TO COMPREHENSIVE SITING REFORM FOR LAND BASED WIND PROJECTS.

Whereas, The deferred operation for this act would tend to defeat its purpose, which is to establish forthwith clear standards and timely and predictable permitting procedures to encourage wind energy development in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. This act shall be construed in a manner to achieve its public purposes, which are to
2 encourage the development of clean, renewable, electric generating plants and ancillary facilities powered
3 by wind, ensure that such facilities are sited in appropriate locations based on clear, predictable and
4 protective environmental, cultural and historic resource standards and streamline the permitting of such
5 facilities at the state and local level and reduce delays associated with appeals of such permits.
- 6 SECTION 2. Subsection (a) of section 10 of chapter 25A of the General Laws, as appearing in the 2008
7 Official Edition, is hereby amended by adding the following sentence:- The director shall identify an
8 employee of the department who shall work within the department and collaborate with regional planning
9 authorities to provide technical assistance to municipalities with respect to the siting of wind energy
10 facilities.
- 11 SECTION 3. Said section 10 of said chapter 25A, as so appearing, is hereby amended by striking out, in
12 lines 22 and 23, the words “or other local governmental body” and inserting in place thereof the following

13 words:- , other local governmental body or other local governmental bodies acting jointly on a regional
14 basis.

15 SECTION 4. Said section 10 of said chapter 25A, as so appearing, is hereby further amended by inserting
16 after the word “locations”, in lines 27 and 28, the following words:- within the municipality, other local
17 governmental body or other local governmental bodies acting jointly on a regional basis.

18 SECTION 5. Said section 10 of said chapter 25A, as so appearing, is hereby further amended by
19 inserting after the word “municipality”, in lines 29, 42 and 43, each time it appears, the following words:-
20 , other local governmental body or other local governmental bodies acting jointly on a regional basis.

21 SECTION 6. The General Laws are hereby amended by inserting after chapter 25C the following
22 chapter:-

23 CHAPTER 25D.

24 WIND ENERGY PERMITTING

25 Section 1. As used in this chapter, the following words shall, unless the context clearly requires
26 otherwise, have the following meanings:-

27 “Department”, the department of energy resources established in chapter 25A.

28 “Expedited permitting”, the expedited procedure established in section 4 that a person proposing to
29 construct a wind energy facility with a capacity of at least 2 megawatts or related test towers may follow
30 to receive a permit from a host municipality.

31 “Facility”, a wind energy facility.

32 “Host municipality”, a city or town in which a facility is located.

33 “Interested party”, an abutter; abutting municipality; a lawfully established trust, corporation,
34 partnership, sole proprietorship, firm, franchise, association, organization, holding company, joint stock
35 company, receivership, business or real estate trust or any other legal entity organized for profit or
36 charitable purposes that is substantially and specifically affected by a proposed facility; or any group
37 consisting of not fewer than 10 residents of the municipality in which the facility is proposed.

38 “Person”, a natural person, corporation, association, partnership or other legal entity.

39 “Regional planning agency”, an agency with regulatory authority to issue permits, licenses or other
40 governmental approvals for particular land uses within its jurisdiction.

41 “Significant wind resource area”, an area within a municipality with a significant percentage of land that
42 has sufficiently high winds and sufficient regularity to support wind energy facilities of 2 megawatts or
43 more.

44 “Wind energy facility”, a facility including blades, turbines, towers, supports, foundations and any
45 ancillary facilities such as roadways, transmission or distribution lines, substations and any other
46 buildings, structures or equipment whose primary purpose is to support the generation, transmission and
47 delivery of at least 2 megawatts of electricity powered by wind; provided, however, that “wind energy
48 facility” shall not include structures or buildings whose primary purpose is unrelated to the generation,
49 transmission and delivery of electricity powered by wind.

50 “Wind energy permitting board”, a municipal board appointed under section 3 or if no board has been
51 appointed, the planning board in the city or town of the proposed facility.

52 Section 2. The department, in consultation with the regional planning agencies, shall identify
53 municipalities containing a significant wind resource area; provided, however, that prior to a final
54 determination that a municipality contains a significant wind resource area, the department shall hold at
55 least 1 public hearing in the region containing the host municipality and offer a period for public
56 comment. A municipality identified as containing a significant wind resource area shall establish a wind
57 energy permitting board to conduct local permitting of a wind energy facility, within 30 days of receipt of
58 a letter of intent from an applicant seeking to file an application under this chapter. A municipality not
59 identified as containing a significant wind resource area may establish a wind energy permitting board.

60 Section 3. A wind energy permitting board established under section 2 may be composed of 3 or 5
61 members appointed by the city manager in the case of a city under a Plan E form of government, the
62 mayor in the case of all other cities or the board of selectmen in the case of a town. A 3- member board
63 shall consist of 1 member of the zoning board of appeals, 1 representative of the conservation
64 commission, if any, and 1 member of the planning board. A 5- member board shall consist of 2 members
65 of the conservation commission, 1 member from the zoning board of appeals and 2 members from the
66 planning board. The appointing authority shall appoint a chair of the board. If the city manager in the
67 case of a city under a Plan E form of government, the mayor in the case of all other cities, or the board of
68 selectmen in the case of a town determine that it is not feasible to establish a wind energy permitting
69 board, the planning board shall serve as the wind energy permitting board. In such instance, the planning
70 board shall take actions to maximize the opportunity for input from other municipal boards and shall, at a
71 minimum, ensure that the conservation commission, if any, and zoning board of appeals are provided with
72 copies of the application and notices of all public hearings relating to the application.

73 Section 4. (a) A person proposing to construct a wind energy facility with a capacity of at least 2
74 megawatts or related test towers may follow the expedited permitting procedure established in this
75 chapter.

76 (b) A proposal to develop a wind energy facility or related test towers that complies with the standards
77 established in section 69U of chapter 164 shall be eligible for the expedited permitting established in this
78 section and section 69V of said chapter 164. A proposal that does not comply with the standards
79 established in said section 69U of said chapter 164 shall be governed by the procedure established in
80 subsection (g).

81 (c) The project proponent shall file an application with the wind energy permitting board and the clerk of
82 the host municipality in lieu of separate applications to the local boards. The proponent shall also file the
83 application with the clerk of any abutting municipality. The application shall identify all local laws, rules
84 or regulations from which a waiver is sought. Within 60 days of receipt, the chair of the wind energy
85 permitting board, or the chair's designee, shall determine whether the application is complete and inform
86 the proponent of that decision. If the application is incomplete, the proponent shall be allowed 30 days or
87 such longer time as may be mutually agreed upon to complete the application. After the expiration of this
88 period, the proponent may elect to go forward with the information provided, and the procedures and
89 timelines in this section shall apply.

90 (d) The wind energy permitting board shall immediately notify each local board, as applicable, of the
91 filing of an application by sending a copy of the application to the applicable local boards for such
92 board's recommendations and shall, within 60 days of the wind energy permitting board's determination
93 that an application is complete or the expiration of the additional information period described in
94 subsection (c), and in compliance with the notice and publication provisions of section 11 of chapter 40A,
95 hold a public hearing and a written public comment period of at least 45 days on the application. The
96 wind energy permitting board shall request the recommendations of the local boards as it deems necessary
97 or helpful in making its decision upon such application and shall have the same power to issue a permit or
98 other approval as any local board or official who would otherwise act with respect to such application,
99 including, but not limited to: the power to attach conditions to said permit or approval as are consistent
100 with this section and all other laws, rules and regulations.

101 (e) The wind energy permitting board, in making its decision on the application, shall apply all applicable
102 local by-laws and ordinances, including by-laws regulating construction in and around and the
103 disturbance of, wetlands and other environmentally sensitive areas. The wind energy permitting board
104 shall consider the recommendations of the local boards and may assess fees on wind energy facility
105 applicants to retain consultants under section 53G of chapter 44. The board may waive zoning and

106 nonzoning requirements of the municipality's local laws, regulations, policies or other regulatory
107 requirements.

108 (f) The wind energy permitting board shall file with the city or town clerk a written decision, based upon
109 a majority vote of the board, within 120 days of the wind energy permitting board's determination that an
110 application is complete or the expiration of the additional information period described in subsection (c),
111 unless the time period is extended by mutual agreement of the board and the applicant and the agreement
112 is filed with the city or town clerk prior to the expiration of the 120 day period. Failure to file a written
113 decision or extension within the 120 day period shall result in a constructive approval of the application,
114 unless a municipal board has made a timely referral of an application to a regional planning agency under
115 subsection (l).

116 (g) A wind energy facility that does not comply with the standards established under section 69U of
117 chapter 164 shall be governed by subsections (a) to (f), inclusive, except that the deadline for a decision
118 shall be within 180 days of the wind energy permitting board's determination that an application is
119 complete or the expiration of the additional information period described in subsection (c). If the
120 applicant states that the project complies with the standards in said section 69U of said chapter 164, but
121 the wind energy permitting board determines through a vote or interim written decision within the 120
122 day period that the application does not comply with those standards, the deadline for a decision shall be
123 extended so that the deadline is 180 days from the wind energy permitting board's determination that an
124 application is complete or the expiration of the additional information period described in subsection (c),
125 unless a municipal board has made a timely referral of an application to a regional planning agency under
126 subsection (l). Failure to file a written decision or extension within the 180 day period shall result in a
127 constructive approval of the application, unless a municipal board has made a timely referral of an
128 application to a regional planning agency under subsection (l).

129 (h) The wind energy permitting board may assess a community mitigation fee upon the applicant, which
130 shall not exceed a cap established by the department. The cap shall be set so as to ensure that community
131 mitigation fees do not render the project economically non-viable.

132 (i) The applicant shall offer the host municipality, or its designee, the option of entering into a legally
133 enforceable purchase and sale agreement for not more than 10 per cent of the electricity generated on site
134 for use by the host municipality or its designee; provided, however, that the wind energy permitting board
135 may accept other forms of mitigation, including, but not limited to, a purchase and sale agreement for
136 electricity between the applicant and a municipality, a county, a regional planning agency or other
137 regional governmental entity, a municipal electric cooperative or a municipal aggregator of energy. The
138 host municipality may enter into legally enforceable agreements with the applicant for additional
139 mitigation measures.

140 (j) Notwithstanding any general or special law to the contrary, a municipality whose wind energy
141 permitting board has approved an application under this section or municipalities acting jointly on a
142 regional basis, within which at least 1 wind energy permitting board has approved an application under
143 this section, shall be deemed to have met the green community eligibility requirements in clauses (2) and
144 (3) of subsection (c) of section 10 of chapter 25A and if the municipality or municipalities acting jointly
145 on a regional basis seeks a waiver of any of the other eligibility requirements under said subsection (c) of
146 said section 10 of said chapter 25A, the municipality or municipalities acting jointly on a regional basis
147 shall be entitled to a finding that the municipality or municipalities acting jointly on a regional basis has
148 committed to alternative measures that advance the purposes of the green communities program as
149 effectively as adherence to the requirements.

150 (k) If a project proponent proposes a single wind energy facility in more than 1 municipality, the wind
151 energy permitting boards, or planning boards, if applicable, may hold joint hearings in 1 or more
152 municipalities.

153 (l) In areas where regional planning agencies have regulatory authority, a local wind energy permitting
154 board or planning board shall refer an application to the regional planning agency in accordance with the
155 special act establishing the regional planning agency. Prior to the regional planning agency's final
156 determination on the application, the local wind energy permitting board may review and hold public
157 hearings and meetings on the application; provided, however, that no final determination shall be made
158 until the regional planning agency has issued an approval or approval with conditions. Notwithstanding
159 any general or special law to the contrary, in areas where regional planning agencies have regulatory
160 authority, a wind energy permitting board and regional planning agency may hold joint hearings
161 concerning a proposed facility so that both boards may review a project simultaneously.

162 A wind energy permitting board shall file its written decision with the city or town clerk within 60 days of
163 the date on which a regional planning agency issues its final decision of approval or approval with
164 conditions. Failure of the wind energy permitting board to file a written decision or an agreed upon
165 extension within the 60 day period shall result in a constructive approval of the application by the wind
166 energy permitting board. If a regional planning agency denies a development of regional impact permit to
167 a proposed wind energy facility, the wind energy permitting board shall not issue any permits for such a
168 facility and no constructive approval shall result.

169 (m) An interested party who is substantially and specifically aggrieved by a decision of the wind energy
170 permitting board or a regional planning agency granting a permit or permit with conditions to the
171 applicant, or constructively approving such a permit may appeal the decision to the energy facilities siting
172 board and this appeal shall be the exclusive means of review of such decisions of a wind energy
173 permitting board or a regional planning agency. The appeal shall be filed with the energy facilities siting

174 board not later than 30 days after the wind energy permitting board's decision is filed with the city or
175 town clerk or rendered by a regional planning agency and shall be governed by section 69V of chapter
176 164.

177 An appeal of a decision of the wind energy permitting board denying a permit or granting a permit with
178 conditions, brought by the applicant or by any other proponent of a wind energy facility shall be filed
179 with superior court or the permit session of the land court under section 3A of chapter 185 within 30 days
180 of the filing of the decision with the city or town clerk and this appeal shall be the exclusive means of
181 review of such decisions of a wind energy permitting board. The court shall hear all evidence pertinent to
182 the authority of the wind energy permitting board and determine the facts. The court shall annul such
183 decision if it finds that the wind energy permitting board exceeded its authority or make such other
184 decree as justice and equity may require. An appeal brought by the applicant or by any other proponent
185 of a wind energy facility of a decision of a regional planning agency denying a permit or granting a
186 permit with conditions shall be governed by the enabling statute of the applicable regional planning
187 agency and this appeal shall be the exclusive means of review of such decisions of a regional planning
188 agency.

189 (n) The energy facilities siting board, the wind energy permitting board issuing the permit or
190 municipality in which a wind energy project is to be developed may move to revoke any permit or
191 authorization given to a wind energy facility under this chapter if the person or entity holding the permit
192 fails to perform as prescribed by the permit.

193 SECTION 7. Section 69H of chapter 164, as appearing in the 2008 Official Edition, is hereby amended
194 by striking out the first 2 paragraphs and inserting in place thereof the following 2 paragraphs:-

195 There is hereby established an energy facilities siting board within the department, but not under the
196 supervision or control of the department. The board shall implement sections 69H to 69Q, inclusive, so
197 as to provide a reliable energy supply for the commonwealth with a minimum impact on the environment
198 at the lowest possible cost. To accomplish this, the board shall review the need for, cost of and
199 environmental impacts of transmission lines, natural gas pipelines, facilities for the manufacture and
200 storage or gas and oil facilities; provided, however, that the board shall review only the environmental
201 impacts of generating facilities, consistent with the commonwealth's policy of allowing market forces to
202 determine the need for and cost of such facilities. Such reviews shall be conducted consistent with
203 section 69J ¼ for generating facilities and with section 69J for all other facilities. The board shall also
204 implement sections 69U and 69V, so as to provide for the development of clean, renewable, electric
205 generating plants and ancillary facilities powered by wind, sited in appropriate locations based on clear,
206 predictable and protective environmental, cultural and historic resource standards.

207 The board shall be composed of the secretary of energy and environmental affairs, who shall serve as
208 chair, the secretary of housing and economic development, the commissioner of environmental
209 protection, the commissioner of fish and game, the commissioner of energy resources, 2 commissioners
210 of the commonwealth utilities commission, or the designees of any of the foregoing and 4 public
211 members to be appointed by the governor for a term coterminous with that of the governor, 1 of whom
212 shall be experienced in environmental issues, 1 of whom shall be experienced in labor issues, 1 of whom
213 shall be a municipal official with experience in land use planning and 1 of whom shall be experienced in
214 energy issues; provided, however that the commissioner of fish and game and the public member who is a
215 municipal official with experience in land use planning shall only be present and serve as members of the
216 board for the implementation, administration and enforcement of said sections 69U and 69V and shall not
217 be present or serve as members of the board for the implementation, administration and enforcement of
218 sections 69H to 69Q, inclusive. The board shall not include as a public member any person who receives
219 or who has received during the past 2 years a significant portion of such person's income directly or
220 indirectly from the developer of an energy facility or an electric, gas or oil company. The public
221 members shall serve on a part-time basis, receive \$100 per diem of board service and shall be reimbursed
222 by the commonwealth for all reasonable expenses actually and necessarily incurred in the performance of
223 official board duties. Upon the resignation of a public member, a successor shall be appointed in a like
224 manner for the unexpired portion of the member's term. No person shall be appointed to serve more than
225 2 consecutive full terms.

226 SECTION 8. Said chapter 164 is hereby further amended by inserting after section 69S the following 4
227 sections:-

228 Section 69T. As used in sections 69U to 69W, inclusive, the following words shall, unless the context
229 clearly requires otherwise, have the following meanings:-

230 "Expedited permitting", the expedited procedure established in section 69V that a person proposing to
231 construct a wind energy facility with a capacity of at least 2 megawatts may follow to receive a permit
232 from the energy facilities siting board.

233 "Facility", a wind energy facility.

234 "Host municipality", a city or town in which a facility is located.

235 "Interested party", an abutter; abutting municipality; a lawfully established trust, corporation, partnership,
236 sole proprietorship, firm, franchise, association, organization, holding company, joint stock company,
237 receivership, business or real estate trust or any other legal entity organized for profit or charitable
238 purposes that is substantially and specifically affected by a proposed facility; or any group consisting of
239 not fewer than 10 residents of the municipality in which the facility is proposed.

240 “Wind energy facility”, a land based facility including blades, turbines, towers, supports, foundations and
241 any ancillary facilities such as roadways, transmission or distribution lines, substations and any other
242 buildings, structures or equipment whose primary purpose is to support the generation, transmission and
243 delivery of at least 2 but fewer than 100 megawatts of electricity, powered by wind; provided, however,
244 that “wind energy facility” shall not include structures or buildings whose primary purpose is unrelated to
245 the generation, transmission and delivery of electricity powered by wind.

246 “Wind energy permitting board”, a municipal board appointed under section 3 of chapter 25D or if no
247 board has been appointed, the planning board in the city or town of the proposed facility.

248 Section 69U. (a) The energy facilities siting board shall, with the approval of the secretary of energy and
249 environmental affairs, promulgate rules and regulations pursuant to chapter 30A containing standards for
250 the land-based siting, operation and decommissioning of wind energy facilities. A wind energy facility
251 shall not be required to comply with the standards established in this section; provided, however, that a
252 wind energy facility that complies with this section shall be eligible for expedited permitting under
253 section 69V and section 4 of chapter 25D. The siting of offshore wind facilities shall be governed by the
254 integrated ocean management plan established under section 4C of chapter 21A.

255 (b) The standards for wind energy facilities shall include, but not be limited to: (1) lighting; (2)
256 appropriate setbacks from residences to prevent significant sound, health and safety impacts; (3)
257 performance standards and appropriate setbacks to avoid impacts, and to the extent impacts cannot be
258 avoided, to minimize or mitigate impacts to scenic or recreational areas of special federal, state or
259 regional significance, regional cultural facilities, historic resources, properties listed or eligible for listing
260 in the National Register of Historic Places or the state register, priority or estimated habitats for plant and
261 animal species listed in chapter 131A, populations of bird and bat species that are considered by the
262 department of fish and game as being vulnerable to impacts from the operation of wind turbines, large
263 unfragmented habitat blocks, wetland resources or other ecologically sensitive areas subject to protection
264 under federal or state law or as identified by the department of environmental protection, department of
265 conservation and recreation or the department of fish and game; and (4) such other factors as the board
266 determines to be relevant to foster the development of wind energy in a manner that avoids, minimizes or
267 mitigates material adverse environmental impact. Mitigation may include, but not be limited to, the
268 preservation, enhancement, restoration or establishment of resources of greater or equal value to those
269 being impacted, as compensation for unavoidable impacts.

270 The standards may vary from region to region to take into account material differences in the natural
271 resources, available wind resources or other characteristics of regions; provided, however, that all
272 applicable standards shall be at least as protective as existing state environmental statutes and regulations.
273 The standards shall be: (i) based upon best available science; (ii) drafted in consultation with the relevant

274 agencies and the advisory group established in subsection (c); and (iii) reviewed and updated as
275 necessary; provided, however, that the standards shall be updated every 5 years.

276 (c) The energy facilities siting board shall empanel an advisory group to develop recommended standards
277 under the direction of the chair of the board. The advisory group may utilize the resources and staff of the
278 energy facilities siting board. The advisory group shall include the commissioner of conservation and
279 recreation, the chair of the Massachusetts historical commission, the commissioner of public safety and
280 the commissioner of public health, or their designees. The advisory group shall also include the
281 following individuals to be appointed by the governor: a representative of the wind energy industry; a
282 representative of the electric transmission and distribution industry; 2 representatives from non-profit
283 environmental organizations with experience in wind energy facility siting policy, 1 of whom shall
284 represent a land and water conservation organization; 1 representative of the Berkshire regional planning
285 commission; 1 representative of the Berkshire natural resources council; 1 representative from the
286 metropolitan area planning council; 1 representative of southeastern regional planning and economic
287 development district; 1 representative of the Franklin regional council of governments; 1 representative
288 from the Cape Cod commission; 1 representative from the Martha's Vineyard commission; 1
289 representative from the Nantucket planning and economic development commission; 1 municipal official
290 with experience in energy siting drawn from a list of not fewer than 3 candidates prepared by the
291 Massachusetts Municipal Association; provided, however, that the same municipal official may not serve
292 on the energy facilities siting board and the advisory group established in this subsection; a scientist who
293 is an expert in ecology and conservation; a scientist or engineer who is an expert in wind energy; a public
294 health official with expertise in audiology; and not more than 2 other representatives, appointed by the
295 chair, as the chair deems advisable. Prior to submitting the recommended standards to the energy
296 facilities siting board, the advisory group shall hold not less than 2 regional public hearings to solicit
297 public comments. Prior to adopting the rules and regulations, the energy facilities siting board shall hold a
298 public hearing and follow the additional procedures established in section 2 of chapter 30A.

299 Section 69V. (a) A person proposing to construct a wind energy facility with a capacity of at least 2
300 megawatts or related test towers may follow the expedited permitting procedures established in this
301 section.

302 (b) A proposal to develop a wind energy facility or related test towers that complies with the standards
303 established under section 69U shall be eligible for the expedited permitting procedures established in this
304 section and section 4 of chapter 25D.

305 (c) After a wind energy permitting board or planning board authorized under section 3 of chapter 25D
306 files a written decision with the city or town clerk, or constructive approval results under subsection (f) of
307 section 4 of chapter 25D, the project applicant may file an application with the energy facilities siting

308 board, together with such supporting materials as are necessary to demonstrate that the facility complies
309 with the standards established in section 69U.

310 The application shall include, in such form and detail as the energy facilities siting board shall from time
311 to time prescribe, the following information: (i) a description of the proposed wind energy generating
312 facility, including any ancillary structures and related facilities; (ii) a description of the project's positive
313 and negative environmental impacts; (iii) a statement of whether the project complies with the standards
314 established in section 69U and if it does not, a listing of the standards for which the project does not
315 comply and an explanation as to why compliance is not practicable; (iv) a complete list of state agency
316 permits that would otherwise be needed for the facility; and (v) any other information requested by the
317 energy facilities siting board. The applicant shall simultaneously file a notice of the application with the
318 wind energy permitting board or planning board established in chapter 25D, any state or regional agencies
319 that have permitting authority over the proposed facility, abutters to the site of the facility and the office
320 of the Massachusetts Environmental Policy Act, which shall publish the notice, as soon as possible, in the
321 Environmental Monitor.

322 Within 45 days of receipt of the application, the energy facilities siting board shall review the application,
323 notify all relevant permitting agencies and inform the applicant in writing whether the application is
324 complete. The applicant shall make the full application readily available to all relevant agencies and
325 municipalities and the energy facilities siting board shall establish a procedure to ensure that the
326 application and supporting materials are available for timely local and statewide public access, including
327 electronic access.

328 (d) Within 60 days of the energy facilities siting board notifying the applicant that the application is
329 complete, a hearing officer of the energy facilities siting board shall take written public comment and
330 hold a non-adjudicatory public hearing to take oral comment on the application. The hearing shall be held
331 in the host community or, if no appropriate locations are available in a host community, in the nearest
332 available appropriate location. The hearing officer shall allow at least 45 days from the energy facilities
333 siting board determination that the application is complete for public comments to be submitted.

334 Based on the comments that are submitted, if the hearing officer determines that there are genuine
335 disputes of material fact as to whether the facility meets the standards, the hearing officer shall schedule
336 at least 1 evidentiary hearing for the limited purpose of taking further evidence upon the issues for which
337 there is a genuine dispute of material fact. If there is a factual dispute between the applicant and a state
338 agency regarding matters within the state agency's regulatory authority, an evidentiary hearing shall be
339 held as to that dispute at the request of the applicant or the state agency. Evidence may be presented at
340 such hearing by the applicant, the municipality in which the proposed facility is located, state permit
341 granting authorities and by any interested party; provided, however, that such party submitted comments

342 during the initial public comment period described in this section. The evidentiary hearing shall be
343 completed on or before 90 days following the close of the initial public comment period. The evidentiary
344 hearing shall include written or oral testimony under oath, the opportunity for cross-examination and the
345 compilation of a record of admissible evidence; provided, however, that the hearing officer and the
346 energy facilities siting board shall not be subject to paragraph (7) of section 11 of chapter 30A.

347 (e) State permit granting agencies shall file, and any other state agency, as defined in section 1 of chapter
348 29, may file, written comments with the hearing officer during the initial 45 day public comment period
349 to assist the energy facilities siting board in determining whether the standards have been met and may
350 include recommended conditions within each agency's regulatory purview.

351 (f) Within 60 days of the close of the public hearing or evidentiary hearings, if scheduled, the energy
352 facilities siting board shall determine, in writing, whether the proposed facility meets the standards. If the
353 energy facilities siting board finds that the proposed facility meets the standards, it shall approve the
354 facility and may impose conditions to its approval. The energy facilities siting board shall, to the
355 maximum extent practicable, adopt conditions recommended: (i) by state environmental agencies
356 regarding issues within their permitting authority; (ii) by state environmental agencies with respect to
357 biological resources identified under section 69U, but not within their permitting authority; (iii) by any
358 other state agency, as defined in section 1 of chapter 29; or (iv) by host municipalities or their constituent
359 boards or regional planning agencies with regulatory authority. The energy facilities siting board shall
360 explain the reasons for not including any such conditions in its written decision.

361 (g)(1) If the energy facilities siting board finds that the facility does not meet the siting standards, it may
362 hold additional hearings to obtain additional evidence from both the applicant and interested parties, if
363 necessary, and approve the facility and impose conditions to its approval if it finds that:

364 (A) the facility has complied to the maximum extent practicable with the siting standards established in
365 section 69U;

366 (B) the facility has mitigated the impact arising out of the non-compliance with the siting standards; and

367 (C) the benefits of the facility outweigh the detriments.

368 (2) To determine whether the benefits of the facility outweigh the detriments, the energy facilities siting
369 board shall take into account:

370 (A) benefits, including, but not limited to:

371 (i) the avoidance or reduction of greenhouse gases and other pollutants;

372 (ii) energy reliability;

373 (iii) security and diversification; and

374 (iv) public ownership of the facility or reduction of electric rates to the community that will be affected by
375 the facility; and

376 (B) detriments, including, but not limited to the impact on:

377 (i) ecologically sensitive areas;

378 (ii) large unfragmented habitat blocks;

379 (iii) priority or estimated habitats for all plant and animal species listed under chapter 131A;

380 (iv) populations of bird and bat species considered by the department of fish and game to be vulnerable to
381 impacts from the operation of wind turbines;

382 (v) historic, cultural or scenic or recreational areas of special federal or state significance;

383 (vi) noise; and

384 (vii) public safety.

385 (3) If the energy facilities siting board finds that the facility meets the standards in this subsection, it may
386 approve the facility and may impose conditions to its approval.

387 (4) A decision under this subsection shall be issued not later than 275 days after the energy facilities siting
388 board determines in writing that the application is complete, if no evidentiary hearings are held, or within
389 365 days after such determination if evidentiary hearings are held.

390 (h) The construction, maintenance and operation of a facility which receives an approval under this
391 chapter shall conform with such approval and any terms and conditions contained in such approval.
392 Notwithstanding any general or special law to the contrary, if the energy facilities siting board issues an
393 approval under this section, no state agency shall require any approval, consent, permit, certificate or
394 condition for the construction, operation or maintenance of the facility for which the approval is issued
395 and no state agency shall impose or enforce any law, ordinance, by-law, rule or regulation, nor take any
396 action, nor fail to take any action which would delay or prevent the construction, operation or
397 maintenance of such facility; provided, however, that the energy facilities siting board shall not issue an
398 approval the effect of which would be to grant or modify a permit, approval or authorization which, if so
399 granted or modified by the appropriate state agency, would be invalid because of a conflict with
400 applicable federal water, air, historic or threatened and endangered species standards or requirements. The
401 approval, if issued, shall be in the form of a composite of all state individual permits, approvals or
402 authorizations which would otherwise be necessary for the construction and operation of the facility and

403 that portion of the approval which relates to subject matters within the jurisdiction of a state agency shall
404 be enforced by said agency under the other applicable laws of the commonwealth as if it had been directly
405 granted by the agency.

406 (i) The energy facilities siting board shall combine the review and approval process under this section
407 with any additional review of a local wind energy permitting board decision approving, approving with
408 conditions or constructively approving an application if such an appeal is brought by a person or entity
409 other than the applicant under subsection (m) of section 4 of chapter 25D. If the energy facilities siting
410 board approves the facility under section (f) or (g), it shall affirm the decision of the wind energy
411 permitting board, but may strengthen conditions imposed by the wind energy permitting board or impose
412 additional conditions upon the approval to address claims brought by the party seeking additional review
413 of the wind energy permitting board's decision.

414 (j) An application filed by a person proposing to construct a wind energy facility that does not comply
415 with the standards established under section 69U shall also be governed by subsections (d) to (g),
416 inclusive; provided that:

417 (1) the hearing officer shall hold a public hearing and close the public comment period within 120 days
418 from the date that the energy facilities siting board determines that the application is complete;

419 (2) the hearing officer shall hold evidentiary hearings as needed to resolve genuine disputes of material
420 facts within 240 days from the date the energy facilities siting board determines that the application is
421 complete; and

422 (3) the energy facilities siting board shall issue a decision within 120 days of the close of the public
423 comment period or evidentiary hearing.

424 (k) Approval by the energy facilities siting board under this section shall not authorize the applicant to
425 begin construction until the applicant obtains a building permit.

426 (l) The regulations promulgated under section 69U shall include clear and concise application
427 requirements including, but not limited to, pre-application survey requirements developed by the energy
428 facilities siting board in consultation with the department of fish and game and the department of
429 environmental protection and may provide for pre-application consultation and site visits. No application
430 shall be considered complete until surveys, if required, are determined by the department of fish and game
431 or the department of environmental protection to be complete. Sufficient data shall be required from the
432 applicant by these regulations to enable the energy facilities siting board to determine whether the facility
433 meets the standards established under section 69U and if it does not, whether it meets the standards set
434 forth in subsection (g).

435 (m) The energy facilities siting board shall promulgate rules and regulations governing the procedures for
436 permitting under this section and appeals brought under chapter 25D. The rules and regulations shall also
437 provide for a reasonable fee for wind energy facility applications subject to this section to defray the
438 energy facilities siting board's reasonable costs of processing the application; a fee set under such rules
439 and regulations may be adjusted according to project size or other objective criteria. The rules and
440 regulations shall also ensure that a reasonable portion of the application fee charged shall be allocated to
441 state agencies that would otherwise be issuing permits for the facility under a fee schedule to be adopted
442 concurrently with the rules and regulations. The energy facilities siting board may retain the fees for the
443 purpose of reviewing applications to construct wind energy facilities. Any remaining balance of the fees
444 at the end of a fiscal year shall not revert to the General Fund, but instead shall be available to the energy
445 facilities siting board during the following fiscal year for the purposes set forth in sections 69U to 69X,
446 inclusive. Nothing in this section shall change the level or use of siting fees for any other type of facility
447 subject to section 69J ½ of this chapter.

448 (n) Any interested party aggrieved by a decision of the energy facilities siting board under this section
449 shall have a right to judicial review in the manner provided by section 5 of chapter 25. The scope of such
450 judicial review shall be limited to whether the decision of the energy facilities siting board conforms with
451 the constitutions of the commonwealth and the United States, was made in accordance with the
452 procedures and application of standards established under sections 69U and 69V, and with the rules and
453 regulations of the board with respect to such sections, was supported by substantial evidence in the record
454 of the board's proceedings and was arbitrary, capricious or an abuse of the board's discretion.

455 (o) This section shall not be deemed to exempt wind energy facilities from sections 61 and 62A to 62I,
456 inclusive, of chapter 30.

457 Section 69W. Sections 69U and 69V shall not preclude or obligate an applicant for a facility from seeking
458 and obtaining board approvals and certificates under sections 69K to 69O ½, inclusive.

459 SECTION 9. Section 138 of said chapter 164 , as appearing in the 2008 Official Edition, is hereby
460 amended by striking out, in lines 39 and 40 and 57 and 58, the words "owned or operated by a customer
461 which is" and inserting in place thereof, in each instance, the following word:- of.

462 SECTION 10. Said section 138 of said chapter 164, as so appearing, is hereby further amended by
463 striking out, in line 48, the words "if a customer is" and inserting in place thereof the following words:-
464 for a Class III net metering facility of.

465 SECTION 11. Said section 138 of said chapter 164, as so appearing, is hereby further amended by
466 inserting after the definition of "Net metering" the following definition:-

467 “Net metering facility of a municipality or other governmental entity”, a Class II or III net metering
468 facility: (1) that is owned or operated by a municipality or other governmental entity; or (2) of which the
469 municipality or other governmental entity is assigned 100 per cent of the output.

470 SECTION 12. Section 139 of said chapter 164, as so appearing, is hereby amended by striking out in
471 lines 9, 11 and 13 and 14, the words “wind or solar”.

472 SECTION 13. Subsection (f) of said section 139 of said chapter 164, as so appearing, is hereby amended
473 by striking out the first sentence and inserting in place thereof the following 3 sentences:- The aggregate
474 net metering capacity of facilities that are not net metering facilities of a municipality or other
475 governmental entity shall not exceed 1 per cent of the distribution company’s peak load. The aggregate
476 net metering capacity of net metering facilities of a municipality or other governmental entity shall not
477 exceed 2 per cent of the distribution company’s peak load. The maximum amount of generating capacity
478 eligible for net metering by a municipality or other governmental entity shall be 10 megawatts.

479 SECTION 14. Said section 139 of said chapter 164, as so appearing, is hereby further amended by
480 inserting after the word “section”, in line 74, the following words:- , including adoption of a system that
481 provides proposed net metering facilities of a municipality or other governmental entity an assurance of
482 net metering eligibility at the time the facilities meet criteria established by the department. Nothing in
483 this subsection shall limit the department’s authority to adopt rules and regulations relating to other
484 proposed net metering facilities.

485 SECTION 15. Notwithstanding any general or special law to the contrary, the energy facilities siting
486 board shall promulgate rules and regulations under sections 69U and 69V of chapter 164 of the General
487 Laws on or before March 1, 2011.

488 SECTION 16. Notwithstanding any general or special law to the contrary, no application may be
489 submitted to or reviewed through the streamlined permitting process established in this act until all
490 necessary rules and regulations are promulgated.

491 SECTION 17. The department of energy resources shall notify each municipality with a significant wind
492 resource area, as determined by the department, within 30 days of the effective date of this act of the
493 terms and provisions of this act.

494 SECTION 18. Notwithstanding any general or special law to the contrary, nothing in this act shall be
495 construed to allow the permitting process contained in chapter 25D of the General Laws or sections 69U
496 to 69W, inclusive, of chapter 164 of the General Laws to apply to land that is under protection pursuant to
497 Article XLIX, as appearing in Article XCVII of the Amendments to the Constitution of the
498 Commonwealth.