

HOUSE No. 4687

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act relative to comprehensive siting reform for land based wind projects.

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

1 The Committee on Ways and Means recommends that the bill be amended by striking out
2 all after the enacting clause and inserting in place thereof the following:

3 SECTION 1. Subsection (a) of section 10 of chapter 25A of the General Laws, as
4 appearing in the 2008 Official Edition, is hereby amended adding the following sentence:-

5 The director shall identify an employee of the division who shall work within the division
6 and collaborate with regional planning authorities to provide technical assistance to
7 municipalities with respect to the siting of wind energy facilities.

8 SECTION 2. Section 6 of said chapter 25A, as so appearing, is hereby amended by
9 inserting after paragraph (1) the following paragraph:-

10 (1½) administer the expedited permitting procedure set forth in section 18 and hear
11 appeals brought pursuant to section 4 of chapter 25D;

12 SECTION 3. Chapter 25A of the General Laws is hereby amended by adding the
13 following 4 sections:-

Section 16. As used in sections 17 to 19, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Division”, the division of green communities.

“Expedited permitting”, the expedited procedure set forth in section 18 that a person proposing to construct a wind energy facility with a capacity of at least 2 megawatts may follow to receive a permit from a host municipality.

“Facility”, a wind energy facility.

“Host municipality”, a city or town wherein a facility is located.

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

“Regional planning agency”, a regional planning district established pursuant to chapter 40B, the cape cod commission established pursuant to section 18 of chapter 716 of the acts of 1989 as amended or the martha’s vineyard commission established pursuant to chapter 831 of the acts of 1977, within such district or commission area or any other regional planning district hereafter established by the general court.

“Wind energy facility”, a land based facility including blades, turbines, towers, test towers, supports, foundations and any ancillary facilities such as roadways, transmission or

distribution lines, substations and any other buildings, structures or equipment whose primary purpose is to support the generation, transmission and delivery of at least 2 megawatts of electricity, but less than 100 megawatts of electricity, powered by wind; provided, however, that wind energy facility shall not include structures or buildings whose primary purpose is unrelated to the generation, transmission and delivery of electricity powered by wind.

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

Section 17. (a) The division shall, with the approval of the department, promulgate regulations pursuant to chapter 30A containing standards for the land based siting, operation and decommissioning of wind energy facilities. A wind energy facility shall not be required to comply with the standards established pursuant to this section; provided, however, that a wind energy facility in compliance with this section shall be eligible for expedited permitting pursuant to section 18 and section 4 of chapter 25D.

(b) The standards for wind energy facilities shall include, but not be limited to: (1) lighting; (2) appropriate setbacks from residences to prevent significant sound, health and safety impacts; (3) performance standards and appropriate setbacks to avoid impacts, and to the extent impacts cannot be avoided, to minimize and mitigate impacts to scenic or recreational areas of special federal or state significance, regional cultural facilities, historic resources, priority or estimated habitats for plant and animal species listed pursuant to chapter 131A, populations of bird and bat species that are considered by the department of fish and game as being vulnerable to impacts from the operation of wind turbines, large unfragmented habitat blocks, wetland

resources or other ecologically sensitive areas subject to protection under federal or state law or as identified by the department of environmental protection, department of conservation and recreation or the department of fish and game; and (4) such other factors as the board determines to be relevant to foster the development of wind energy in a manner that avoids, minimizes or mitigates material adverse environmental impact. Mitigation may include, but is not limited to, the preservation, enhancement, restoration or establishment of resources of greater or equal value to those being impacted, as compensation for unavoidable impacts.

The standards may vary from region to region to take into account material differences in the natural resources, available wind resources or other characteristics of regions; provided, however, that all applicable standards shall be at least as protective as existing state environmental statutes and regulations. The standards shall be based upon best available science, be drafted in consultation with the relevant agencies and the advisory group created by subsection (c), and shall be reviewed and updated as necessary; provided, however, that said standards shall be updated every 5 years.

(c) The director of the division shall appoint an advisory group to develop recommended standards. The advisory group may utilize the resources and staff of the division. The advisory group shall include the commissioner of the department of conservation and recreation, the chairman of the Massachusetts historical commission, the commissioner of the department of public safety, the commissioner of the department of public health, or designees from their respective staffs. The advisory group shall also include the following individuals to be appointed by the governor: a representative of the wind energy industry; a representative of the electric transmission and distribution industry; 2 representatives from non-profit environmental organizations with experience in wind energy facility siting policy, 1 of whom shall represent a

land and water conservation organization; 1 representative of the Berkshire Regional Planning Commission; 1 representative of the Berkshire Natural Resources Council; 1 representative from the Metropolitan Area Planning Council; 1 representative of Southeastern Regional Planning and Economic Development District; 1 representative of the Franklin Regional Council of Governments; 1 representative from the Cape Cod Commission; 1 representative from the Martha's Vineyard Commission; 1 representative from the Nantucket Planning and Economic Development Commission; 1 municipal official with experience in energy siting drawn from a list of not fewer than 3 candidates prepared by the Massachusetts Municipal Association; and not more than 2 other representatives, appointed by the director of the division, as the director deems advisable. Prior to submitting the recommended standards to the division, the advisory group shall hold not less than 2 regional public hearings for the purpose of soliciting public comments. Prior to adopting the regulations, the division, in consultation with the department, shall hold a public hearing and follow the additional procedures set forth in section 2 of chapter 30A.

Section 18. (a) A person proposing to construct a wind energy facility with a capacity of at least 2 megawatts may elect to follow the expedited permitting procedures established herein.

(b) A proposal to develop a wind energy facility that complies with the standards established under section 17 shall be eligible for the expedited permitting procedures set forth in this section and section 4 of chapter 25D.

(c) After a wind energy permitting board or planning board authorized under section 3 of chapter 25D files a written decision with the clerk of the local governmental body, or constructive approval results pursuant to subsection (f) of section 4 of said chapter 25D, the project applicant may file an application with the energy facilities siting board, together with

such supporting materials as are necessary to demonstrate that the facility complies with the standards established under section 17.

The application shall include, in such form and detail as the division shall from time to time prescribe, the following information: (i) a description of the proposed wind energy generating facility, including any ancillary structures and related facilities; (ii) a description of the project's environmental impacts, both positive and negative; (iii) a statement of whether the project complies with the standards established under section 17, and if it does not, a listing of the standards for which the project does not comply and an explanation as to why compliance is not practicable; (iv) a complete list of state agency permits that would otherwise be needed for the facility; and (v) any other information requested by the division. The applicant shall simultaneously file a notice of the application with the wind energy permitting board or planning board established under chapter 25D, any state or regional agencies that have permitting authority over the proposed facility, abutters to the site of the facility and the office of the Massachusetts Environmental Policy Act, which shall publish the notice, as soon as possible, in the Environmental Monitor.

Within 45 days of receipt of the application the division shall review the application, notify all relevant permitting agencies and inform the applicant in writing whether the application is complete. The applicant shall make the full application readily available to all relevant agencies and municipalities, and the division shall establish a procedure to ensure that the application and supporting materials are available for timely local and statewide public access, including but not limited to, electronically.

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

Based on the comments that are submitted, if the hearing officer determines that there are genuine disputes of material fact as to whether the facility meets the standards, the hearing officer shall schedule at least 1 evidentiary hearing for the limited purpose of taking further evidence upon the issues for which there is a genuine dispute of material fact. In any instance in which there is a factual dispute between the applicant and a state agency regarding matters within the state agency's regulatory authority, an evidentiary hearing shall be held as to that dispute at the request of the applicant or the state agency. Evidence may be presented at such hearing by the applicant, the municipality in which the proposed facility is located, state permit granting authorities and by any interested party; provided, however, that such party submitted comments during the initial public comment period described herein. The evidentiary hearing shall be completed no later than 90 days following the close of the initial public comment period. The evidentiary hearing shall include written or oral testimony under oath, the opportunity for cross-examination and the compilation of a record of admissible evidence; provided, however, that the hearing officer and the division shall not be bound by paragraph (7) of section 11 of chapter 30A.

(e) State permit granting agencies shall file written comments with the hearing officer during the initial 60 day public comment period to assist the division in determining whether the

146 standards have been met, and may include recommended conditions within each agency's
147 regulatory purview.

148 (f) Within 60 days of the close of the public hearing or evidentiary hearings if scheduled,
149 the division shall determine, in writing, whether the proposed facility meets the standards. If the
150 division finds that the proposed facility meets the standards, it shall approve the facility, and may
151 impose conditions to its approval. Conditions recommended by state environmental agencies
152 with respect to issues within their permitting authority, by state environmental agencies with
153 respect to biological resources identified under section 17 but not within their permitting
154 authority, or conditions recommended by host municipalities or their constituent boards or
155 regional planning agencies with regulatory authority, shall be adopted to the maximum extent
156 practicable, and the division shall explain the reasons for not including any such conditions in its
157 written decision.

158 (g) (1) If the division finds that the facility does not meet the siting standards, it may hold
159 additional hearings to take additional evidence from both the applicant and interested parties, if
160 necessary and approve the facility and impose conditions to its approval if it finds that:

161 (A) the facility has complied to the maximum practicable extent with the siting standards
162 established under section 17;

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

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

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

(A) benefits including, but not limited to:

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

(ii) energy reliability;

(iii) security and diversification;

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

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

(i) ecologically sensitive areas;

(ii) large unfragmented habitat blocks;

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

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

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

(vi) noise; and

(vii) public safety.

(3) If the division finds that the facility meets the standards in this subsection, it may approve the facility and may impose conditions to its approval.

(4) A decision under this subsection shall be issued no later than 275 days after the division determines in writing that the application is complete, if no evidentiary hearings are held, or within 365 days after such determination if evidentiary hearings are held.

(5) Conditions recommended by state environmental agencies with respect to issues within their permitting authority under state law, by state environmental agencies with respect to biological resources identified under section 17 but not within their permitting authority under existing state law or conditions recommended by host municipalities or their constituent boards, shall be adopted to the maximum extent practicable, and the division shall explain the reasons for not including any such conditions in its written decision.

(h) The construction, maintenance and operation of a facility which receives an approval under this chapter shall conform with such approval and any terms and conditions contained therein. If the division issues an approval under this section, no state agency shall require any approval, consent, permit, certificate or condition for the construction, operation or maintenance of the facility with respect to which the approval is issued and no state agency shall impose or enforce any law, ordinance, by-law, rule or regulation nor take any action nor fail to take any action which would delay or prevent the construction, operation or maintenance of such facility; provided, however, that the division shall not issue an approval the effect of which would be to grant or modify a permit, approval or authorization which, if so granted or modified by the appropriate state agency, would be invalid because of a conflict with applicable federal water, air, historic or threatened and endangered species standards or requirements. The approval, if

issued, shall be in the form of a composite of all state individual permits, approvals or authorizations which would otherwise be necessary for the construction and operation of the facility and that portion of the approval which relates to subject matters within the jurisdiction of a state agency shall be enforced by said agency under the other applicable laws of the commonwealth as if it had been directly granted by the agency.

(i) The division shall combine the review and approval process under this section with any additional review of a local wind energy permitting board decision approving, approving with conditions or constructively approving an application if such an appeal is brought by a person or entity other than the applicant under subsection (m) of section 3 of chapter 25D. If the division approves the facility under section (f) or (g), it shall affirm the decision of the wind energy permitting board, but may modify conditions or impose additional conditions upon the approval to address claims brought by the party seeking additional review of the wind energy permitting board decision.

(j) An application filed by a person proposing to construct a wind energy facility that does not comply with the standards established under section 17 shall also be governed by subsections (d) through (g), inclusive; provided, however, that:

(1) the hearing officer shall hold a public hearing and close the public comment period within 120 days from the date that the division determines that the application is complete;

(2) the hearing officer shall hold evidentiary hearings as needed to resolve genuine disputes of material facts within 240 days from the date the division determines that the application is complete; and

(3) the division shall issue a decision within 120 days of the close of the public comment period or evidentiary hearing.

(k) Approval of an application shall not be granted if, after exhaustion of all appeals, a permit is not granted by the affected municipality pursuant to chapter 25D or, if a permit was not sought pursuant to chapter 25D, any other relevant local permitting law or regulation.

(l) The regulations promulgated pursuant to section 17 shall include clear and concise application requirements, including but not limited to, pre-application survey requirements developed by the division in consultation with the department of fish and game and the department of environmental protection, and may provide for pre-application consultation and site visits. No application shall be considered complete until surveys, if required, are determined by the department of fish and game or the department of environmental protection to be complete. Sufficient data shall be required from the applicant by these regulations to enable the division to determine whether the facility meets the standards established under section 17, and if it does not, whether it meets the standards set forth in subsection (g); provided, however, that these regulations shall not require any data related to the necessity or cost of the proposed generating facility, except for data related to the costs or economic feasibility associated with the mitigation, control or reduction of the environmental impacts of the proposed generating facility, so that the division can make an informed determination as to the ability of the applicant to afford to comply with conditions imposed by an agency, municipality or the state.

(m) The division shall promulgate regulations governing the procedures for permitting under this section and appeals brought under chapter 25D. The regulations shall also provide for a reasonable fee for wind energy facility applications subject to this section to defray the

division's reasonable costs of processing the application; a fee set under such regulations may be adjusted according to project size or other objective criteria. The regulations shall also ensure that a reasonable portion of the application fee charged shall be allocated to state agencies that would otherwise be issuing permits for the facility in accordance with a fee schedule to be adopted concurrently with the regulations.

(n) Any interested party aggrieved by a decision of the division under this section may appeal therefrom to the superior court department of the trial court, pursuant to the provisions of section 14 of chapter 30A. The decision of the superior court or justice shall be final.

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

Section 19. Sections 17 and 18 shall not preclude or obligate an applicant for a facility from seeking and obtaining board approvals and certificates under sections 69K through 69O ½, inclusive, of chapter 164 in lieu of proceeding under sections 17 and 18.

SECTION 4. The General Laws are hereby amended by inserting after chapter 25C the following new chapter:-

Chapter 25D.

Wind Energy Permitting

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

“Department”, the department of energy resources established pursuant to chapter 25A.

269 “Division”, the division of green communities established pursuant to section 2 of
270 chapter 25A.

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

274 “Facility”, a wind energy facility.

275 “Host municipality”, a city or town wherein a facility is located.

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

282 “Local governmental body”, a city, town, district, regional school district or county, or an
283 agency or authority thereof, including a housing authority, board, commission, department or
284 instrumentality of a city, town district, regional school district or county, and any other agency
285 which is not a state agency or building authority; or a combination of 2 or more such cities,
286 towns, districts, regional school districts or counties, or agencies or authorities thereof.

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

288 “Regional planning agency”, a regional planning district established pursuant to chapter
289 40B, the cape cod commission established pursuant to section 18 of chapter 716 of the acts of

1989 as amended or the martha's vineyard commission established pursuant to chapter 831 of the acts of 1977, within such district or commission area or any other regional planning district hereafter established by the general court.

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

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

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

Section 2. The department, in consultation with the regional planning agencies, shall identify local governmental bodies containing significant wind resource areas; provided, that prior to a final determination that a local governmental body contains a significant wind resource area, the division shall hold at least 1 public hearing in the region containing the host municipality and offer a period for public comment. A local governmental body identified as being a significant wind resource area may establish a wind energy permitting board to conduct

311 local permitting of a wind energy facility, within 30 days of receipt of a letter of intent from an
312 applicant seeking to file an application under this chapter.

313 Section 3. A local governmental body designated as a significant wind resource area
314 pursuant to section 2 may establish and appoint a wind energy permitting board, to be composed
315 of 3 members, 1 of whom shall be a member of the zoning board of appeals, 1 of whom shall be
316 a member of the conservation commission, if any, and 1 of whom shall be a member of the
317 planning board. Said board shall be appointed by the city manager in the case of a city under a
318 Plan E form of government, the mayor in the case of all other cities or the board of selectmen in
319 the case of a town. The appointing authority shall appoint a chair of the board. If the city
320 manager in the case of a city under a Plan E form of government, the mayor in the case of all
321 other cities, or the board of selectmen in the case of a town determine that it is not feasible to
322 establish a wind energy permitting board, the planning board shall serve as the wind energy
323 permitting board. In such instance, the planning board shall take actions to maximize the
324 opportunity for input from other municipal boards, and shall at a minimum ensure that the
325 conservation commission, if any, and zoning board of appeals are provided with copies of the
326 application and notices of all public hearings relating to the application.

327 Section 4. (a) A person proposing to construct a wind energy facility with a capacity of at
328 least 2 megawatts or related test towers may elect to follow the expedited permitting procedure
329 established herein.

330 (b) A proposal to develop a wind energy facility or related test towers that complies with
331 the standards established under section 17 of chapter 25A shall be eligible for the expedited
332 permitting set forth in this section and section 18 of said chapter 25A. A proposal that does not

comply with the standards established under said section 17 of said chapter 25A shall be governed by the procedure set forth in subsection (g).

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

(d) The wind energy permitting board shall immediately notify each local board, as applicable, of the filing of an application by sending a copy thereof to the applicable local boards for their recommendations and shall, within 60 days of the wind energy permitting board's determination that an application is complete or the expiration of the additional information period described in subsection (c), and in compliance with the notice and publication provisions of section 11 of chapter 40A, hold a public hearing and a written public comment period of not less than 45 days on the application. The wind energy permitting board shall request the recommendations of the local boards as are deemed necessary or helpful in making its decision upon such application and shall have the same power to issue a permit or other approval as any local board or official who would otherwise act with respect to such application, including, but

not limited, to the power to attach conditions to said permit or approval as are consistent with this section and all other laws and regulations.

(e) The wind energy permitting board, in making its decision on the application, shall apply all applicable local by-laws and ordinances, including any by-laws regulating construction in and around, and the disturbance of, wetlands and other environmentally sensitive areas, and shall take into consideration the recommendations of the local boards and shall have the authority to assess fees on wind energy facility applicants to retain consultants under section 53G of chapter 44. The board shall have the authority to waive zoning and nonzoning requirements of the municipality's local laws, regulations, policies or other regulatory requirements.

(f) The wind energy permitting board shall file with the clerk of the local governmental body a written decision, based upon a majority vote of the board, within 120 days from the filing of the application, unless the time period is extended by mutual agreement by the board and the applicant, and the agreement is filed with the city or town clerk prior to the expiration of the 120 day period. Failure to file a written decision or extension within the 120 day period shall result in a constructive approval of the application, unless a municipal board has made a timely referral of an application to a regional planning agency pursuant to subsection (l).

(g) A wind energy facility that does not comply with the standards established under section 17 of chapter 25A shall be governed by subsections (a) through (f), inclusive, except that the deadline for a decision shall be 180 days. If the applicant states that the project complies with the standards in said section 17 of said chapter 25A, but the wind energy permitting board determines through a vote or interim written decision within the 120 day period that the application does not comply with those standards, the deadline for decision shall be extended so

that the deadline is 180 days from the filing of the application unless a municipal board has made a timely referral of an application to a regional planning agency pursuant to subsection (l).

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

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

(j) A local governmental body that has approved an application pursuant to this section by the relevant wind energy permitting board shall be deemed to have met the green community eligibility requirements set forth in clauses (2) and (3) of subsection (c) of section 10 of chapter 25A, and if the local governmental body acting jointly on a regional basis seeks a waiver of any of the other eligibility requirements under said subsection (c) of said section 10 of said chapter 25A, it shall be entitled to a finding that the local governmental body acting jointly on a regional basis has committed to alternative measures that advance the purposes of the green communities program as effectively as adherence to the requirements.

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

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

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

(m) (i) An interested party who is substantially and specifically aggrieved by a decision of the wind energy permitting board or a regional planning agency granting a permit or permit with conditions to the applicant, or constructively approving such a permit may appeal the decision to the division. The appeal shall be filed with the division no later than 30 days after the wind energy permitting board's decision is filed with the city or town clerk or rendered by a regional planning agency, and shall be governed by section 18 of chapter 25A. Any interested party aggrieved by a decision of the division under this section may appeal therefrom to the superior court department of the trial court, pursuant to the provisions of section 14 of chapter 30A. The decision of the superior court or justice shall be final.

(ii) The applicant or any other proponent of a wind energy facility aggrieved by a decision of the wind energy permitting board denying a permit or granting a permit with conditions, may appeal therefrom to the superior court department of the trial court, pursuant to the provisions of section 14 of chapter 30A. The decision of the superior court or justice shall be final.

Section 5. The division shall, with the approval of the department, promulgate regulations for the administration and enforcement of this chapter; provided further, that said regulations shall establish the criteria for the determination required pursuant to section 2; and provided further, that prior to the promulgation of final regulations, the division shall hold at least 1 public hearing and offer a period for public comment.

SECTION 5. Section 138 of chapter 164 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out in lines 39, 40, 41, 57, 58, and 59, each time they appear, the words "net metering facility owned or operated by a customer which is a

municipality or other governmental entity,” and inserting in place thereof the following words:-
net metering facility of a municipality or other governmental entity.

SECTION 6. Said section 138 of said chapter 164, as so appearing, is hereby further
amended by inserting after the definition “Net metering,” the following definition:-

“Net metering facility of a municipality or other governmental entity,” a Class II or III
net metering facility: (1) that is owned or operated by a municipality or other governmental
entity; or (2) of which the municipality or other governmental entity is assigned 100 percent of
the output and which is on land owned by the municipality or other governmental entity.

SECTION 7. Said section 138 of said chapter 164, as so appearing, is hereby further
amended by striking out, in lines 48 and 49, the words “if a customer is a municipality or other
governmental entity,” and inserting in place thereof the words:- for a Class III net metering
facility of a municipality or other governmental entity,.

SECTION 8. Section 139 of said chapter 164, as so appearing, is hereby amended by
striking out in lines 9, 11, 12 and 13, each time it appears, the words “wind or solar.”

SECTION 9. Subsection (f) of said section 139 of said chapter 164, as so appearing, is
hereby amended by striking out the first sentence and inserting in place thereof the following 3
sentences:- The aggregate net metering capacity of facilities that are not net metering facilities of
a municipality or other governmental entity shall not exceed 1 per cent of the distribution
company’s peak load. The aggregate net metering capacity of net metering facilities of a
municipality or other governmental entity shall not exceed 2 per cent of the distribution
company’s peak load. The maximum amount of generating capacity eligible for net metering by
a municipality or other governmental entity is 10 megawatts.

SECTION 10. Subsection (g) of said section 139 of said chapter 164, as so appearing, is hereby amended by adding the following words:- including adoption of a system that provides proposed net metering facilities of a municipality or other governmental entity an assurance of net metering eligibility at the time they meet criteria established by the department. Nothing herein shall limit the department's authority to adopt rules and regulations relating to other proposed net metering facilities.

SECTION 11. Notwithstanding any general or special law to the contrary, the division of wind energy siting shall promulgate regulations under section 17 and 18 of chapter 25D of the General Laws within 275 days of the effective date of this act.

SECTION 12. Notwithstanding any general or special law to the contrary, no application may be submitted to or reviewed through the streamlined permitting process established in this act until all necessary regulations are promulgated.

SECTION 13. The department of energy resources shall notify each municipality with significant wind resource areas, as determined by the department, within 30 days of the effective date of this act of the terms and provisions of this act.

SECTION 14. Notwithstanding any general or special law to the contrary, nothing in this act shall be construed to allow the permitting process contained in chapter 25D of the General Laws or sections 17 to 19, inclusive, of chapter 25A of the General Laws to apply to land that is under protection pursuant to Article XLIX, as appearing in Article XCVII of the Amendments to the Constitution of the Commonwealth.