

SENATE No. 1504

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to comprehensive wind energy siting reform..

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

3 (g) There shall be within the department a full-time employee who shall provide technical
4 assistance to municipalities with respect to the siting of wind energy facilities.

5 SECTION 2. Section 69H of chapter 164 of the General Laws, as appearing in the 2006
6 Official Edition, is hereby amended by inserting in line 18 after the words “or his designee,” the
7 following words:- the commissioner of the department of fish and game,

8 SECTION 3. Said section 69H of said chapter 164, as so appearing, is hereby further
9 amended by striking out the word “three” in line 18, and inserting in place thereof the
10 following:- four

11 SECTION 4. Said section 69H of said chapter 164, as so appearing, is hereby further
12 amended by inserting in line 20 after the words “consumer matters” the following:- , one of
13 whom shall be a municipal official with experience in land use planning,

SECTION 5. Chapter 164 of the General Laws is hereby amended by adding after section 69S the following three new sections:-

Section 69T. The board shall appoint a director of wind energy facility siting, who shall be responsible for ensuring that the siting standards established in section 96U of this chapter are timely issued, and that the procedures for the siting of wind energy facilities established in section 69V result in timely and predictable permitting decisions.

Section 69U. No later than 9 months after the effective date of this act, the board shall promulgate regulations containing standards for the siting of electric generating plants that are: (1) powered by wind energy and (b) have the capacity to generate 5 or more megawatts. The criteria shall be established for wind energy facilities that are inland. Facilities are not required to comply with such criteria, but compliant facilities shall be entitled to state agency fast-track permitting under section 69V of this chapter and municipal fast-track permitting under chapter 40T.

The standards shall include, but not be limited to, the following: wind speeds; proximity to transmission or distribution lines; appropriate distances from residences to minimize noise and safety impacts; appropriate distances from recreational areas of special federal or state significance; performance standards to protect rare species if a wind energy facility is located within habitats for rare species; performance standards to minimize impact upon wetland resources or other ecologically sensitive areas; and such other factors as the board determines to be relevant to foster the development of wind energy in a manner that minimizes environmental impact.

35 The board shall empanel an advisory group to assist in developing the standards. The
36 advisory group shall include the secretary of energy and environmental affairs, the commissioner
37 of the department of energy resources, a commissioner of the department of public utilities, the
38 commissioner of the department of environmental protection, the commissioner of the
39 department of conservation and recreation, the commissioner of the department of fish and game,
40 the commissioner of the department of public safety, the secretary of the executive office of
41 housing and economic development, or the designees of any of the foregoing. The advisory
42 group shall also include the following individuals to be selected by the secretary of the executive
43 office of energy and environmental affairs: a representative of the wind power generation
44 industry, a representative of the electric power generation industry, a representative of a non-
45 profit environmental organization with experience in wind energy facility siting, a representative
46 of the Berkshire Regional Planning Council, a representative from the Cape Cod Commission, a
47 municipal official with experience in wind energy facility siting, and such other representatives
48 as the secretary deems advisable.

49 Section 69V. Notwithstanding any general or special law to the contrary, any person that
50 seeks to construct a wind energy facility with a capacity of five or more megawatts may elect to
51 follow the procedures established by this section. As used in this section, the term “wind energy
52 facility” or “the facility” includes turbines, foundations, and ancillary facilities such as roadways,
53 transmission or distribution lines, substations, and any other buildings, structures or equipment
54 needed to generate and deliver electricity powered by wind.

55 A person seeking to construct a wind energy facility that complies with the siting
56 standards established pursuant to section 69U shall be eligible for the following fast-track
57 permitting procedures under this subsection.

After the local wind energy board renders a final decision pursuant to chapter 40T or the time for decision has passed, the project applicant shall file an application with the board, together with such supporting materials as are necessary to demonstrate that the facility complies with the siting standards. The application shall include a complete list of state agency permits that are needed for the facility. The applicant shall file a notice of the application with the municipal wind energy permitting board established pursuant to chapter 40T, any state agencies that have been identified as permit granting authorities in the application, abutters to the site of the facility, and the office of the Massachusetts Environmental Policy Act, which shall publish the notice in the Environmental Monitor.

Within two months of publication of the application in the environmental monitor, siting board staff shall hold a non-adjudicatory public hearing to take comment on the application, and shall allow written comments to be filed within two months of the publication of the notice. State permit granting agencies shall file comments with the staff that include recommended conditions within each agency's regulatory purview.

Within two months of the close of the public comment period, the board shall render a decision on whether the facility meets the siting standards. If the board finds that the facility meets the siting standards, it shall approve the facility and may impose conditions to its approval.

Should the board find that the facility does not meet the siting standards, it may hold additional hearings to take additional evidence, if necessary, and approve the facility and impose conditions to its approval if it finds that that the benefits of the facility outweigh the detriments, taking into account impact on ecologically sensitive areas, rare species, recreational areas of special federal or state significance; noise and public safety. A decision under this subparagraph

shall be issued no later than nine months after the publication of the notice in the environmental monitor.

Notwithstanding the provisions of any other law to the contrary, if the Board issues an approval under this section, no state agency or local government shall require any approval, consent, permit, certificate or condition for the construction, operation or maintenance of the facility with respect to which the certificate is issued and no state agency or local government 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 board shall not issue a certificate 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 or local agency, would be invalid because of a conflict with applicable federal water or air standards or requirements. The approval, if issued, shall be in the form of a composite of all individual permits, approvals or authorizations which would otherwise be necessary for the construction and operation of the facility and that portion of the certificate which relates to subject matters within the jurisdiction of a state or local agency shall be enforced by said agency under the other applicable laws of the commonwealth as if it had been directly granted by the said agency. Notwithstanding the foregoing, if the local wind energy permitting board grants a permit pursuant to section 40T, the board's decision shall not supersede the local wind energy permitting board's permit except as to any locally-imposed conditions that the board finds would significantly impair the ability of the applicant to construct or operate the facility.

101 The board shall combine the review and approval process under this section with any
102 appeal of a local wind energy permitting board decision brought by an applicant or aggrieved
103 person pursuant to chapter 40T.

104 An application filed by a person seeking to construct a wind energy facility that does not
105 comply with the siting standards shall be governed by the same procedures as above, except that:
106 (a) the board shall hold a hearing within four months and close the public comment period within
107 six months from the date of publication of the notice of the application in the environmental
108 monitor; and (b) the board shall issue an approval within nine months of the date of publication
109 if it finds that the benefits of the facility outweighs the detriments, taking into account adverse
110 impact on ecologically sensitive areas, rare species, recreational areas of special federal or state
111 significance; noise and public safety.

112 The board shall promulgate regulations governing the procedures for permitting under
113 this section and appeals brought pursuant to chapter 40T.

114 SECTION 6. The General Laws are hereby amended by adding after Chapter 40S, the
115 following new chapter:-

116 Chapter 40T: Municipal Wind Energy Permitting Board.

117 Section 1. A municipality with significant wind resources areas as determined by the
118 Department of Energy Resources shall establish a wind energy permitting board to conduct local
119 permitting of a wind energy facility. As used in this chapter, the term “wind energy facility” or
120 “the facility” includes turbines, foundations and ancillary facilities such as roadways,
121 transmission or distribution lines, substations, and any other buildings, structures or equipment
122 needed to generate and deliver electricity powered by wind.

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

Section 3. Permitting Procedure. Any person that seeks to construct a wind energy facility with a capacity of five or more megawatts may elect to follow the procedure established herein.

A person seeking to construct a wind energy facility that complies with the siting standards established pursuant to section 69U of chapter 164 shall be eligible for fast-track permitting procedures under this subsection.

The applicant shall file an application with the wind energy permitting board and the town or city clerk in lieu of separate applications to the applicable local boards. The application shall identify any provisions of local laws or regulations from which a waiver is sought.

The wind energy permitting board shall forthwith notify each such local board, as applicable, of the filing of such application by sending a copy thereof to such local boards for their recommendations and shall, within sixty days of the receipt of such application and in compliance with the notice and publication provisions of section 11 of chapter 40A, hold a public hearing on the application. The wind energy permitting board shall request the recommendations of said 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 to said permit or approval conditions as are consistent with the terms of this section.

The wind energy permitting board, in making its decision on the application, shall take into consideration the recommendations of the local boards and shall have the authority to assess fees to retain consultants pursuant to the provisions of section 53G of chapter 44. The board shall have the authority to waive zoning and non-zoning requirements of the municipality's local bylaw.

The board shall file with the city or town clerk a written decision, based upon a majority vote of said 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.

A wind energy facility that does not comply with the siting standards established under section sixty-nine U of chapter 164 shall be governed by the same procedures as in subsection 1 above, except that the deadline for a decision shall be 180 days, rather than 120 days.

The wind energy permitting board is authorized to assess an impact fee upon the applicant in accordance with a fee schedule to be promulgated by the Department of Energy Resources. Notwithstanding the foregoing, the wind energy permitting board may accept other forms of mitigation, including but not limited to a purchase and sale agreement for electricity,

166 and is authorized to enter into a legally enforceable agreements with the applicant for alternative
167 mitigation.

168 Notwithstanding any general or special law to the contrary, a municipality in which the
169 wind energy permitting board has issued an approval pursuant to this chapter shall be deemed to
170 have met the green community eligibility standards set forth in subsections (2) and (3) of section
171 10(c) of chapter 25A, and if the municipality seeks a waiver of any of the other eligibility
172 requirements, shall be entitled to a finding that the municipality has committed to alternative
173 measures that advance the purposes of the green communities program as effectively as
174 adherence to the requirements.

175 Any person aggrieved by a decision of the wind energy permitting board may appeal the
176 decision to the Energy Facilities Siting Board and this appeal shall be the exclusive means of
177 review of the board's decision. The appeal shall be filed with the siting board no later than thirty
178 days after the wind energy permitting board's decision is filed with the city or town clerk.