

## Senate, No. 2206

[Senate, November 16, 2009 – New draft of Senate, No. 1504 reported by the committee on Telecommunications, Utilities and Energy]



## The Commonwealth of Massachusetts

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IN THE YEAR OF TWO THOUSAND AND NINE

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### **AN ACT** RELATIVE TO COMPREHENSIVE WIND ENERGY SITING REFORM

*Whereas*, The deferred operation for this act would tend to defeat its purpose, which is forthwith to make that the General Court finds that locating wind energy facilities within the commonwealth is an essential public purpose, as this will create jobs and foster technical expertise in the clean energy sector as mandated by the Green Jobs Act, reduce the emissions of pollutants, including greenhouse gases as mandated by the Global Warming Solutions Act, diversify energy supply and reduce dependence on fossil fuels, and assist electric distribution companies in meeting their renewable energy portfolio obligations as mandated by the Green Communities Act; The General Court further finds that existing state and local procedures hinder the siting of wind energy facilities, and that it is necessary to establish 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 entitled the “Wind Energy Siting Reform Act”, and shall be
- 2 construed in a manner to achieve its public purposes, which are to encourage the development of clean,
- 3 renewable, electric generating plants and ancillary facilities powered by wind, ensure that such facilities
- 4 are sited in appropriate locations based on clear, predictable, and protective environmental, cultural and
- 5 historic resource standards, and streamline the permitting of such facilities at the state and local level and

6 reduce delays associated with appeals of such permits. No application may be submitted to or reviewed  
7 through the streamlined permitting process established in this Act until all necessary regulations are  
8 promulgated.

9 SECTION 2. Section 10 of chapter 25A of the General Laws, as amended by section 22 of  
10 chapter 169 of the Acts of 2008, is hereby amended by adding the following subsection:-

11 (g) The department shall have a full-time employee who shall work within the division and  
12 collaborate with regional planning authorities to provide technical assistance to municipalities with  
13 respect to the siting of wind energy facilities.

14 SECTION 3. Section 69H of chapter 164 of the General Laws, as appearing in the 2007 Official  
15 Edition, is hereby amended by inserting after the words “2 commissioners of the commonwealth utilities  
16 commission” the following words:- the commissioner of the department of fish and game,

17 SECTION 4. Said section 69H of said chapter 164, as so appearing, is hereby further amended  
18 by striking out the words “3 public members” and inserting in place thereof the following:- 4 public  
19 members,

20 SECTION 5. Said section 69H of said chapter 164, as so appearing, is hereby further amended  
21 by inserting after the words “energy issues” the following:- , one of whom shall be a municipal official  
22 with experience in land use planning,

23 SECTION 6. Chapter 164 of the General Laws, as so appearing, is hereby amended by adding  
24 after section 69S the following three new sections:-

25 Section 69T. The department of public utilities shall establish a division of wind energy facility  
26 siting, with adequate staff, and appoint a director of that division who shall be responsible for ensuring  
27 that the standards established in section 69U of this chapter are timely issued, and that the procedures for  
28 the siting of wind energy facilities established in section 69V result in timely and predictable permitting  
29 decisions that uphold the intent of this chapter.

30 Section 69U. No later than nine months after the effective date of this act, the energy facilities  
31 siting board shall, with the approval of the secretary of the executive office of energy and environmental

32 affairs, promulgate regulations containing standards for the siting, operation, and decommissioning of  
33 electric generating plants and ancillary facilities thereto that are: (1) powered by wind energy and (b) have  
34 the capacity to generate two or more megawatts of electricity. The standards shall be established for wind  
35 energy facilities that are sited on land. Facilities are not required to comply with such standards, but  
36 compliant facilities shall be eligible for state agency fast-track permitting pursuant to section 69V of this  
37 chapter and municipal fast-track permitting pursuant to chapter 40T. The siting of offshore wind facilities  
38 shall be governed by the integrated ocean management plan established pursuant to section 4C of chapter  
39 21A.

40           The standards for wind energy facilities sited on land shall include, but not be limited to, the  
41 following: lighting; appropriate setbacks from residences to prevent or minimize to the maximum extent  
42 practicable sound and health and safety impacts; performance standards to avoid impacts, and to the  
43 extent impacts cannot be avoided, to minimize and mitigate impacts to scenic or recreational areas of  
44 special federal or state significance, regional cultural facilities, historic resources, priority or estimated  
45 habitats for plant and animal species listed pursuant to chapter 131A, populations of bird and bat species  
46 that are considered by the department of fish and game as being vulnerable to impacts from the operation  
47 of wind turbines, large unfragmented habitat blocks, wetland resources or other ecologically sensitive  
48 areas subject to protection under federal or state law and/or as identified by the department of  
49 environmental protection, department of conservation and recreation, or the department of fish and game;  
50 and such other factors as the board determines to be relevant to foster the development of wind energy in  
51 a manner that avoids, minimizes and mitigates material adverse environmental impact. Mitigation may  
52 include, but is not limited to, the preservation, enhancement, restoration or establishment of resources of  
53 greater or equal value to those being impacted, as compensation for unavoidable impacts. The standards  
54 may vary from region to region to take into account material differences in the natural resources,  
55 available wind resources, or other characteristics of regions, provided that all applicable standards shall be  
56 at least as protective as existing state environmental statutes and regulations. The standards shall be based

57 upon best available science, be drafted in consultation with the relevant agencies and the advisory group  
58 described below, and shall be reviewed and updated as necessary, but not less than once every 5 years.

59         The energy facilities siting board shall empanel an advisory group to develop the standards. The  
60 advisory group shall include the secretary of energy and environmental affairs who shall serve as chair,  
61 the commissioner of the department of energy resources, a commissioner of the department of public  
62 utilities, the commissioner of the department of environmental protection, the commissioner of the  
63 department of conservation and recreation, the commissioner of the department of fish and game, the  
64 commissioner of the department of public safety, the commissioner of the department of public health, the  
65 secretary of the executive office of housing and economic development, or the designees of any of the  
66 foregoing from their respective staffs. The advisory group shall also include the following individuals to  
67 be selected by the secretary of the executive office of energy and environmental affairs: a representative  
68 of the wind energy industry, a representative of the electric transmission and distribution industry, two  
69 representatives from non-profit environmental organizations with experience in wind energy facility  
70 siting policy, of whom one shall represent a land and water conservation organization, a representative of  
71 the Berkshire Regional Planning Commission, a representative of the Berkshire Natural Resources  
72 Council, a representative from the Cape Cod Commission, a representative from the Martha's Vineyard  
73 Commission, a representative from the Nantucket Planning and Economic Development Council, a  
74 municipal official with experience in wind energy facility siting drawn from a list of not fewer than three  
75 candidates prepared by the Massachusetts municipal association, and up to two other representatives as  
76 the secretary deems advisable. Prior to submitting the standards to the board, the advisory group shall  
77 hold not less than 2 regional public hearings for the purpose of soliciting public comments. Prior to  
78 adopting the regulations, the board shall hold a public hearing and follow the additional procedures set  
79 forth in section 2 of chapter 30A.

80         Section 69V.

81         (a)Notwithstanding any general or special law to the contrary, any person who proposes to  
82 construct a wind energy facility with a capacity of 2 or more megawatts may elect to follow the

83 procedures established by this section and sections 69T and 69U of this chapter. As used in this section,  
84 the term “wind energy facility” or “the facility” includes blades, turbines, towers, supports, foundations,  
85 and any ancillary facilities such as roadways, transmission or distribution lines, substations, and any other  
86 buildings, structures or equipment whose primary purpose is to support the generation and delivery of  
87 electricity powered by wind.

88 (b)A proposal to develop a wind energy facility that complies with the standards established  
89 pursuant to section 69U shall be eligible for the fast-track permitting procedures set forth in this section  
90 and section 3 of chapter 40T.

91 (c)After a municipal wind energy board or planning board authorized under section 1 or 2 of  
92 chapter 40T files a written decision with the city or town clerk, or constructive approval results pursuant  
93 to section 3(f) of chapter 40T, the project applicant may file an application with the energy facilities siting  
94 board, together with such supporting materials as are necessary to demonstrate that the facility complies  
95 with the standards. The application shall include, in such form and detail as the energy facilities siting  
96 board shall from time to time prescribe, the following information: (i) a description of the proposed wind  
97 energy generating facility, including any ancillary structures and related facilities; (ii) a description of the  
98 project’s environmental impacts, both positive and negative, (iii) a statement of whether the project  
99 complies with the standards established under section 69U, and if it does not, a listing of the standards for  
100 which the project does not comply and an explanation as to why compliance is not practicable; (iv) a  
101 complete list of state agency permits that would otherwise be needed for the facility; (v) any other  
102 information requested by the board. The applicant shall simultaneously file a notice of the application  
103 with the municipal wind energy permitting board or planning board established pursuant to chapter 40T,  
104 any state or regional agencies that have permitting authority, abutters to the site of the facility, and the  
105 office of the Massachusetts Environmental Policy Act, which shall publish the notice in the  
106 Environmental Monitor. Within 45 days of receipt of the application, board staff shall review the  
107 application, notify all relevant permitting agencies, and inform the applicant in writing whether the  
108 application is complete. The applicant shall make the full application readily available to all relevant

109 agencies and municipalities, and the board shall establish a procedure to ensure that the application and  
110 supporting materials are available for timely local and statewide public access, including but limited to,  
111 electronically.

112 (d) Within 2 months of the issuance of a determination that the application is complete, a hearing  
113 officer of the energy facilities siting board shall take written public comment and hold a non-adjudicatory  
114 public hearing to take oral comment on the application. The hearing shall be held in the host community  
115 or in a nearby community. The hearing officer shall allow not less than 45 days from the determination of  
116 a complete application for public comments to be submitted. Based on the comments that are submitted,  
117 if the hearing officer determines that there are genuine disputes of material fact as to whether the facility  
118 meets the standards, the hearing officer shall schedule one or more evidentiary hearings for the limited  
119 purpose of taking further evidence upon the issues for which there is a genuine dispute of material fact.  
120 In any instance in which there is a factual dispute between the applicant and a state agency regarding  
121 matters within the state agency's regulatory authority, an evidentiary hearing shall be held as to that  
122 dispute at the request of the applicant or the state agency. Evidence may be presented at such hearing by  
123 the applicant, the municipality in which the proposed facility is located, and state permit granting  
124 authorities, and by any entity or person from the following list, provided such entity or person submitted  
125 comments during the initial public comment period described here in: an abutter, an abutting  
126 municipality, a lawfully established trust, corporation, or other incorporated organization or person who  
127 is substantially and specifically affected by the proceeding, or any group consisting of not fewer than ten  
128 residents of the municipality in which the facility is proposed. Each such party presenting evidence shall  
129 be deemed to be a party in interest for the purposes of subsection (m) of this section. The evidentiary  
130 hearing shall be completed no later than 3 months following the close of the initial public comment  
131 period. The evidentiary hearing shall include written or oral testimony under oath, the opportunity for  
132 cross-examination, and the compilation of a record of admissible evidence, but the hearing officer and the  
133 board shall not be bound by the provisions of paragraph 7 of section 11 of chapter 30A.

134 (e) State permit granting agencies shall file written comments with the hearing officer during the  
135 initial 2 month public comment period. The written comments from the agencies shall assist the board in  
136 determining whether the standards have been met, and shall include recommended conditions within each  
137 agency's regulatory purview.

138 (f) Within 2 months of the close of the public hearing or evidentiary hearings if scheduled, the  
139 board shall render a written decision on whether the proposed facility meets the standards.  
140 Notwithstanding the provisions of any other law to the contrary, if the board finds that the proposed  
141 facility meets the standards, it shall approve the facility, and may impose conditions to its approval.  
142 Conditions recommended by state environmental agencies with respect to issues within their permitting  
143 authority under state law, by state environmental agencies with respect to biological resources identified  
144 under section 69U but not within their permitting authority under existing state law, or conditions  
145 recommended by host municipalities or their constituent boards or regional planning agencies with  
146 regulatory authority, shall be adopted to the maximum extent practicable, and the board shall explain the  
147 reasons for not including any such conditions in its written decision.

148 (g) Should the board find that the facility does not meet the siting standards, it may hold  
149 additional hearings to take additional evidence from both the applicant and interested parties, if necessary,  
150 and, notwithstanding the provisions of any other law to the contrary, approve the facility and impose  
151 conditions to its approval if it finds that the facility has complied to the maximum practicable extent with  
152 the siting standards established under section 69U, that the facility has mitigated the impact arising out of  
153 the non-compliance with the siting standards, and the benefits of the facility outweigh the detriments,  
154 taking into account benefits including but not limited to the avoidance or reduction of greenhouse gases  
155 and other pollutants, energy reliability, security and diversification, public ownership of the facility or  
156 reduction of electric rates to the local community that will be affected by the facility, and detriments  
157 including but not limited to the impact on ecologically sensitive areas, large unfragmented habitat blocks,  
158 priority or estimated habitats for plant and animal species listed pursuant to chapter 131A, populations of  
159 bird and bat species that are considered by the department of fish and game as being vulnerable to impacts

160 from the operation of wind turbines, historic, cultural, or scenic or recreational areas of special federal or  
161 state significance, noise and public safety. Notwithstanding the provisions of any other law to the  
162 contrary, if the board finds that the facility meets the standards in this paragraph, it may approve the  
163 facility, and may impose conditions to its approval. A decision under this subparagraph shall be issued no  
164 later than 9 months after the written determination of a complete application, if no evidentiary hearings  
165 are held, or within 12 months if evidentiary hearings are held. Conditions recommended by state  
166 environmental agencies with respect to issues within their permitting authority under state law, by state  
167 environmental agencies with respect to biological resources identified under section 69U but not within  
168 their permitting authority under existing state law, or conditions recommended by host municipalities or  
169 their constituent boards, shall be adopted to the maximum extent practicable, and the board shall explain  
170 the reasons for not including any such conditions in its written decision.

171 (h) Any facility which receives an approval under this chapter shall thereafter be constructed,  
172 maintained, and operated in conformity with such approval and any terms and conditions contained  
173 therein. Notwithstanding the provisions of any other law to the contrary, if the board issues an approval  
174 under this section, no state agency shall require any approval, consent, permit, certificate or condition for  
175 the construction, operation or maintenance of the facility with respect to which the approval is issued and  
176 no state agency shall impose or enforce any law, ordinance, by-law, rule or regulation nor take any action  
177 nor fail to take any action which would delay or prevent the construction, operation or maintenance of  
178 such facility; provided, however, that the board shall not issue an approval the effect of which would be to  
179 grant or modify a permit, approval or authorization which, if so granted or modified by the appropriate  
180 state agency, would be invalid because of a conflict with applicable federal water, air, historic, or  
181 threatened and endangered species standards or requirements. The approval, if issued, shall be in the form  
182 of a composite of all state individual permits, approvals or authorizations which would otherwise be  
183 necessary for the construction and operation of the facility and that portion of the approval which relates  
184 to subject matters within the jurisdiction of a state agency shall be enforced by said agency under the  
185 other applicable laws of the commonwealth as if it had been directly granted by the said agency.

186 Notwithstanding the foregoing, section 69V shall not be deemed to exempt wind energy facilities from  
187 sections 61, and 62A through 62I of chapter 30.

188 (i) The board shall combine the review and approval process under this section with any  
189 additional review of a local wind energy permitting board decision approving, approving with conditions,  
190 or constructively approving an application, provided such an appeal is brought by a person or entity other  
191 than the applicant pursuant to subsection 1 of section 3 of chapter 40T. If the board approves the facility  
192 pursuant to sections (f) or (g), it shall affirm the decision of the wind energy permitting board, but may  
193 modify conditions or impose additional conditions upon the approval to address claims brought by the  
194 party seeking additional review of the wind energy permitting board decision.

195 (j) An application filed by a person proposing to construct a wind energy facility that does not  
196 comply with the standards shall be governed by the same procedures as above, except that: (a) the hearing  
197 officer shall hold a public hearing and close the public comment period within four months from the date  
198 of determination of a complete application; (b) the hearing officer shall hold evidentiary hearings as  
199 needed to resolve genuine disputes of material facts within eight month from the date of determination of  
200 a complete application; and (c) the board shall issue a decision within 4 months of the close of the public  
201 comment period or evidentiary hearing. The board shall issue an approval if it finds that the facility  
202 meets the standards set forth in subsection (g) of this section. Conditions recommended by state  
203 environmental agencies with respect to issues within their permitting authority under state law, by state  
204 environmental agencies with respect to biological resources identified under section 69U but not within  
205 their permitting authority under existing state law, or conditions recommended by host municipalities or  
206 their constituent boards, or regional planning agencies with regulatory authority, shall be adopted to the  
207 maximum extent practicable, and the board shall explain the reasons for not including any such conditions  
208 in its written decision.

209 (k) No later than 9 months after the effective date of this act, the energy facilities siting board  
210 shall promulgate regulations governing the procedures for permitting under this section and appeals  
211 brought pursuant to chapter 40T. The regulations shall include clear and concise application

212 requirements, including but not limited to pre-application survey requirements developed by the board in  
213 consultation with the department of fish and game and the department of environmental protection, and  
214 may provide for pre-application consultation and site visits. No application shall be considered complete  
215 until surveys, if required, are determined by the department of fish and game or the department of  
216 environmental protection to be complete. Sufficient data shall be required from the applicant by these  
217 regulations to enable the board to determine whether the facility meets the standards under section 69U,  
218 and if it does not, whether it meets the standards set forth in subsection (g), provided, however, that these  
219 regulations shall not require any data related to the necessity or cost of the proposed generating facility,  
220 except for data related to the costs or economic feasibility associated with the mitigation, control, or  
221 reduction of the environmental impacts of the proposed generating facility, so that the board can make an  
222 informed determination as to the ability of the applicant to afford to comply with conditions imposed at  
223 the local or state level.

224 (l) The regulations shall also provide for a reasonable application fee for wind energy facilities  
225 subject to this section to defray the board's reasonable costs of processing the application; a fee set under  
226 such regulations may be adjusted according to project size or other objective criteria. The regulations  
227 shall also ensure that a reasonable portion of the fee charged under this section shall be allocated to state  
228 agencies that would otherwise be issuing permits for the facility in accordance with a fee schedule to be  
229 adopted concurrently with the regulations. The board may retain said fees for the purpose of reviewing  
230 applications to construct wind energy facilities. Any remaining balances of said fees at the end of a fiscal  
231 year shall not revert to the General Fund, but instead shall be available to the board during the following  
232 fiscal year for the purposes provided herein. Nothing in this section shall change the level or use of siting  
233 fees for any other type of facility subject to section 69J ½ of this chapter.

234 (m) Any party in interest aggrieved by a decision of the board under this section shall have a  
235 right to judicial review in the manner provided by section 5 of chapter 25. The scope of such judicial  
236 review shall be limited to whether the decision of the board is in conformity with the constitution of the  
237 commonwealth and the constitution of the United States, was made in accordance with the procedures and

238 application of standards established under sections 69U and 69V, and with the rules and regulations of the  
239 board with respect to such provisions, was supported by substantial evidence in the record of the board's  
240 proceedings; and was arbitrary, capricious or an abuse of the board's discretion.

241 Section 69W: Sections 69U and 69V shall not preclude, or obligate an applicant for a "facility" as  
242 defined in section 69G of this chapter from seeking and obtaining board approvals and certificates  
243 pursuant to sections 69K through 69O ½ in lieu of proceeding under sections 69U and 69V.

244 Section 69X: Sections 69T through 69W shall not apply to lands that are under protection  
245 pursuant to Article XLIX, as appearing in Article XCVII, of the Amendments to the Constitution of the  
246 Commonwealth (Article 97).

247 SECTION 7. The General Laws are hereby amended by adding after Chapter 40S, as so appearing in the  
248 2006 Official Edition, the following new chapter:-

249 Chapter 40T: Wind Energy Permitting

250 Section 1. A municipality with significant wind resource areas as determined by the department  
251 of energy resources, in consultation with the Massachusetts municipal association and applicable regional  
252 planning authorities, shall establish a wind energy permitting board to conduct local permitting of a wind  
253 energy facility, within 30 days of receipt of a letter of intent from an applicant seeking to file an  
254 application pursuant to this chapter. As used in this chapter, the term "wind energy facility" or "the  
255 facility" includes blades, turbines, towers, supports, foundations and any ancillary facilities such as  
256 roadways, transmission or distribution lines, substations, and any other buildings, structures or equipment  
257 whose primary purpose is to support the generation and delivery of electricity powered by wind. In all  
258 other municipalities, the municipality's planning board shall implement the provisions of this chapter.

259 Section 2. In the case of towns, the board of selectmen, and in the case of cities, the mayor, shall  
260 establish and appoint the wind energy permitting board, to be composed of either 3 or 5 members, at the  
261 discretion of the board of selectmen or mayor. A 3 member board shall consist of one representative from  
262 the conservation commission, one member from the zoning board of appeals, and one member from the  
263 planning board. A 5 member board shall consist of two members of the conservation commission, one

264 member from the zoning board of appeals, and two members from the planning board. The board of  
265 selectmen or mayor shall appoint one member of the board to be the chairman. If the board of selectmen  
266 or mayor determine that it is infeasible to establish a wind energy permitting board, the planning board  
267 shall serve as the wind energy permitting board to implement the provisions of this chapter. In such  
268 instances, the planning board shall take actions to maximize the opportunity for input from other  
269 municipal boards, and shall at a minimum ensure that the conservation commission and zoning board of  
270 appeals are provided with copies of the application and notices of any public hearings. As used hereafter,  
271 the term “wind energy permitting board” shall also mean the planning board acting under sections 1 and 2  
272 of this chapter.

273 Section 3. (a) Any person who proposes to construct a wind energy facility with a capacity of 2 or  
274 more megawatts may elect to follow the procedure established by this chapter.

275 (b) A proposal to develop a wind energy facility that complies with the standards established  
276 pursuant to section 69U of chapter 164 shall be eligible for the fast-track permitting set forth in this  
277 section and section 69V of chapter 164.

278 (c) The project proponent shall file an application with the wind energy permitting board and the  
279 town or city clerk in lieu of separate applications to the otherwise applicable local boards, commissions,  
280 officials or other municipal agencies or authorities (hereinafter referred to collectively as “local boards”).  
281 The proponent shall also file the application with the town or city clerk of any abutting municipality. The  
282 application shall identify any provisions of local laws or regulations from which a waiver is sought.  
283 Within thirty days of receipt, the chairman of the wind energy permitting board, or his designee, shall  
284 inform the proponent whether the application is complete. If the application is incomplete, the proponent  
285 shall provide the additional information within thirty days or such longer time as may be mutually agreed  
286 upon. After the expiration of this period, the proponent may elect to go forward with the information  
287 provided, and the procedures and timelines set forth below shall apply.

288 (d) The wind energy permitting board shall forthwith notify each such local board, as applicable,  
289 of the filing of such application by sending a copy thereof to such local boards for their recommendations

290 and shall, within sixty days of the determination of a complete application or the expiration of the  
291 additional information period described in subsection (c), and in compliance with the notice and  
292 publication provisions of section 11 of chapter 40A, hold a public hearing and a written public comment  
293 period of not less than 45 days on the application. The wind energy permitting board shall request the  
294 recommendations of said local boards as are deemed necessary or helpful in making its decision upon  
295 such application and shall have the same power to issue a permit or other approval as any local board or  
296 official who would otherwise act with respect to such application, including but not limited to the power  
297 to attach to said permit or approval conditions as are consistent with the terms of this section and  
298 otherwise authorized by applicable local laws and regulations.

299 (e)The wind energy permitting board, in making its decision on the application, shall apply all  
300 applicable local bylaws and ordinances, and take into consideration the recommendations of the local  
301 boards and shall have the authority to assess fees to retain consultants pursuant to the provisions of  
302 section 53G of chapter 44. The board shall have the authority to waive zoning and non-zoning  
303 requirements of the municipality's local laws, regulations, policies, or other regulatory requirements.

304 (f)The wind energy permitting board shall file with the city or town clerk a written decision,  
305 based upon a majority vote of said board, within 120 days from the filing of the application, unless the  
306 time period is extended by mutual agreement by the board and the applicant, and the agreement is filed  
307 with the city or town clerk prior to the expiration of the 120 day period. Failure to file a written decision  
308 or extension within the 120 day period shall result in a constructive approval of the application, except  
309 where a municipal board has made a timely referral of an application to a regional planning agency with  
310 regulatory authority.

311 (g)A wind energy facility that does not comply with the standards established under section 69U  
312 of chapter 164 shall be governed by the same procedures as set forth in subsections (a) through (f) above,  
313 except that the deadline for a decision shall be 180 days, rather than 120 days. If the applicant states that  
314 the project complies with the standards, but the wind energy permitting board determines through a vote  
315 or interim written decision within the 120 day period that the application does not comply with the

316 standards, the deadline for decision shall be extended so that the deadline is 180 days from the filing of  
317 the application except where a municipal board has made a timely referral of an application to a regional  
318 planning agency with regulatory authority.

319 (h)The wind energy permitting board is authorized to assess a community mitigation fee upon the  
320 applicant. The fee shall not exceed a cap promulgated by the department of energy resources through  
321 regulations; the cap shall be set so as to ensure that community mitigation fees do not render the project  
322 uneconomic. The applicant must offer the host municipality or its designee the option of entering a  
323 legally enforceable purchase and sale agreement for not more than 10 per cent of the electricity generated  
324 on site for use by the host municipality or its designee. Notwithstanding the foregoing, the wind energy  
325 permitting board may accept other forms of mitigation in lieu thereof, including but not limited to a  
326 purchase and sale agreement for electricity between the applicant and a municipality, a county, a regional  
327 planning agency or other regional governmental entity, a municipal electric cooperative or a municipal  
328 aggregator of energy and is authorized to enter into a legally enforceable agreements with the applicant  
329 for such other mitigation.

330 (i)Notwithstanding any general or special law to the contrary, a municipality in which the wind  
331 energy permitting board has issued an approval pursuant to this chapter shall be deemed to have met the  
332 green community eligibility standards set forth in subsections (2) and (3) of section 10(c) of chapter 25A,  
333 and if the municipality seeks a waiver of any of the other eligibility requirements, shall be entitled to a  
334 finding that the municipality has committed to alternative measures that advance the purposes of the  
335 green communities program as effectively as adherence to the requirements.

336 (j) If a project proponent proposes a single wind energy facility in more than one municipality,  
337 the wind energy permitting boards, or planning boards, if applicable, may hold joint hearings in one or  
338 more municipalities.

339 (k) In areas where regional planning agencies have regulatory authority, a local wind energy  
340 permitting board or planning board may refer an application to the regional planning agency in  
341 accordance with the special act establishing the regional planning agency. Notwithstanding any general

342 or special law to the contrary, prior to the regional planning agency's final determination on the  
343 application, the local wind energy permitting board may review and hold public hearings and meetings on  
344 the application, provided however, no final determination shall be made until the regional planning  
345 agency has issued an approval or approval with conditions. Notwithstanding any general or special law to  
346 the contrary, in areas where regional planning agencies have regulatory authority, a wind energy  
347 permitting board and regional planning agency may hold joint hearings concerning a proposed facility so  
348 that both boards may review a project simultaneously. Upon approval or approval with conditions by a  
349 regional planning agency, a wind energy permitting board shall file its written decision with the city or  
350 town clerk within 60 days of the issuance of a final decision by the regional planning agency. Failure to  
351 file a written decision or an agreed upon extension within the 60 day period shall result in a constructive  
352 approval of the application by a wind energy permitting board. If a regional planning agency denies a  
353 development of regional impact permit to a proposed wind energy facility, the wind energy permitting  
354 board shall not issue any permits for such a facility and no constructive approval shall result.

355 (l) An abutting municipality, a person (other than the applicant), or lawfully established trust,  
356 corporation, or other incorporated organization, any of whom are substantially and specifically aggrieved  
357 by a decision of the wind energy permitting board or a regional planning agency granting a permit or  
358 permit with conditions to the applicant, or constructively approving such a permit may seek further  
359 review of the decision to the energy facilities siting board and this appeal shall be the exclusive means of  
360 review of such decisions of a wind energy permitting board or a regional planning agency. The appeal  
361 shall be filed with the siting board no later than 30 days after the wind energy permitting board's decision  
362 is filed with the city or town clerk or rendered by a regional planning agency, and shall be governed by  
363 section 69V of chapter 164 and regulations promulgated thereunder. An appeal of a decision of the wind  
364 energy permitting board denying a permit or granting a permit with conditions, brought by the applicant  
365 or by any other proponent of a wind energy facility shall be filed with superior court or the permit session  
366 of the land court pursuant to section 3A of chapter 185 within 30 days of the filing of the decision with  
367 the city or town clerk. The court shall hear all evidence pertinent to the authority of the wind energy

368 permitting board and determine the facts, and, upon the facts so determined, annul such decision if found  
369 to exceed the authority of the wind energy permitting board or make such other decree as justice and  
370 equity may require. An appeal brought by the applicant of a decision of a regional planning agency  
371 denying a permit or granting a permit with conditions shall be governed by the enabling statute of the  
372 applicable regional planning agency.

373 (m) This chapter shall not apply to lands that are under protection pursuant to Article XLIX, as  
374 appearing in Article XCVII, of the Amendments to the Constitution of the Commonwealth (Article 97).

375 SECTION 8. Section 3 of chapter 40A, as so appearing in the 2006 Official Edition, is hereby  
376 amended by inserting after the words “public service corporation” on lines 46 and 53 the following:- or  
377 by any person or entity to generate and transmit electricity derived from wind

378 SECTION 9. Section 3 of chapter 40A, as so appearing in the 2006 Official Edition, is hereby  
379 amended by inserting after the words “the corporation” on lines 56 following:- or of any person or entity  
380 to generate and transmit electricity derived from wind.