

SENATE No. 2206

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. This Act shall be entitled the “Wind Energy Siting Reform Act”, and shall
2 be construed in a manner to achieve its public purposes, which are to encourage the development
3 of clean, renewable, electric generating plants and ancillary facilities powered by wind, ensure
4 that such facilities are sited in appropriate locations based on clear, predictable, and protective
5 environmental, cultural and historic resource standards, and streamline the permitting of such
6 facilities at the state and local level and reduce delays associated with appeals of such permits.
7 No application may be submitted to or reviewed through the streamlined permitting process
8 established in this Act until all necessary regulations are promulgated.

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

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

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

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

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

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

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

31 Section 69U. No later than nine months after the effective date of this act, the energy
32 facilities siting board shall, with the approval of the secretary of the executive office of energy
33 and environmental affairs, promulgate regulations containing standards for the siting, operation,
34 and decommissioning of electric generating plants and ancillary facilities thereto that are: (1)
35 powered by wind energy and (b) have the capacity to generate two or more megawatts of

36 electricity. The standards shall be established for wind energy facilities that are sited on land.
37 Facilities are not required to comply with such standards, but compliant facilities shall be eligible
38 for state agency fast-track permitting pursuant to section 69V of this chapter and municipal fast-
39 track permitting pursuant to chapter 40T. The siting of offshore wind facilities shall be governed
40 by the integrated ocean management plan established pursuant to section 4C of chapter 21A.

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

59 environmental statutes and regulations. The standards shall be based upon best available science,
60 be drafted in consultation with the relevant agencies and the advisory group described below,
61 and shall be reviewed and updated as necessary, but not less than once every 5 years.

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

82 regional public hearings for the purpose of soliciting public comments. Prior to adopting the
83 regulations, the board shall hold a public hearing and follow the additional procedures set forth
84 in section 2 of chapter 30A.

85 Section 69V.

86 (a)Notwithstanding any general or special law to the contrary, any person who proposes
87 to construct a wind energy facility with a capacity of 2 or more megawatts may elect to follow
88 the procedures established by this section and sections 69T and 69U of this chapter. As used in
89 this section, the term “wind energy facility” or “the facility” includes blades, turbines, towers,
90 supports, foundations, and any ancillary facilities such as roadways, transmission or distribution
91 lines, substations, and any other buildings, structures or equipment whose primary purpose is to
92 support the generation and delivery of electricity powered by wind.

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

96 (c)After a municipal wind energy board or planning board authorized under section 1 or 2
97 of chapter 40T files a written decision with the city or town clerk, or constructive approval
98 results pursuant to section 3(f) of chapter 40T, the project applicant may file an application with
99 the energy facilities siting board, together with such supporting materials as are necessary to
100 demonstrate that the facility complies with the standards. The application shall include, in such
101 form and detail as the energy facilities siting board shall from time to time prescribe, the
102 following information: (i) a description of the proposed wind energy generating facility,
103 including any ancillary structures and related facilities; (ii) a description of the project’s

104 environmental impacts, both positive and negative, (iii) a statement of whether the project
105 complies with the standards established under section 69U, and if it does not, a listing of the
106 standards for which the project does not comply and an explanation as to why compliance is not
107 practicable; (iv) a complete list of state agency permits that would otherwise be needed for the
108 facility; (v) any other information requested by the board. The applicant shall simultaneously
109 file a notice of the application with the municipal wind energy permitting board or planning
110 board established pursuant to chapter 40T, any state or regional agencies that have permitting
111 authority, abutters to the site of the facility, and the office of the Massachusetts Environmental
112 Policy Act, which shall publish the notice in the Environmental Monitor. Within 45 days of
113 receipt of the application, board staff shall review the application, notify all relevant permitting
114 agencies, and inform the applicant in writing whether the application is complete. The applicant
115 shall make the full application readily available to all relevant agencies and municipalities, and
116 the board shall establish a procedure to ensure that the application and supporting materials are
117 available for timely local and statewide public access, including but limited to, electronically.

118 (d) Within 2 months of the issuance of a determination that the application is complete, a
119 hearing officer of the energy facilities siting board shall take written public comment and hold a
120 non-adjudicatory public hearing to take oral comment on the application. The hearing shall be
121 held in the host community or in a nearby community. The hearing officer shall allow not less
122 than 45 days from the determination of a complete application for public comments to be
123 submitted. Based on the comments that are submitted, if the hearing officer determines that
124 there are genuine disputes of material fact as to whether the facility meets the standards, the
125 hearing officer shall schedule one or more evidentiary hearings for the limited purpose of taking
126 further evidence upon the issues for which there is a genuine dispute of material fact. In any

127 instance in which there is a factual dispute between the applicant and a state agency regarding
128 matters within the state agency's regulatory authority, an evidentiary hearing shall be held as to
129 that dispute at the request of the applicant or the state agency. Evidence may be presented at such
130 hearing by the applicant, the municipality in which the proposed facility is located, and state
131 permit granting authorities, and by any entity or person from the following list, provided such
132 entity or person submitted comments during the initial public comment period described here in:
133 an abutter, an abutting municipality, a lawfully established trust, corporation, or other
134 incorporated organization or person who is substantially and specifically affected by the
135 proceeding, or any group consisting of not fewer than ten residents of the municipality in which
136 the facility is proposed. Each such party presenting evidence shall be deemed to be a party in
137 interest for the purposes of subsection (m) of this section. The evidentiary hearing shall be
138 completed no later than 3 months following the close of the initial public comment period. The
139 evidentiary hearing shall include written or oral testimony under oath, the opportunity for cross-
140 examination, and the compilation of a record of admissible evidence, but the hearing officer and
141 the board shall not be bound by the provisions of paragraph 7 of section 11 of chapter 30A.

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

146 (f) Within 2 months of the close of the public hearing or evidentiary hearings if
147 scheduled, the board shall render a written decision on whether the proposed facility meets the
148 standards. Notwithstanding the provisions of any other law to the contrary, if the board finds
149 that the proposed facility meets the standards, it shall approve the facility, and may impose

150 conditions to its approval. Conditions recommended by state environmental agencies with
151 respect to issues within their permitting authority under state law, by state environmental
152 agencies with respect to biological resources identified under section 69U but not within their
153 permitting authority under existing state law, or conditions recommended by host municipalities
154 or their constituent boards or regional planning agencies with regulatory authority, shall be
155 adopted to the maximum extent practicable, and the board shall explain the reasons for not
156 including any such conditions in its written decision.

157 (g) Should the board find that the facility does not meet the siting standards, it may hold
158 additional hearings to take additional evidence from both the applicant and interested parties, if
159 necessary, and, notwithstanding the provisions of any other law to the contrary, approve the
160 facility and impose conditions to its approval if it finds that the facility has complied to the
161 maximum practicable extent with the siting standards established under section 69U, that the
162 facility has mitigated the impact arising out of the non-compliance with the siting standards, and
163 the benefits of the facility outweigh the detriments, taking into account benefits including but not
164 limited to the avoidance or reduction of greenhouse gases and other pollutants, energy
165 reliability, security and diversification, public ownership of the facility or reduction of electric
166 rates to the local community that will be affected by the facility, and detriments including but not
167 limited to the impact on ecologically sensitive areas, large unfragmented habitat blocks, priority
168 or estimated habitats for plant and animal species listed pursuant to chapter 131A, populations
169 of bird and bat species that are considered by the department of fish and game as being
170 vulnerable to impacts from the operation of wind turbines, historic, cultural, or scenic or
171 recreational areas of special federal or state significance, noise and public safety.
172 Notwithstanding the provisions of any other law to the contrary, if the board finds that the

173 facility meets the standards in this paragraph, it may approve the facility, and may impose
174 conditions to its approval. A decision under this subparagraph shall be issued no later than 9
175 months after the written determination of a complete application, if no evidentiary hearings are
176 held, or within 12 months if evidentiary hearings are held. Conditions recommended by state
177 environmental agencies with respect to issues within their permitting authority under state law,
178 by state environmental agencies with respect to biological resources identified under section 69U
179 but not within their permitting authority under existing state law, or conditions recommended by
180 host municipalities or their constituent boards, shall be adopted to the maximum extent
181 practicable, and the board shall explain the reasons for not including any such conditions in its
182 written decision.

183 (h) Any facility which receives an approval under this chapter shall thereafter be
184 constructed, maintained, and operated in conformity with such approval and any terms and
185 conditions contained therein. Notwithstanding the provisions of any other law to the contrary, if
186 the board issues an approval under this section, no state agency shall require any approval,
187 consent, permit, certificate or condition for the construction, operation or maintenance of the
188 facility with respect to which the approval is issued and no state agency shall impose or enforce
189 any law, ordinance, by-law, rule or regulation nor take any action nor fail to take any action
190 which would delay or prevent the construction, operation or maintenance of such facility;
191 provided, however, that the board shall not issue an approval the effect of which would be to
192 grant or modify a permit, approval or authorization which, if so granted or modified by the
193 appropriate state agency, would be invalid because of a conflict with applicable federal water,
194 air, historic, or threatened and endangered species standards or requirements. The approval, if
195 issued, shall be in the form of a composite of all state individual permits, approvals or

196 authorizations which would otherwise be necessary for the construction and operation of the
197 facility and that portion of the approval which relates to subject matters within the jurisdiction of
198 a state agency shall be enforced by said agency under the other applicable laws of the
199 commonwealth as if it had been directly granted by the said agency. Notwithstanding the
200 foregoing, section 69V shall not be deemed to exempt wind energy facilities from sections 61,
201 and 62A through 62I of chapter 30.

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

210 (j) An application filed by a person proposing to construct a wind energy facility that
211 does not comply with the standards shall be governed by the same procedures as above, except
212 that: (a) the hearing officer shall hold a public hearing and close the public comment period
213 within four months from the date of determination of a complete application; (b) the hearing
214 officer shall hold evidentiary hearings as needed to resolve genuine disputes of material facts
215 within eight months from the date of determination of a complete application; and (c) the board
216 shall issue a decision within 4 months of the close of the public comment period or evidentiary
217 hearing. The board shall issue an approval if it finds that the facility meets the standards set
218 forth in subsection (g) of this section. Conditions recommended by state environmental agencies

219 with respect to issues within their permitting authority under state law, by state environmental
220 agencies with respect to biological resources identified under section 69U but not within their
221 permitting authority under existing state law, or conditions recommended by host municipalities
222 or their constituent boards, or regional planning agencies with regulatory authority, shall be
223 adopted to the maximum extent practicable, and the board shall explain the reasons for not
224 including any such conditions in its written decision.

225 (k) No later than 9 months after the effective date of this act, the energy facilities siting
226 board shall promulgate regulations governing the procedures for permitting under this section
227 and appeals brought pursuant to chapter 40T. The regulations shall include clear and concise
228 application requirements, including but not limited to pre-application survey requirements
229 developed by the board in consultation with the department of fish and game and the department
230 of environmental protection, and may provide for pre-application consultation and site visits. No
231 application shall be considered complete until surveys, if required, are determined by the
232 department of fish and game or the department of environmental protection to be complete.
233 Sufficient data shall be required from the applicant by these regulations to enable the board to
234 determine whether the facility meets the standards under section 69U, and if it does not, whether
235 it meets the standards set forth in subsection (g), provided, however, that these regulations shall
236 not require any data related to the necessity or cost of the proposed generating facility, except for
237 data related to the costs or economic feasibility associated with the mitigation, control, or
238 reduction of the environmental impacts of the proposed generating facility, so that the board can
239 make an informed determination as to the ability of the applicant to afford to comply with
240 conditions imposed at the local or state level.

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

252 (m) Any party in interest aggrieved by a decision of the board under this section shall
253 have a right to judicial review in the manner provided by section 5 of chapter 25. The scope of
254 such judicial review shall be limited to whether the decision of the board is in conformity with
255 the constitution of the commonwealth and the constitution of the United States, was made in
256 accordance with the procedures and application of standards established under sections 69U and
257 69V, and with the rules and regulations of the board with respect to such provisions, was
258 supported by substantial evidence in the record of the board’s proceedings; and was arbitrary,
259 capricious or an abuse of the board’s discretion.

260 Section 69W: Sections 69U and 69V shall not preclude, or obligate an applicant for a
261 “facility” as defined in section 69G of this chapter from seeking and obtaining board approvals
262 and certificates pursuant to sections 69K through 69O ½ in lieu of proceeding under sections
263 69U and 69V.

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

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

269 Chapter 40T: Wind Energy Permitting

270 Section 1. A municipality with significant wind resource areas as determined by the
271 department of energy resources, in consultation with the Massachusetts municipal association
272 and applicable regional planning authorities, shall establish a wind energy permitting board to
273 conduct local permitting of a wind energy facility, within 30 days of receipt of a letter of intent
274 from an applicant seeking to file an application pursuant to this chapter. As used in this chapter,
275 the term “wind energy facility” or “the facility” includes blades, turbines, towers, supports,
276 foundations and any ancillary facilities such as roadways, transmission or distribution lines,
277 substations, and any other buildings, structures or equipment whose primary purpose is to
278 support the generation and delivery of electricity powered by wind. In all other municipalities,
279 the municipality’s planning board shall implement the provisions of this chapter.

280 Section 2. In the case of towns, the board of selectmen, and in the case of cities, the
281 mayor, shall establish and appoint the wind energy permitting board, to be composed of either 3
282 or 5 members, at the discretion of the board of selectmen or mayor. A 3 member board shall
283 consist of one representative from the conservation commission, one member from the zoning
284 board of appeals, and one member from the planning board. A 5 member board shall consist of
285 two members of the conservation commission, one member from the zoning board of appeals,

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

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

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

300 (c) The project proponent shall file an application with the wind energy permitting board
301 and the town or city clerk in lieu of separate applications to the otherwise applicable local
302 boards, commissions, officials or other municipal agencies or authorities (hereinafter referred to
303 collectively as “local boards”). The proponent shall also file the application with the town or
304 city clerk of any abutting municipality. The application shall identify any provisions of local
305 laws or regulations from which a waiver is sought. Within thirty days of receipt, the chairman of
306 the wind energy permitting board, or his designee, shall inform the proponent whether the
307 application is complete. If the application is incomplete, the proponent shall provide the

308 additional information within thirty days or such longer time as may be mutually agreed upon.
309 After the expiration of this period, the proponent may elect to go forward with the information
310 provided, and the procedures and timelines set forth below shall apply.

311 (d)The wind energy permitting board shall forthwith notify each such local board, as
312 applicable, of the filing of such application by sending a copy thereof to such local boards for
313 their recommendations and shall, within sixty days of the determination of a complete
314 application or the expiration of the additional information period described in subsection (c),
315 and in compliance with the notice and publication provisions of section 11 of chapter 40A, hold
316 a public hearing and a written public comment period of not less than 45 days on the application.
317 The wind energy permitting board shall request the recommendations of said local boards as are
318 deemed necessary or helpful in making its decision upon such application and shall have the
319 same power to issue a permit or other approval as any local board or official who would
320 otherwise act with respect to such application, including but not limited to the power to attach to
321 said permit or approval conditions as are consistent with the terms of this section and otherwise
322 authorized by applicable local laws and regulations.

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

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

336 (g)A wind energy facility that does not comply with the standards established under
337 section 69U of chapter 164 shall be governed by the same procedures as set forth in subsections
338 (a) through (f) above, except that the deadline for a decision shall be 180 days, rather than 120
339 days. If the applicant states that the project complies with the standards, but the wind energy
340 permitting board determines through a vote or interim written decision within the 120 day period
341 that the application does not comply with the standards, the deadline for decision shall be
342 extended so that the deadline is 180 days from the filing of the application except where a
343 municipal board has made a timely referral of an application to a regional planning agency with
344 regulatory authority.

345 (h)The wind energy permitting board is authorized to assess a community mitigation fee
346 upon the applicant. The fee shall not exceed a cap promulgated by the department of energy
347 resources through regulations; the cap shall be set so as to ensure that community mitigation fees
348 do not render the project uneconomic. The applicant must offer the host municipality or its
349 designee the option of entering a legally enforceable purchase and sale agreement for not more
350 than 10 per cent of the electricity generated on site for use by the host municipality or its
351 designee. Notwithstanding the foregoing, the wind energy permitting board may accept other

352 forms of mitigation in lieu thereof, including but not limited to a purchase and sale agreement for
353 electricity between the applicant and a municipality, a county, a regional planning agency or
354 other regional governmental entity, a municipal electric cooperative or a municipal aggregator of
355 energy and is authorized to enter into a legally enforceable agreements with the applicant for
356 such other mitigation.

357 (i) Notwithstanding any general or special law to the contrary, a municipality in which the
358 wind energy permitting board has issued an approval pursuant to this chapter shall be deemed to
359 have met the green community eligibility standards set forth in subsections (2) and (3) of section
360 10(c) of chapter 25A, and if the municipality seeks a waiver of any of the other eligibility
361 requirements, shall be entitled to a finding that the municipality has committed to alternative
362 measures that advance the purposes of the green communities program as effectively as
363 adherence to the requirements.

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

367 (k) In areas where regional planning agencies have regulatory authority, a local wind
368 energy permitting board or planning board may refer an application to the regional planning
369 agency in accordance with the special act establishing the regional planning agency.

370 Notwithstanding any general or special law to the contrary, prior to the regional planning
371 agency's final determination on the application, the local wind energy permitting board may
372 review and hold public hearings and meetings on the application, provided however, no final
373 determination shall be made until the regional planning agency has issued an approval or

374 approval with conditions. Notwithstanding any general or special law to the contrary, in areas
375 where regional planning agencies have regulatory authority, a wind energy permitting board and
376 regional planning agency may hold joint hearings concerning a proposed facility so that both
377 boards may review a project simultaneously. Upon approval or approval with conditions by a
378 regional planning agency, a wind energy permitting board shall file its written decision with the
379 city or town clerk within 60 days of the issuance of a final decision by the regional planning
380 agency. Failure to file a written decision or an agreed upon extension within the 60 day period
381 shall result in a constructive approval of the application by a wind energy permitting board. If a
382 regional planning agency denies a development of regional impact permit to a proposed wind
383 energy facility, the wind energy permitting board shall not issue any permits for such a facility
384 and no constructive approval shall result.

385 (l) An abutting municipality, a person (other than the applicant), or lawfully established
386 trust, corporation, or other incorporated organization, any of whom are substantially and
387 specifically aggrieved by a decision of the wind energy permitting board or a regional planning
388 agency granting a permit or permit with conditions to the applicant, or constructively approving
389 such a permit may seek further review of the decision to the energy facilities siting board and
390 this appeal shall be the exclusive means of review of such decisions of a wind energy permitting
391 board or a regional planning agency. The appeal shall be filed with the siting board no later than
392 30 days after the wind energy permitting board's decision is filed with the city or town clerk or
393 rendered by a regional planning agency, and shall be governed by section 69V of chapter 164
394 and regulations promulgated thereunder. An appeal of a decision of the wind energy permitting
395 board denying a permit or granting a permit with conditions, brought by the applicant or by any
396 other proponent of a wind energy facility shall be filed with superior court or the permit session

397 of the land court pursuant to section 3A of chapter 185 within 30 days of the filing of the
398 decision with the city or town clerk. The court shall hear all evidence pertinent to the authority
399 of the wind energy permitting board and determine the facts, and, upon the facts so determined,
400 annul such decision if found to exceed the authority of the wind energy permitting board or make
401 such other decree as justice and equity may require. An appeal brought by the applicant of a
402 decision of a regional planning agency denying a permit or granting a permit with conditions
403 shall be governed by the enabling statute of the applicable regional planning agency.

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

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

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