

**SENATE . . . . . No. 2245**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Ten**  
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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           SECTION 1. This act shall be construed in a manner to achieve its public purposes,  
2           which are to encourage the development of clean, renewable, electric generating plants and  
3           ancillary facilities powered by wind, ensure that such facilities are sited in appropriate locations  
4           based on clear, predictable and protective environmental, cultural and historic resource  
5           standards and streamline the permitting of such facilities at the state and local level and reduce  
6           delays associated with appeals of such permits.

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

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

12           SECTION 3. Section 3 of chapter 40A, as appearing in the 2008 Official Edition, is  
13           hereby amended by inserting after the words “public service corporation” in lines 46 and 53-54

14 the following words:- or by any person or entity to generate and transmit electricity derived from  
15 wind.

16 SECTION 4. Said section 3 of said chapter 40A, as so appearing, is hereby amended by  
17 inserting after the words “the corporation” in line 56 following:- or of any person or entity to  
18 generate and transmit electricity derived from wind.

19 SECTION 5. The General Laws are hereby amended by inserting after Chapter 40S the  
20 following chapter:-

21 Chapter 40T: Wind Energy Permitting

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

24 “Facility”, a wind energy facility.

25 “Local boards”, boards, commissions, officials or other municipal agencies or authorities  
26 who would otherwise have jurisdiction over any portion or all of the siting of a proposed facility.

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

33 “Regional planning agency”, an agency with regulatory authority to issue permits,  
34 licenses or other governmental approvals for particular land uses within its jurisdiction.

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

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

43 Section 2. A municipality with significant wind resource areas as determined by the  
44 department of energy resources, in consultation with the Massachusetts Municipal Association  
45 and applicable regional planning authorities, shall establish a wind energy permitting board to  
46 conduct local permitting of a wind energy facility, within 30 days of receipt of a letter of intent  
47 from an applicant seeking to file an application under this chapter. In all other municipalities, the  
48 municipality may establish a wind energy permitting board, or the municipality’s planning board  
49 shall implement the provisions of this chapter.

50 Section 3. In the case of towns, the board of selectmen, and in the case of cities, the  
51 mayor, shall establish and appoint the wind energy permitting board, to be composed of either 3  
52 or 5 members, at the discretion of the board of selectmen or mayor. A 3 member board shall  
53 consist of 1 representative from the conservation commission, 1 member from the zoning board  
54 of appeals, and 1 member from the planning board. A 5 member board shall consist of 2  
55 members of the conservation commission, 1 member from the zoning board of appeals and 2  
56 members from the planning board. The board of selectmen or mayor shall appoint 1 member of

57 the board to be the chairman. If the board of selectmen or mayor determines that it is infeasible  
58 to establish a wind energy permitting board, the planning board shall serve as the wind energy  
59 permitting board. In such instances, the planning board shall take actions to maximize the  
60 opportunity for input from other municipal boards, and shall at a minimum ensure that the  
61 conservation commission and zoning board of appeals are provided with copies of the  
62 application and notices of all public hearings relating to the application.

63 Section 4. (a) A person who proposes to construct a wind energy facility with a capacity  
64 of at least 2 megawatts may elect to follow the procedure established by this chapter.

65 (b) A proposal to develop a wind energy facility that complies with the standards  
66 established under section 69V of chapter 164 shall be eligible for the fast-track permitting set  
67 forth in this section and section 69W of chapter 164.

68 (c) The project proponent shall file an application with the wind energy permitting board  
69 and the town or city clerk in lieu of separate applications to the local boards. The proponent shall  
70 also file the application with the town or city clerk of any abutting municipality. The application  
71 shall identify all provisions of local laws or regulations from which a waiver is sought. Within  
72 30 days of receipt, the chairman of the wind energy permitting board, or the chairman's  
73 designee, shall determine whether the application is complete and inform the proponent of that  
74 decision. If the application is incomplete, the proponent shall be allowed 30 days or such longer  
75 time as may be mutually agreed upon to complete the application. After the expiration of this  
76 period, the proponent may elect to go forward with the information provided, and the procedures  
77 and timelines in this section shall apply.

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

90 (e)The wind energy permitting board, in making its decision on the application, shall  
91 apply all applicable local by-laws and ordinances, and take into consideration the  
92 recommendations of the local boards and shall have the authority to assess fees to retain  
93 consultants under the provisions of section 53G of chapter 44. The board shall have the authority  
94 to waive zoning and non-zoning requirements of the municipality’s local laws, regulations,  
95 policies or other regulatory requirements.

96 (f)The wind energy permitting board shall file with the city or town clerk a written  
97 decision, based upon a majority vote of the board, within 120 days from the filing of the  
98 application, unless the time period is extended by mutual agreement by the board and the  
99 applicant, and the agreement is filed with the city or town clerk prior to the expiration of the 120  
100 day period. Failure to file a written decision or extension within the 120 day period shall result

101 in a constructive approval of the application, unless a municipal board has made a timely referral  
102 of an application to a regional planning agency.

103 (g)A wind energy facility that does not comply with the standards established under  
104 section 69V of chapter 164 shall be governed by subsections (a) through (f) of this section, except  
105 that the deadline for a decision shall be 180 days. If the applicant states that the project complies  
106 with the standards, but the wind energy permitting board determines through a vote or interim  
107 written decision within the 120 day period that the application does not comply with the  
108 standards, the deadline for decision shall be extended so that the deadline is 180 days from the  
109 filing of the application unless a municipal board has made a timely referral of an application to  
110 a regional planning agency.

111 (h)The wind energy permitting board is authorized to assess a community mitigation fee  
112 upon the applicant, which shall not exceed a cap established by the department of energy  
113 resources through regulations. The cap shall be set so as to ensure that community mitigation  
114 fees do not render the project economically non-viable.

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

122 also authorized to enter into legally enforceable agreements with the applicant for additional  
123 mitigation measures.

124 (j)Notwithstanding any general or special law to the contrary, a municipality in which the  
125 wind energy permitting board has issued an approval under this chapter shall be deemed to have  
126 met the green community eligibility requirements set forth in subsections (2) and (3) of section  
127 10(c) of chapter 25A, and if the municipality seeks a waiver of any of the other eligibility  
128 requirements under section 10(c) of chapter 25A, shall be entitled to a finding that the  
129 municipality has committed to alternative measures that advance the purposes of the green  
130 communities program as effectively as adherence to the requirements.

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

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

144 boards may review a project simultaneously. A wind energy permitting board shall file its  
145 written decision with the city or town clerk within 60 days of the date on which a regional  
146 planning agency issues its final decision of approval or approval with conditions. Failure of the  
147 wind energy permitting board to file a written decision or an agreed upon extension within the 60  
148 day period shall result in a constructive approval of the application by the wind energy  
149 permitting board. If a regional planning agency denies a development of regional impact permit  
150 to a proposed wind energy facility, the wind energy permitting board shall not issue any permits  
151 for such a facility and no constructive approval shall result.

152 (m) (i) An interested party who is substantially and specifically aggrieved by a decision  
153 of the wind energy permitting board or a regional planning agency granting a permit or permit  
154 with conditions to the applicant, or constructively approving such a permit may appeal the  
155 decision to the energy facilities siting board and this appeal shall be the exclusive means of  
156 review of such decisions of a wind energy permitting board or a regional planning agency. The  
157 appeal shall be filed with the energy facilities siting board no later than 30 days after the wind  
158 energy permitting board's decision is filed with the city or town clerk or rendered by a regional  
159 planning agency, and shall be governed by section 69W of chapter 164.