

**SENATE . . . . . No. 2260**

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

14 Chapter 40T: Wind Energy Permitting

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

17 “Facility”, a wind energy facility.

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

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

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

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

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

36 Section 2. The department of energy resources, in consultation with the Massachusetts  
37 Municipal Association and applicable regional planning authorities, shall determine which  
38 municipalities in the commonwealth contain significant wind resource areas; provided, however,  
39 that the department shall promulgate through regulation criteria for such determination;  
40 provided, further, that prior to a final determination, the department shall hold at least 1 public  
41 hearing in the region containing the relevant municipality and offer a period for public comment.  
42 A municipality with significant wind resource areas shall establish a wind energy permitting  
43 board to conduct local permitting of a wind energy facility, within 30 days of receipt of a letter  
44 of intent from an applicant seeking to file an application under this chapter. In all other  
45 municipalities, the municipality may establish a wind energy permitting board..

46 Section 3. In the case of towns, the board of selectmen, and in the case of cities, the  
47 mayor, shall establish and appoint the wind energy permitting board, to be composed of either 3  
48 or 5 members, at the discretion of the board of selectmen or mayor. A 3 member board shall  
49 consist of 1 representative from the conservation commission, 1 member from the zoning board  
50 of appeals, and 1 member from the planning board. A 5 member board shall consist of 2  
51 members of the conservation commission, 1 member from the zoning board of appeals and 2  
52 members from the planning board. The board of selectmen or mayor shall appoint 1 member of  
53 the board to be the chairman. If the board of selectmen or mayor determines that it is infeasible  
54 to establish a wind energy permitting board, the planning board shall serve as the wind energy  
55 permitting board. In such instances, the planning board shall take actions to maximize the  
56 opportunity for input from other municipal boards, and shall at a minimum ensure that the

57 conservation commission and zoning board of appeals are provided with copies of the  
58 application and notices of all public hearings relating to the application.

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

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

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

74 (d) The wind energy permitting board shall immediately notify each such local board, as  
75 applicable, of the filing of such application by sending a copy thereof to such local boards for  
76 their recommendations and shall, within 60 days of the board's determination that an application  
77 is complete or the expiration of the additional information period described in subsection (c),  
78 and in compliance with the notice and publication provisions of section 11 of chapter 40A, hold

79 a public hearing and a written public comment period of not less than 45 days on the application.  
80 The wind energy permitting board shall request the recommendations of the local boards as are  
81 deemed necessary or helpful in making its decision upon such application and shall have the  
82 same power to issue a permit or other approval as any local board or official who would  
83 otherwise act with respect to such application, including, but not limited, to the power to attach  
84 conditions to said permit or approval as are consistent with this section and all other laws and  
85 regulations.

86 (e) The wind energy permitting board, in making its decision on the application, shall  
87 apply all applicable local by-laws and ordinances, including any by-laws regulating construction  
88 in and around, and the disturbance of, wetlands and other environmentally sensitive areas, and  
89 shall take into consideration the recommendations of the local boards and shall have the  
90 authority to assess fees to retain consultants under section 53G of chapter 44. The board shall  
91 have the authority to waive zoning and nonzoning requirements of the municipality's local laws,  
92 regulations, policies or other regulatory requirements. (f) The wind energy permitting board shall  
93 file with the city or town clerk a written decision, based upon a majority vote of the board, within  
94 120 days from the filing of the application, unless the time period is extended by mutual  
95 agreement by the board and the applicant, and the agreement is filed with the city or town clerk  
96 prior to the expiration of the 120 day period. Failure to file a written decision or extension  
97 within the 120 day period shall result in a constructive approval of the application, unless a  
98 municipal board has made a timely referral of an application to a regional planning agency.

99 (g) A wind energy facility that does not comply with the standards established under  
100 section 69V of chapter 164 shall be governed by subsections (a) through (f) of this section, except  
101 that the deadline for a decision shall be 180 days. If the applicant states that the project complies

102 with the standards, but the wind energy permitting board determines through a vote or interim  
103 written decision within the 120 day period that the application does not comply with the  
104 standards, the deadline for decision shall be extended so that the deadline is 180 days from the  
105 filing of the application unless a municipal board has made a timely referral of an application to  
106 a regional planning agency.

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

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

120 (j) Notwithstanding any general or special law to the contrary, a municipality, other local  
121 governmental body or other local governmental bodies acting jointly on a regional basis whose  
122 applications have been approved by a host municipality's wind energy permitting board under  
123 this chapter, in which the wind energy permitting board has issued an approval under this

124 chapter shall be deemed to have met the green community eligibility requirements set forth in  
125 subsections (2) and (3) of section 10(c) of chapter 25A, and if the municipality, other local  
126 governmental body or other local governmental bodies acting jointly on a regional basis seeks a  
127 waiver of any of the other eligibility requirements under section 10(c) of chapter 25A, shall be  
128 entitled to a finding that the municipality, other local governmental body or other local  
129 governmental bodies acting jointly on a regional basis has committed to alternative measures that  
130 advance the purposes of the green communities program as effectively as adherence to the  
131 requirements.

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

135 (l) In areas where regional planning agencies have regulatory authority, a local wind  
136 energy permitting board or planning board shall refer an application to the regional planning  
137 agency in accordance with the special act establishing the regional planning agency.  
138 Notwithstanding any general or special law to the contrary, prior to the regional planning  
139 agency's final determination on the application, the local wind energy permitting board may  
140 review and hold public hearings and meetings on the application; provided, however, that no  
141 final determination shall be made until the regional planning agency has issued an approval or  
142 approval with conditions. Notwithstanding any general or special law to the contrary, in areas  
143 where regional planning agencies have regulatory authority, a wind energy permitting board and  
144 regional planning agency may hold joint hearings concerning a proposed facility so that both  
145 boards may review a project simultaneously. A wind energy permitting board shall file its  
146 written decision with the city or town clerk within 60 days of the date on which a regional

147 planning agency issues its final decision of approval or approval with conditions. Failure of the  
148 wind energy permitting board to file a written decision or an agreed upon extension within the 60  
149 day period shall result in a constructive approval of the application by the wind energy  
150 permitting board. If a regional planning agency denies a development of regional impact permit  
151 to a proposed wind energy facility, the wind energy permitting board shall not issue any permits  
152 for such a facility and no constructive approval shall result.

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

161 (ii) An appeal of a decision of the wind energy permitting board denying a permit or  
162 granting a permit with conditions, brought by the applicant or by any other proponent of a wind  
163 energy facility shall be filed with superior court or the permit session of the land court under  
164 section 3A of chapter 185 within 30 days of the filing of the decision with the city or town clerk  
165 and this appeal shall be the exclusive means of review of such decisions of a wind energy  
166 permitting board. The court shall hear all evidence pertinent to the authority of the wind energy  
167 permitting board and determine the facts, and, upon the facts so determined, annul such decision  
168 if found to exceed the authority of the wind energy permitting board or make such other decree  
169 as justice and equity may require. An appeal brought by the applicant or by any other proponent



170 of a wind energy facility of a decision of a regional planning agency denying a permit or  
171 granting a permit with conditions shall be governed by the enabling statute of the applicable  
172 regional planning agency and this appeal shall be the exclusive means of review of such  
173 decisions of a regional planning agency.

174 SECTION 6. Section 69H of chapter 164 of the General Laws, as appearing in the 2008  
175 Official Edition, is hereby amended by inserting after the words “the commissioner of the  
176 department of environmental protection” the following words:- , the commissioner of the  
177 department of fish and game.

178 SECTION 7. Said section 69H of said chapter 164, as so appearing, is hereby further  
179 amended in line 20 by striking out the figure “3” and inserting in place thereof the following  
180 figure:- 4.

181 SECTION 8. Said section 69H of said chapter 164, as so appearing, is hereby further  
182 amended by inserting after the words “labor issues” the following words:- , 1 of whom shall be a  
183 municipal official with experience in land use planning.

184 SECTION 9. Chapter 164 of the General Laws, as so appearing, is hereby amended by  
185 inserting after section 69S the following 5 sections:-

186 Section 69T. As used in section 69 U to 69 X, inclusive, the following words and terms  
187 shall, unless the context clearly requires otherwise have the following meanings:—

188 “Facility”, a wind energy facility.

189 “Interested Party”, an abutter; abutting municipality; lawfully established trust,  
190 corporation, partnership, sole proprietorship, firm, franchise, association, organization, holding

191 company, joint stock company, receivership, business or real estate trust or any other legal entity  
192 organized for profit or charitable purposes which is substantially and specifically affected by the  
193 proposed facility; or any group consisting of not fewer than 10 residents of the municipality in  
194 which the facility is proposed.

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

201 “Wind energy permitting board”, municipal board appointed under sections 2 and 3 of  
202 chapter 40T or if no board has been appointed, the planning board.

203 Section 69U. The department of public utilities shall establish a division of wind energy  
204 facility siting. The chairman of the department of public utilities shall appoint a director of that  
205 division who shall be responsible for ensuring that the standards established in section 69V of  
206 this chapter are timely issued, and that the procedures for the siting of wind energy facilities  
207 established in section 69W result in timely and predictable permitting decisions that uphold the  
208 intent of sections 69U through 69X, inclusive.

209 Section 69V. (a) The energy facilities siting board shall, with the approval of the  
210 secretary of the executive office of energy and environmental affairs, promulgate regulations  
211 pursuant to chapter 30A containing standards for the siting, operation, and decommissioning of  
212 electric generating plants and ancillary facilities thereto that are: (1) powered by wind energy and

213 (2) have the capacity to generate at least 2 megawatts of electricity. The standards shall be  
214 established for wind energy facilities that are sited on land. Facilities are not required to comply  
215 with the standards established under section 69V by the energy facilities siting board, but  
216 compliant facilities shall be eligible for state agency fast-track permitting under section 69W of  
217 this chapter and municipal fast-track permitting under chapter 40T. The siting of offshore wind  
218 facilities shall be governed by the integrated ocean management plan established under section  
219 4C of chapter 21A.

220 (b) The standards for wind energy facilities sited on land shall include, but not be limited  
221 to;

222 (1) lighting;

223 (2) appropriate setbacks from residences to prevent significant sound and health and  
224 safety impacts;

225 (3) performance standards to avoid impacts, and to the extent impacts cannot be avoided,  
226 to minimize and mitigate impacts to scenic or recreational areas of special federal or state  
227 significance, regional cultural facilities, historic resources, priority or estimated habitats for  
228 plant and animal species listed pursuant to chapter 131A, populations of bird and bat species  
229 that are considered by the department of fish and game as being vulnerable to impacts from the  
230 operation of wind turbines, large unfragmented habitat blocks, wetland resources or other  
231 ecologically sensitive areas subject to protection under federal or state law or as identified by the  
232 department of environmental protection, department of conservation and recreation, or the  
233 department of fish and game; and

234 (4) such other factors as the board determines to be relevant to foster the development of  
235 wind energy in a manner that avoids, minimizes and mitigates material adverse environmental  
236 impact. Mitigation may include, but is not limited to, the preservation, enhancement, restoration  
237 or establishment of resources of greater or equal value to those being impacted, as compensation  
238 for unavoidable impacts.

239 The standards shall vary from region to region to take into account material differences in  
240 the natural resources, available wind resources or other characteristics of regions; provided,  
241 however, that all applicable standards shall be at least as protective as existing state  
242 environmental statutes and regulations. The standards shall be based upon best available science,  
243 be drafted in consultation with the relevant agencies and the advisory group created by  
244 subsection (c), and shall be reviewed and updated as necessary, but not less frequently than once  
245 every 5 years.

246 (c) The energy facilities siting board shall empanel an advisory group to develop  
247 recommended standards under the direction of the chairman of the board. The advisory group  
248 may utilize the resources and staff of the board, or those of the board's members, who may  
249 participate as appropriate. The advisory group shall include the commissioner of the department  
250 of conservation and recreation, the chairman of the Massachusetts historical commission, the  
251 commissioner of the department of public safety, the commissioner of the department of public  
252 health, or the designees of any of the foregoing from their respective staffs. The advisory group  
253 shall also include the following individuals to be appointed by the governor: a representative of  
254 the wind energy industry; a representative of the electric transmission and distribution industry;  
255 2 representatives from non-profit environmental organizations with experience in wind energy  
256 facility siting policy, 1 of whom shall represent a land and water conservation organization; 1

257 representative of the Berkshire Regional Planning Commission; 1 representative of the Berkshire  
258 Natural Resources Council; 1 representative from the Metropolitan Area Planning Council; 1  
259 representative of Southeastern Regional Planning and Economic Development District; 1  
260 representative of the Franklin Regional Council of Governments; 1 representative from the Cape  
261 Cod Commission; 1 representative from the Martha's Vineyard Commission; 1 representative  
262 from the Nantucket Planning and Economic Development Council; 1 municipal official with  
263 experience in wind energy siting drawn from a list of not fewer than 3 candidates prepared by the  
264 Massachusetts Municipal Association; provided, however, that the same municipal official may  
265 not serve on the wind energy facilities siting board and advisory group; and up to 2 other  
266 representatives, appointed by the chairman, as the chairman of the board deems advisable. Prior  
267 to submitting the recommended standards to the board, the advisory group shall hold not less  
268 than 2 regional public hearings for the purpose of soliciting public comments. Prior to adopting  
269 the regulations, the board shall hold a public hearing and follow the additional procedures set  
270 forth in section 2 of chapter 30A.

271           Section 69W. (a) Notwithstanding any general or special law to the contrary, any person  
272 who proposes to construct a wind energy facility with a capacity of at least 2 megawatts may  
273 elect to follow the procedures established by this section and sections 69U and 69V of this  
274 chapter.

275           (b) A proposal to develop a wind energy facility that complies with the standards  
276 established under section 69V shall be eligible for the fast-track permitting procedures set forth  
277 in this section and section 3 of chapter 40T.

278 (c) After a municipal wind energy board or planning board authorized under section 1 or  
279 2 of chapter 40T files a written decision with the city or town clerk, or constructive approval  
280 results pursuant to section 3(f) of chapter 40T, the project applicant may file an application with  
281 the energy facilities siting board, together with such supporting materials as are necessary to  
282 demonstrate that the facility complies with the standards. The application shall include, in such  
283 form and detail as the energy facilities siting board shall from time to time prescribe, the  
284 following information: (i) a description of the proposed wind energy generating facility,  
285 including any ancillary structures and related facilities; (ii) a description of the project's  
286 environmental impacts, both positive and negative; (iii) a statement of whether the project  
287 complies with the standards established under section 69V, and if it does not, a listing of the  
288 standards for which the project does not comply and an explanation as to why compliance is not  
289 practicable; (iv) a complete list of state agency permits that would otherwise be needed for the  
290 facility; and (v) any other information requested by the board. The applicant shall  
291 simultaneously file a notice of the application with the municipal wind energy permitting board  
292 or planning board established under chapter 40T, any state or regional agencies that have  
293 permitting authority over the proposed facility, abutters to the site of the facility, and the office  
294 of the Massachusetts Environmental Policy Act, which shall publish the notice, as soon as  
295 possible, in the Environmental Monitor. Within 45 days of receipt of the application, energy  
296 facilities siting board staff shall review the application, notify all relevant permitting agencies,  
297 and inform the applicant in writing whether the application is complete. The applicant shall  
298 make the full application readily available to all relevant agencies and municipalities, and the  
299 energy facilities siting board shall establish a procedure to ensure that the application and

300 supporting materials are available for timely local and statewide public access, including but not  
301 limited to, electronically.

302 (d) Within 2 months of the energy facilities siting board notifying the applicant that the  
303 application is complete, a hearing officer of the energy facilities siting board shall take written  
304 public comment and hold a non-adjudicatory public hearing to take oral comment on the  
305 application. The hearing shall be held in the host community or if no appropriate locations are  
306 available in a host community, in the nearest available appropriate location. The hearing officer  
307 shall allow at least 45 days from the board's determination that the application is complete for  
308 public comments to be submitted. Based on the comments that are submitted, if the hearing  
309 officer determines that there are genuine disputes of material fact as to whether the facility meets  
310 the standards, the hearing officer shall schedule at least 1 evidentiary hearing for the limited  
311 purpose of taking further evidence upon the issues for which there is a genuine dispute of  
312 material fact. In any instance in which there is a factual dispute between the applicant and a state  
313 agency regarding matters within the state agency's regulatory authority, an evidentiary hearing  
314 shall be held as to that dispute at the request of the applicant or the state agency. Evidence may  
315 be presented at such hearing by the applicant, the municipality in which the proposed facility is  
316 located, state permit granting authorities, and by any interested party; provided, however, that  
317 such party submitted comments during the initial public comment period described herein. The  
318 evidentiary hearing shall be completed no later than 3 months following the close of the initial  
319 public comment period. The evidentiary hearing shall include written or oral testimony under  
320 oath, the opportunity for cross-examination and the compilation of a record of admissible  
321 evidence, but the hearing officer and the energy facilities siting board shall not be bound by  
322 paragraph 7 of section 11 of chapter 30A.

323 (e) State permit granting agencies shall file written comments with the hearing officer  
324 during the initial 2 month public comment period to assist the energy facilities siting board in  
325 determining whether the standards have been met, and may include recommended conditions  
326 within each agency's regulatory purview.

327 (f) Within 2 months of the close of the public hearing or evidentiary hearings if  
328 scheduled, the energy facilities siting board shall determine, in writing, whether the proposed  
329 facility meets the standards. Notwithstanding the provisions of any other law to the contrary, if  
330 the energy facilities siting board finds that the proposed facility meets the standards, it shall  
331 approve the facility, and may impose conditions to its approval. Conditions recommended by  
332 state environmental agencies with respect to issues within their permitting authority, by state  
333 environmental agencies with respect to biological resources identified under section 69V but not  
334 within their permitting authority, or conditions recommended by host municipalities or their  
335 constituent boards or regional planning agencies with regulatory authority, shall be adopted to  
336 the maximum extent practicable, and the energy facilities siting board shall explain the reasons  
337 for not including any such conditions in its written decision.

338 (g) (1) If the energy facilities siting board finds that the facility does not meet the siting  
339 standards, it may hold additional hearings to take additional evidence from both the applicant  
340 and interested parties, if necessary, and, notwithstanding the provisions of any other law to the  
341 contrary, approve the facility and impose conditions to its approval if it finds that:

342 (A) the facility has complied to the maximum practicable extent with the siting standards  
343 established under section 69V;



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

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

347 (2) To determine whether the benefits outweigh the detriment, the energy facilities siting  
348 board shall take into account;

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

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

351 (ii) energy reliability;

352 (iii) security and diversification;

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

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

356 (i) ecologically sensitive areas;

357 (ii) large unfragmented habitat blocks;

358 (iii) priority or estimated habitats for all plant and animal species listed under chapter  
359 131A;

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

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

363 (vi) noise; and

364 (vii) public safety.

365 (3) Notwithstanding any other general or special law to the contrary, if the energy facility  
366 siting board finds that the facility meets the standards in this subsection, it may approve the  
367 facility, and may impose conditions to its approval.

368 (4) A decision under this subsection shall be issued no later than 9 months after the  
369 energy facilities siting board determines in writing that the application is complete, if no  
370 evidentiary hearings are held, or within 12 months after such determination if evidentiary  
371 hearings are held.

372 (5) Conditions recommended by state environmental agencies with respect to issues  
373 within their permitting authority under state law, by state environmental agencies with respect to  
374 biological resources identified under section 69V but not within their permitting authority under  
375 existing state law, or conditions recommended by host municipalities or their constituent boards,  
376 shall be adopted to the maximum extent practicable, and the energy facilities siting board shall  
377 explain the reasons for not including any such conditions in its written decision.

378 (h) The construction, maintenance and operation of a facility which receives an approval  
379 under this chapter shall conform with such approval and any terms and conditions contained  
380 therein. Notwithstanding the provisions of any other law to the contrary, if the energy facilities  
381 siting board issues an approval under this section, no state agency shall require any approval,  
382 consent, permit, certificate or condition for the construction, operation or maintenance of the  
383 facility with respect to which the approval is issued and no state agency shall impose or enforce  
384 any law, ordinance, by-law, rule or regulation nor take any action nor fail to take any action

385 which would delay or prevent the construction, operation or maintenance of such facility;  
386 provided, however, that the energy facilities siting board shall not issue an approval the effect of  
387 which would be to grant or modify a permit, approval or authorization which, if so granted or  
388 modified by the appropriate state agency, would be invalid because of a conflict with applicable  
389 federal water, air, historic or threatened and endangered species standards or requirements. The  
390 approval, if issued, shall be in the form of a composite of all state individual permits, approvals  
391 or authorizations which would otherwise be necessary for the construction and operation of the  
392 facility and that portion of the approval which relates to subject matters within the jurisdiction of  
393 a state agency shall be enforced by said agency under the other applicable laws of the  
394 commonwealth as if it had been directly granted by the agency.

395 (i) The energy facilities siting board shall combine the review and approval process under  
396 this section with any additional review of a local wind energy permitting board decision  
397 approving, approving with conditions, or constructively approving an application if such an  
398 appeal is brought by a person or entity other than the applicant under subsection 1 of section 3 of  
399 chapter 40T. If the energy facilities siting board approves the facility under section (f) or (g), it  
400 shall affirm the decision of the wind energy permitting board, but may modify conditions or  
401 impose additional conditions upon the approval to address claims brought by the party seeking  
402 additional review of the wind energy permitting board decision.

403 (j) An application filed by a person proposing to construct a wind energy facility that  
404 does not comply with the standards shall also be governed by subsection (d) through(g),  
405 inclusive, except that:

406 (1) the hearing officer shall hold a public hearing and close the public comment period  
407 within 4 months from the date that the energy facilities siting board determines that the  
408 application is complete;

409 (2) the hearing officer shall hold evidentiary hearings as needed to resolve genuine  
410 disputes of material facts within 8 months from the date the energy facilities siting board  
411 determines that the application is complete; and

412 (3) the energy facilities siting board shall issue a decision within 4 months of the close of  
413 the public comment period or evidentiary hearing.

414 (k) The regulations promulgated under section 69V shall include clear and concise  
415 application requirements, including but not limited to pre-application survey requirements  
416 developed by the energy facilities siting board in consultation with the department of fish and  
417 game and the department of environmental protection, and may provide for pre-application  
418 consultation and site visits. No application shall be considered complete until surveys, if  
419 required, are determined by the department of fish and game or the department of environmental  
420 protection to be complete. Sufficient data shall be required from the applicant by these  
421 regulations to enable the energy facilities siting board to determine whether the facility meets the  
422 standards under section 69V, and if it does not, whether it meets the standards set forth in  
423 subsection (g); provided, however, that these regulations shall not require any data related to the  
424 necessity or cost of the proposed generating facility, except for data related to the costs or  
425 economic feasibility associated with the mitigation, control or reduction of the environmental  
426 impacts of the proposed generating facility, so that the energy facilities siting board can make an

427 informed determination as to the ability of the applicant to afford to comply with conditions  
428 imposed by an agency, municipality or the state.

429 (l) The energy facilities siting board shall promulgate regulations governing the  
430 procedures for permitting under this section and appeals brought under chapter 40T. The  
431 regulations shall also provide for a reasonable fee for wind energy facility applications subject to  
432 this section to defray the energy facilities siting board's reasonable costs of processing the  
433 application; a fee set under such regulations may be adjusted according to project size or other  
434 objective criteria. The regulations shall also ensure that a reasonable portion of the application  
435 fee charged shall be allocated to state agencies that would otherwise be issuing permits for the  
436 facility in accordance with a fee schedule to be adopted concurrently with the regulations. The  
437 energy facilities siting board may retain said fees for the purpose of reviewing applications to  
438 construct wind energy facilities. Any remaining balances of said fees at the end of a fiscal year  
439 shall not revert to the General Fund, but instead shall be available to the energy facilities siting  
440 board during the following fiscal year for the purposes set forth in sections 69U through 69X,  
441 inclusive. Nothing in this section shall change the level or use of siting fees for any other type of  
442 facility subject to section 69J ½ of this chapter.

443 (m) Any interested party aggrieved by a decision of the energy facilities siting board  
444 under this section shall have a right to judicial review in the manner provided by section 5 of  
445 chapter 25. The scope of such judicial review shall be limited to whether the decision of the  
446 energy facilities siting board conforms with the constitutions of the commonwealth and the  
447 United States, was made in accordance with the procedures and application of standards  
448 established under sections 69V and 69W, and with the rules and regulations of the board with

449 respect to such provisions, was supported by substantial evidence in the record of the board's  
450 proceedings and was arbitrary, capricious or an abuse of the board's discretion.

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

453 Section 69X: Sections 69V and 69W shall not preclude, or obligate an applicant for a  
454 facility from seeking and obtaining board approvals and certificates under sections 69K through  
455 69O ½ in lieu of proceeding under sections 69V and 69W.

456 SECTION 9A. Section 10 of chapter 25A of the General Laws, as appearing in the 2008  
457 Official Edition, is hereby amended by striking out, in lines 22 and 23, the words, 'or other local  
458 governmental body' and inserting in place thereof the following words:- , other local  
459 governmental body or other local governmental bodies acting jointly on a regional basis.