

HOUSE No. 4886

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 By striking out all after the enacting clause and inserting in place thereof the following:—

2 “NO SECTION 1.

3 SECTION 2. Subsection (a) of section 10 of said chapter 25A, as so appearing, is hereby
4 amended by adding the following sentence:- The director shall identify an employee of the
5 department who shall work within the department and collaborate with regional planning
6 authorities to provide technical assistance to municipalities with respect to the siting of wind
7 energy facilities.

8 SECTION 3. Said chapter 164 is hereby further amended by adding the following 4
9 sections:-

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

12 “Expedited permitting”, the expedited procedure established in section 69V that a person
13 proposing to construct a wind energy facility with a capacity of at least 2 megawatts may follow
14 to receive a permit from the division.

15 “Facility”, a wind energy facility.

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

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

23 “Regional planning agency”, a regional planning district established in chapter 40B, the
24 Cape Cod commission established in section 18 of chapter 716 of the acts of 1989 or the
25 Martha’s Vineyard commission established in chapter 831 of the acts of 1977, within such
26 district or commission area or any other regional planning district hereafter established by the
27 general court.

28 “Wind energy facility”, a land based facility including blades, turbines, towers, test
29 towers, supports, foundations and any ancillary facilities such as roadways, transmission or
30 distribution lines, substations and any other buildings, structures or equipment whose primary
31 purpose is to support the generation, transmission and delivery of at least 2 megawatts of
32 electricity, but less than 100 megawatts of electricity, powered by wind; provided, however, that

33 wind energy facility shall not include structures or buildings whose primary purpose is unrelated
34 to the generation, transmission and delivery of electricity powered by wind.

35 “Wind energy permitting board”, a municipal board appointed under section 3 of chapter
36 25D or if no board has been appointed, the planning board in the city or town of the proposed
37 facility.

38 Section 69U. (a) The energy facilities siting board shall, with the approval of the
39 secretary of the executive office of energy and environment affairs, promulgate rules and
40 regulations pursuant to chapter 30A containing standards for the land based siting, operation and
41 decommissioning of wind energy facilities. A wind energy facility shall not be required to
42 comply with the standards established in this section; provided, however, that a wind energy
43 facility in compliance with this section shall be eligible for expedited permitting pursuant to
44 sections 4 and 69V of chapter 25D.

45 (b) The standards for wind energy facilities shall include, but not be limited to: (1)
46 lighting; (2) appropriate setbacks from residences to prevent significant sound, health and safety
47 impacts; (3) performance standards and appropriate setbacks to avoid impacts, and to the extent
48 impacts cannot be avoided, to minimize or mitigate impacts to scenic or recreational areas of
49 special federal state, or regional significance, regional cultural facilities, historic resources,
50 priority or estimated habitats for plant and animal species listed in chapter 131A, populations of
51 bird and bat species that are considered by the department of fish and game as being vulnerable
52 to impacts from the operation of wind turbines, large unfragmented habitat blocks, wetland
53 resources or other ecologically sensitive areas subject to protection under federal or state law or
54 as identified by the department of environmental protection, department of conservation and

55 recreation or the department of fish and game; and (4) such other factors as the board determines
56 to be relevant to foster the development of wind energy in a manner that avoids, minimizes or
57 mitigates material adverse environmental impact. Mitigation may include, but not be limited to:
58 the preservation, enhancement, restoration or establishment of resources of greater or equal value
59 to those being impacted, as compensation for unavoidable impacts.

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

67 (c) The energy facilities siting board shall empanel an advisory group to develop
68 recommended standards under the direction of the chairperson of the board. The advisory group
69 may utilize the resources and staff of the energy facilities siting board. The advisory group shall
70 include the commissioner of the department of conservation and recreation, the chairman of the
71 Massachusetts historical commission, the commissioner of the department of public safety, the
72 commissioner of the department of public health, or their designees. The advisory group shall
73 also include the following individuals to be appointed by the governor: a representative of the
74 wind energy industry; a representative of the electric transmission and distribution industry; 2
75 representatives from non-profit environmental organizations with experience in wind energy
76 facility siting policy, 1 of whom shall represent a land and water conservation organization; 1
77 representative of the Berkshire regional planning commission; 1 representative of the Berkshire

78 natural resources council; 1 representative from the metropolitan area planning council; 1
79 representative of southeastern regional planning and economic development district; 1
80 representative of the Franklin regional council of governments; 1 representative from the Cape
81 Cod commission; 1 representative from the Martha's Vineyard commission; 1 representative
82 from the Nantucket planning and economic development commission; 1 municipal official with
83 experience in energy siting drawn from a list of not fewer than 3 candidates prepared by the
84 Massachusetts Municipal Association; a scientist who is an expert in ecology and conservation; a
85 scientist or engineer who is an expert in wind energy; a public health official with expertise in
86 audiology; and not more than 2 other representatives, appointed by the chairperson, as the
87 chairperson deems advisable. Prior to submitting the recommended standards to the energy
88 facilities siting board, the advisory group shall hold not less than 2 regional public hearings for
89 the purpose of soliciting public comments. Prior to adopting the rules and regulations, the energy
90 facilities siting board, shall hold a public hearing and follow the additional procedures
91 established in section 2 of chapter 30A.

92 Section 69V. (a) A person proposing to construct a wind energy facility with a capacity
93 of at least 2 megawatts may elect to follow the expedited permitting procedures established
94 herein.

95 (b) A proposal to develop a wind energy facility that complies with the standards
96 established under section 69U shall be eligible for the expedited permitting procedures
97 established in this section and section 4 of chapter 25D.

98 (c) After a wind energy permitting board or planning board authorized under section 3 of
99 chapter 25D files a written decision with the clerk of the local governmental body, or

100 constructive approval results pursuant to subsection (f) of section 4 of chapter 25D, the project
101 applicant may file an application with the division, together with such supporting materials as are
102 necessary to demonstrate that the facility complies with the standards established in section 69U.

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

116 Within 45 days of receipt of the application, the energy facilities siting board shall review
117 the application, notify all relevant permitting agencies and inform the applicant in writing
118 whether the application is complete. The applicant shall make the full application readily
119 available to all relevant agencies and municipalities, and the energy facilities siting board shall
120 establish a procedure to ensure that the application and supporting materials are available for
121 timely local and statewide public access, including electronically.

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

129 Based on the comments that are submitted, if the hearing officer determines that there are
130 genuine disputes of material fact as to whether the facility meets the standards, the hearing
131 officer shall schedule at least 1 evidentiary hearing for the limited purpose of taking further
132 evidence upon the issues for which there is a genuine dispute of material fact. In any instance in
133 which there is a factual dispute between the applicant and a state agency regarding matters
134 within the state agency's regulatory authority, an evidentiary hearing shall be held as to that
135 dispute at the request of the applicant or the state agency. Evidence may be presented at such
136 hearing by the applicant, the municipality in which the proposed facility is located, state permit
137 granting authorities and by any interested party; provided, however, that such party submitted
138 comments during the initial public comment period described herein. The evidentiary hearing
139 shall be completed on or before 90 days following the close of the initial public comment period.
140 The evidentiary hearing shall include written or oral testimony under oath, the opportunity for
141 cross-examination and the compilation of a record of admissible evidence; provided, however,
142 that the hearing officer and the energy facilities siting board shall not be bound by paragraph (7)
143 of section 11 of chapter 30A.

144 (e) State permit granting agencies shall file written comments with the hearing officer
145 during the initial 45 day public comment period to assist the energy facilities siting board in
146 determining whether the standards have been met, and may include recommended conditions
147 within each agency's regulatory purview.

148 (f) Within 60 days of the close of the public hearing or evidentiary hearings, if scheduled,
149 the energy facilities siting board shall determine, in writing, whether the proposed facility meets
150 the standards. If the energy facilities siting board finds that the proposed facility meets the
151 standards, it shall approve the facility, and may impose conditions to its approval. Conditions
152 recommended by state environmental agencies with respect to issues within their permitting
153 authority, by state environmental agencies with respect to biological resources identified under
154 section 69U, but not within their permitting authority, or conditions recommended by host
155 municipalities or their constituent boards or regional planning agencies with regulatory authority,
156 shall be adopted to the maximum extent practicable, and the energy facilities siting board shall
157 explain the reasons for not including any such conditions in its written decision.

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

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

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

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

167 (2) To determine whether the benefits of the facility outweigh the detriments, the division
168 shall take into account:

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

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

171 (ii) energy reliability;

172 (iii) security and diversification;

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

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

176 (i) ecologically sensitive areas;

177 (ii) large unfragmented habitat blocks;

178 (iii) priority or estimated habitats for all plant and animal species listed under chapter
179 131A;

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

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

183 (vi) noise; and

184 (vii) public safety.

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

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

191 (5) Conditions recommended by state environmental agencies with respect to issues
192 within their permitting authority under state law, by state environmental agencies with respect to
193 biological resources identified under section 69U, but not within their permitting authority under
194 existing state law or conditions recommended by host municipalities or their constituent boards
195 or regional planning agencies with regulatory authority, shall be adopted to the maximum extent
196 practicable, and the energy facilities siting board shall explain the reasons for not including any
197 such conditions in its written decision.

198 (h) Notwithstanding the provisions of any other law to the contrary, the construction,
199 maintenance and operation of a facility which receives an approval under this chapter shall
200 conform with such approval and any terms and conditions contained therein. If the energy
201 facilities siting board issues an approval under this section, no state agency shall require any
202 approval, consent, permit, certificate or condition for the construction, operation or maintenance
203 of the facility with respect to which the approval is issued and no state agency shall impose or
204 enforce any law, ordinance, by-law, rule or regulation nor take any action nor fail to take any
205 action which would delay or prevent the construction, operation or maintenance of such facility;

206 provided, however, that the energy facilities siting board shall not issue an approval the effect of
207 which would be to grant or modify a permit, approval or authorization which, if so granted or
208 modified by the appropriate state agency, would be invalid because of a conflict with applicable
209 federal water, air, historic or threatened and endangered species standards or requirements. The
210 approval, if issued, shall be in the form of a composite of all state individual permits, approvals
211 or authorizations which would otherwise be necessary for the construction and operation of the
212 facility and that portion of the approval which relates to subject matters within the jurisdiction of
213 a state agency shall be enforced by said agency under the other applicable laws of the
214 commonwealth as if it had been directly granted by the agency.

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

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

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

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

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

235 (k) Approval by the energy facilities siting board pursuant to this section shall not
236 authorize the applicant to commence construction unless and until the applicant obtains a
237 building permit.

238 (l) The regulation promulgated pursuant to section 69U shall include clear and concise
239 application requirements including but not limited to, pre-application survey requirements
240 developed by the energy facilities siting board in consultation with the department of fish and
241 game and the department of environmental protection, and may provide for pre-application
242 consultation and site visits. No application shall be considered complete until surveys, if
243 required, are determined by the department of fish and game or the department of environmental
244 protection to be complete. Sufficient data shall be required from the applicant by these
245 regulations to enable the energy facilities siting board to determine whether the facility meets the
246 standards established under section 69U and if it does not, whether the standards set forth in
247 subsection (g).

248 (m) The energy facilities siting board shall promulgate rules and regulations governing
249 the procedures for permitting under this section and appeals brought under chapter 25D. The
250 rules and regulations shall also provide for a reasonable fee for wind energy facility applications
251 subject to this section to defray the energy facilities siting board's reasonable costs of processing
252 the application; a fee set under such rules and regulations may be adjusted according to project
253 size or other objective criteria. The rules and regulations shall also ensure that a reasonable
254 portion of the application fee charged shall be allocated to state agencies that would otherwise be
255 issuing permits for the facility in accordance with a fee schedule to be adopted concurrently with
256 the rules and regulations.

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

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

267 Section 69W. Sections 69U and 69V shall not preclude or obligate an applicant for a
268 facility from seeking and obtaining board approvals and certificates under sections 69K to 69O
269 ½, inclusive, in lieu of proceeding under sections 69U and 69V.

270 SECTION 4. The General Laws are hereby amended by adding the following chapter:-

271 Chapter 25D.

272 Wind Energy Permitting

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

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

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

279 “Facility”, a wind energy facility.

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

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

287 “Local governmental body”, a city, town, district, regional school district or county, or an
288 agency or authority thereof, including a housing authority, board, commission, department or
289 instrumentality of a city, town district, regional school district or county, and any other agency

290 which is not a state agency or building authority; or a combination of 2 or more such cities,
291 towns, districts, regional school districts or counties, or agencies or authorities thereof.

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

293 “Regional planning agency”, a regional planning district established in chapter 40B, the
294 Cape Cod commission established in section 18 of chapter 716 of the acts of 1989 as amended or
295 the Martha’s Vineyard commission established pursuant to chapter 831 of the acts of 1977,
296 within such district or commission area or any other regional planning district hereafter
297 established by the general court.

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

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

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

310 Section 2. The department, in consultation with the regional planning agencies, shall
311 identify local governmental bodies containing significant wind resource areas; provided,
312 however, that prior to a final determination that a local governmental body contains a significant
313 wind resource area, the department shall hold at least 1 public hearing in the region containing
314 the host municipality and offer a period for public comment. A local governmental body
315 identified as being a significant wind resource area may establish a wind energy permitting board
316 to conduct local permitting of a wind energy facility, within 30 days of receipt of a letter of
317 intent from an applicant seeking to file an application under this chapter.

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

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

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

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

350 (d) The wind energy permitting board shall immediately notify each local board, as
351 applicable, of the filing of an application by sending a copy thereof to the applicable local boards
352 for their recommendations and shall, within 60 days of the wind energy permitting board's
353 determination that an application is complete or the expiration of the additional information

354 period described in subsection (c), and in compliance with the notice and publication provisions
355 of section 11 of chapter 40A, hold a public hearing and a written public comment period of on or
356 before 45 days on the application. The wind energy permitting board shall request the
357 recommendations of the local boards as are deemed necessary or helpful in making its decision
358 upon such application and shall have the same power to issue a permit or other approval as any
359 local board or official who would otherwise act with respect to such application, including, but
360 not limited to: the power to attach conditions to said permit or approval as are consistent with
361 this section and all other laws, rules and regulations.

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

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

376 (g) A wind energy facility that does not comply with the standards established under
377 section 69U of chapter 164 shall be governed by subsections (a) to (f), inclusive, except that the
378 deadline for a decision shall be 180 days. If the applicant states that the project complies with
379 the standards in said section 69U of said chapter 164, but the wind energy permitting board
380 determines through a vote or interim written decision within the 120 day period that the
381 application does not comply with those standards, the deadline for decision shall be extended so
382 that the deadline is 180 days from the filing of the application unless a municipal board has made
383 a timely referral of an application to a regional planning agency pursuant to subsection (l).

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

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

395 (j) A local governmental body that has approved an application pursuant to this section
396 by the relevant wind energy permitting board shall be deemed to have met the green community
397 eligibility requirements set forth in clauses (2) and (3) of subsection (c) of section 10 of chapter

398 25A, and if the local governmental body acting jointly on a regional basis seeks a waiver of any
399 of the other eligibility requirements under said subsection (c) of said section 10 of said chapter
400 25A, it shall be entitled to a finding that the local governmental body acting jointly on a regional
401 basis has committed to alternative measures that advance the purposes of the green communities
402 program as effectively as adherence to the requirements.

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

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

416 A wind energy permitting board shall file its written decision with the clerk of the local
417 governmental body within 60 days of the date on which a regional planning agency issues its
418 final decision of approval or approval with conditions. Failure of the wind energy permitting
419 board to file a written decision or an agreed upon extension within the 60 day period shall result

420 in a constructive approval of the application by the wind energy permitting board. If a regional
421 planning agency denies a development of regional impact permit to a proposed wind energy
422 facility, the wind energy permitting board shall not issue any permits for such a facility and no
423 constructive approval shall result.

424 (m) (i) An interested party who is substantially and specifically aggrieved by a decision
425 of the wind energy permitting board or a regional planning agency granting a permit or permit
426 with conditions to the applicant, or constructively approving such a permit may appeal the
427 decision to the energy facilities siting board and this appeal shall be the exclusive means of
428 review of such decisions of a wind energy permitting board or a regional planning agency. The
429 appeal shall be filed with the energy facilities siting board no later than 30 days after the wind
430 energy permitting board's decision is filed with the city or town clerk or rendered by a regional
431 planning agency, and shall be governed by section 69V of chapter 164.

432 An appeal of a decision of the wind energy permitting board denying a permit or granting
433 a permit with conditions, brought by the applicant or by any other proponent of a wind energy
434 facility shall be filed with superior court or the permit session of the land court under section 3A
435 of chapter 185 within 30 days of the filing of the decision with the city or town clerk and this
436 appeal shall be the exclusive means of review of such decisions of a wind energy permitting
437 board. The court shall hear all evidence pertinent to the authority of the wind energy permitting
438 board and determine the facts, and, upon the facts so determined annul such decision if found to
439 exceed the authority of the wind energy permitting board or make such other decree as justice
440 and equity may require. An appeal brought by the applicant or by any other proponent of a wind
441 energy facility of a decision of a regional planning agency denying a permit or granting a permit
442 with conditions shall be governed by the enabling statute of the applicable regional planning

443 agency and this appeal shall be the exclusive means of review of such decisions of a regional
444 planning agency.

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

449 SECTION 4A. Section 69H of chapter 164, as so appearing, is hereby amended by
450 striking the first two paragraphs and inserting in place thereof the following two paragraphs:-

451 Section 69H. There is hereby established an energy facilities siting board within the
452 department, but not under the supervision or control of the department. Said board shall
453 implement the provisions contained in sections 69H to 69Q, inclusive, so as to provide a reliable
454 energy supply for the commonwealth with a minimum impact on the environment at the lowest
455 possible cost. To accomplish this, the board shall review the need for, cost of, and
456 environmental impacts of transmission lines, natural gas pipelines, facilities for the manufacture
457 and storage of gas, and oil facilities; provided, however, that the board shall review only the
458 environmental impacts of generating facilities, consistent with the commonwealth's policy of
459 allowing market forces to determine the need for and cost of such facilities. Such reviews shall
460 be conducted consistent with section 69J ¼ for generating facilities and with section 69J for all
461 other facilities. Said board shall also implement the provisions contained in sections 69U and
462 69V, so as to provide for the development of clean, renewable, electric generating plants and
463 ancillary facilities powered by wind, sited in appropriate locations based on clear, predictable
464 and protective environmental, cultural and historic resource standards.

465 The board shall be composed of the secretary of energy and environmental affairs, who
466 shall serve as chairman, the secretary of housing and economic development, the commissioner
467 of the department of environmental protection, the commissioner of the department of fish and
468 game, the commissioner of the division of energy resources, 2 commissioners of the
469 commonwealth utilities commission, or the designees of any of the foregoing, and 4 public
470 members to be appointed by the governor for a term coterminous with that of the governor, 1 of
471 whom shall be experienced in environmental issues, 1 of whom shall be experienced in labor
472 issues, 1 of whom shall be a municipal official with experience in land use planning, and 1 of
473 whom shall be experienced in energy issues; provided, however that the commissioner of the
474 department of fish and game and the public member who is a municipal official with experience
475 in land use planning shall only be present and serve as members of the board for the
476 implementation, administration and enforcement of sections 69U and 69V, and shall not be
477 present and serve as members of the board for the implementation, administration and
478 enforcement of sections 69H to 69Q, inclusive. The board shall not include as a public member
479 any person who receives, or who has received during the past two years a significant portion of
480 his or her income directly or indirectly from the developer of an energy facility or an electric, gas
481 or oil company. The public members shall serve on a part-time basis, receive \$100 per diem of
482 board service, and shall be reimbursed by the commonwealth for all reasonable expenses actually
483 and necessarily incurred in the performance of official board duties. Upon the resignation of any
484 public member, a successor shall be appointed in a like manner for the unexpired portion of the
485 term. No person shall be appointed to serve more than two consecutive full terms.

486 SECTION 5. Section 138 of chapter 164 of the General Laws, as appearing in the 2008
487 Official Edition, is hereby amended by striking out, in lines 39 and 40 and in lines 57 and 58, the

488 words “owned or operated by a customer which is” and inserting in place thereof, in each
489 instance, the following word:- of.

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

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

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

499 SECTION 8. Section 139 of said chapter 164, as so appearing, is hereby amended by
500 striking out in lines 9, 11, and in lines 13 and 14, each time it appears, the words “wind or solar.”

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

509 SECTION 10. Said section 139 of said chapter 164, as so appearing, is hereby amended
510 by inserting after the word “section”, in line 74, the following:- , including adoption of a system
511 that provides proposed net metering facilities of a municipality or other governmental entity an
512 assurance of net metering eligibility at the time they meet criteria established by the department.
513 Nothing herein shall limit the department’s authority to adopt rules and regulations relating to
514 other proposed net metering facilities.

515 SECTION 11. Notwithstanding any general or special law to the contrary, the energy
516 facilities siting board shall promulgate rules and regulations under sections 69U and 69V of
517 chapter 164 of the General Laws on or before March 1, 2011.

518 SECTION 12. Notwithstanding any general or special law to the contrary, no application
519 may be submitted to or reviewed through the streamlined permitting process established in this
520 act until all necessary rules and regulations are promulgated by the division of green
521 communities.

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

525 SECTION 14. Notwithstanding any general or special law to the contrary, nothing in this
526 act shall be construed to allow the permitting process contained in chapter 25D of the General
527 Laws or sections 69U to 69W, inclusive, of chapter 164 of the General Laws to apply to land that
528 is under protection pursuant to Article XLIX, as appearing in Article XCVII of the Amendments
529 to the Constitution of the Commonwealth. The permitting process contained in chapter 25D of
530 the General Laws or sections 17 to 19, inclusive, of chapter 25A of the General Laws shall not

531 apply to projects that will have an adverse effect on properties that are listed or eligible for
532 listing in the National or State Registers of Historic Places.”.