

HOUSE No. 4687

The Commonwealth of Massachusetts

By Mr. Murphy of Burlington, for the committee on Ways and Means, that the Senate Bill relative to comprehensive siting reform for land based wind projects (Senate, No. 2260) ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of House document numbered 4687. May 18, 2010.

FOR THE COMMITTEE:

NAME:	DISTRICT/ADDRESS:
Charles Murphy	21st Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

The Committee on Ways and Means recommends that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following:

1 SECTION 1. Subsection (a) of section 10 of chapter 25A of the General Laws, as
2 appearing in the 2008 Official Edition, is hereby amended adding the following sentence:-

3 The director shall identify an employee of the division who shall work within the division and
4 collaborate with regional planning authorities to provide technical assistance to municipalities
5 with respect to the siting of wind energy facilities.

6 SECTION 2. Section 6 of said chapter 25A, as so appearing, is hereby amended by inserting
7 after paragraph (1) the following paragraph:-

8 (1½) administer the expedited permitting procedure set forth in section 18 and hear appeals
9 brought pursuant to section 4 of chapter 25D;

10 SECTION 3. Chapter 25A of the General Laws is hereby amended by adding the following 4
11 sections:-

12 Section 16. As used in sections 17 to 19, inclusive, the following words shall, unless the context
13 clearly requires otherwise, have the following meanings:-

14 “Division”, the division of green communities.

15 “Expedited permitting”, the expedited procedure set forth in section 18 that a person proposing
16 to construct a wind energy facility with a capacity of at least 2 megawatts may follow to receive
17 a permit from a host municipality.

18 “Facility”, a wind energy facility.

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

20 “Interested party”, an abutter; abutting municipality; a lawfully established trust, corporation,
21 partnership, sole proprietorship, firm, franchise, association, organization, holding company,
22 joint stock company, receivership, business or real estate trust or any other legal entity organized
23 for profit or charitable purposes that is substantially and specifically affected by a proposed

24 facility; or any group consisting of not fewer than 10 residents of the local governmental body in
25 which the facility is proposed.

26 “Regional planning agency”, a regional planning district established pursuant to chapter 40B, the
27 cape cod commission established pursuant to section 18 of chapter 716 of the acts of 1989 as
28 amended or the martha’s vineyard commission established pursuant to chapter 831 of the acts of
29 1977, within such district or commission area or any other regional planning district hereafter
30 established by the general court.

31 “Wind energy facility”, a land based facility including blades, turbines, towers, test towers,
32 supports, foundations and any ancillary facilities such as roadways, transmission or distribution
33 lines, substations and any other buildings, structures or equipment whose primary purpose is to
34 support the generation, transmission and delivery of at least 2 megawatts of electricity, but less
35 than 100 megawatts of electricity, powered by wind; provided, however, that wind energy
36 facility shall not include structures or buildings whose primary purpose is unrelated to the
37 generation, transmission and delivery of electricity powered by wind.

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

40 Section 17. (a) The division shall, with the approval of the department, promulgate regulations
41 pursuant to chapter 30A containing standards for the land based siting, operation and
42 decommissioning of wind energy facilities. A wind energy facility shall not be required to
43 comply with the standards established pursuant to this section; provided, however, that a wind
44 energy facility in compliance with this section shall be eligible for expedited permitting pursuant
45 to section 18 and section 4 of chapter 25D.

46 (b) The standards for wind energy facilities shall include, but not be limited to: (1) lighting; (2)
47 appropriate setbacks from residences to prevent significant sound, health and safety impacts; (3)
48 performance standards and appropriate setbacks to avoid impacts, and to the extent impacts
49 cannot be avoided, to minimize and mitigate impacts to scenic or recreational areas of special
50 federal or state significance, regional cultural facilities, historic resources, priority or estimated
51 habitats for plant and animal species listed pursuant to chapter 131A, populations of bird and bat
52 species that are considered by the department of fish and game as being vulnerable to impacts
53 from the operation of wind turbines, large unfragmented habitat blocks, wetland resources or
54 other ecologically sensitive areas subject to protection under federal or state law or as identified
55 by the department of environmental protection, department of conservation and recreation or the
56 department of fish and game; and (4) such other factors as the board determines to be relevant to
57 foster the development of wind energy in a manner that avoids, minimizes or mitigates material
58 adverse environmental impact. Mitigation may include, but is not limited to, the preservation,
59 enhancement, restoration or establishment of resources of greater or equal value to those being
60 impacted, as compensation for unavoidable impacts.

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

68 (c) The director of the division shall appoint an advisory group to develop recommended
69 standards. The advisory group may utilize the resources and staff of the division. The advisory
70 group shall include the commissioner of the department of conservation and recreation, the
71 chairman of the Massachusetts historical commission, the commissioner of the department of
72 public safety, the commissioner of the department of public health, or designees from their
73 respective staffs. The advisory group shall also include the following individuals to be appointed
74 by the governor: a representative of the wind energy industry; a representative of the electric
75 transmission and distribution industry; 2 representatives from non-profit environmental
76 organizations with experience in wind energy facility siting policy, 1 of whom shall represent a
77 land and water conservation organization; 1 representative of the Berkshire Regional Planning
78 Commission; 1 representative of the Berkshire Natural Resources Council; 1 representative from
79 the Metropolitan Area Planning Council; 1 representative of Southeastern Regional Planning and
80 Economic Development District; 1 representative of the Franklin Regional Council of
81 Governments; 1 representative from the Cape Cod Commission; 1 representative from the
82 Martha's Vineyard Commission; 1 representative from the Nantucket Planning and Economic
83 Development Commission; 1 municipal official with experience in energy siting drawn from a
84 list of not fewer than 3 candidates prepared by the Massachusetts Municipal Association; and not
85 more than 2 other representatives, appointed by the director of the division, as the director deems
86 advisable. Prior to submitting the recommended standards to the division, the advisory group
87 shall hold not less than 2 regional public hearings for the purpose of soliciting public comments.
88 Prior to adopting the regulations, the division, in consultation with the department, shall hold a
89 public hearing and follow the additional procedures set forth in section 2 of chapter 30A.

90 Section 18. (a) A person proposing to construct a wind energy facility with a capacity of at least
91 2 megawatts may elect to follow the expedited permitting procedures established herein.

92 (b) A proposal to develop a wind energy facility that complies with the standards established
93 under section 17 shall be eligible for the expedited permitting procedures set forth in this section
94 and section 4 of chapter 25D.

95 (c) After a wind energy permitting board or planning board authorized under section 3 of chapter
96 25D files a written decision with the clerk of the local governmental body, or constructive
97 approval results pursuant to subsection (f) of section 4 of said chapter 25D, the project applicant
98 may file an application with the energy facilities siting board, together with such supporting

99 materials as are necessary to demonstrate that the facility complies with the standards established
100 under section 17.

101 The application shall include, in such form and detail as the division shall from time to
102 time prescribe, the following information: (i) a description of the proposed wind energy
103 generating facility, including any ancillary structures and related facilities; (ii) a description of
104 the project's environmental impacts, both positive and negative; (iii) a statement of whether the
105 project complies with the standards established under section 17, and if it does not, a listing of
106 the standards for which the project does not comply and an explanation as to why compliance is
107 not practicable; (iv) a complete list of state agency permits that would otherwise be needed for
108 the facility; and (v) any other information requested by the division. The applicant shall
109 simultaneously file a notice of the application with the wind energy permitting board or planning
110 board established under chapter 25D, any state or regional agencies that have permitting
111 authority over the proposed facility, abutters to the site of the facility and the office of the
112 Massachusetts Environmental Policy Act, which shall publish the notice, as soon as possible, in
113 the Environmental Monitor.

114 Within 45 days of receipt of the application the division shall review the application,
115 notify all relevant permitting agencies and inform the applicant in writing whether the
116 application is complete. The applicant shall make the full application readily available to all
117 relevant agencies and municipalities, and the division shall establish a procedure to ensure that
118 the application and supporting materials are available for timely local and statewide public
119 access, including but not limited to, electronically.

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

126 Based on the comments that are submitted, if the hearing officer determines that there are
127 genuine disputes of material fact as to whether the facility meets the standards, the hearing
128 officer shall schedule at least 1 evidentiary hearing for the limited purpose of taking further
129 evidence upon the issues for which there is a genuine dispute of material fact. In any instance in
130 which there is a factual dispute between the applicant and a state agency regarding matters
131 within the state agency's regulatory authority, an evidentiary hearing shall be held as to that
132 dispute at the request of the applicant or the state agency. Evidence may be presented at such
133 hearing by the applicant, the municipality in which the proposed facility is located, state permit
134 granting authorities and by any interested party; provided, however, that such party submitted
135 comments during the initial public comment period described herein. The evidentiary hearing
136 shall be completed no later than 90 days following the close of the initial public comment period.

137 The evidentiary hearing shall include written or oral testimony under oath, the opportunity for
138 cross-examination and the compilation of a record of admissible evidence; provided, however,
139 that the hearing officer and the division shall not be bound by paragraph (7) of section 11 of
140 chapter 30A.

141 (e) State permit granting agencies shall file written comments with the hearing officer during the
142 initial 60 day public comment period to assist the division in determining whether the standards
143 have been met, and may include recommended conditions within each agency's regulatory
144 purview.

145 (f) Within 60 days of the close of the public hearing or evidentiary hearings if scheduled, the
146 division shall determine, in writing, whether the proposed facility meets the standards. If the
147 division finds that the proposed facility meets the standards, it shall approve the facility, and may
148 impose conditions to its approval. Conditions recommended by state environmental agencies
149 with respect to issues within their permitting authority, by state environmental agencies with
150 respect to biological resources identified under section 17 but not within their permitting
151 authority, or conditions recommended by host municipalities or their constituent boards or
152 regional planning agencies with regulatory authority, shall be adopted to the maximum extent
153 practicable, and the division shall explain the reasons for not including any such conditions in its
154 written decision.

155 (g) (1) If the division finds that the facility does not meet the siting standards, it may hold
156 additional hearings to take additional evidence from both the applicant and interested parties, if
157 necessary and approve the facility and impose conditions to its approval if it finds that:

158 (A) the facility has complied to the maximum practicable extent with the siting standards
159 established under section 17;

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

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

163 (2) To determine whether the benefits of the facility outweigh the detriments, the energy
164 facilities siting board shall take into account:

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

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

167 (ii) energy reliability;

168 (iii) security and diversification;

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

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

172 (i) ecologically sensitive areas;

173 (ii) large unfragmented habitat blocks;

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

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

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

178 (vi) noise; and

179 (vii) public safety.

180 (3) If the division finds that the facility meets the standards in this subsection, it may approve the
181 facility and may impose conditions to its approval.

182 (4) A decision under this subsection shall be issued no later than 275 days after the division
183 determines in writing that the application is complete, if no evidentiary hearings are held, or
184 within 365 days after such determination if evidentiary hearings are held.

185 (5) Conditions recommended by state environmental agencies with respect to issues within their
186 permitting authority under state law, by state environmental agencies with respect to biological
187 resources identified under section 17 but not within their permitting authority under existing state
188 law or conditions recommended by host municipalities or their constituent boards, shall be
189 adopted to the maximum extent practicable, and the division shall explain the reasons for not
190 including any such conditions in its written decision.

191 (h) The construction, maintenance and operation of a facility which receives an approval under
192 this chapter shall conform with such approval and any terms and conditions contained therein. If
193 the division issues an approval under this section, no state agency shall require any approval,
194 consent, permit, certificate or condition for the construction, operation or maintenance of the
195 facility with respect to which the approval is issued and no state agency shall impose or enforce
196 any law, ordinance, by-law, rule or regulation nor take any action nor fail to take any action
197 which would delay or prevent the construction, operation or maintenance of such facility;
198 provided, however, that the division shall not issue an approval the effect of which would be to
199 grant or modify a permit, approval or authorization which, if so granted or modified by the
200 appropriate state agency, would be invalid because of a conflict with applicable federal water,
201 air, historic or threatened and endangered species standards or requirements. The approval, if

202 issued, shall be in the form of a composite of all state individual permits, approvals or
203 authorizations which would otherwise be necessary for the construction and operation of the
204 facility and that portion of the approval which relates to subject matters within the jurisdiction of
205 a state agency shall be enforced by said agency under the other applicable laws of the
206 commonwealth as if it had been directly granted by the agency.

207 (i) The division shall combine the review and approval process under this section with any
208 additional review of a local wind energy permitting board decision approving, approving with
209 conditions or constructively approving an application if such an appeal is brought by a person or
210 entity other than the applicant under subsection (m) of section 3 of chapter 25D. If the division
211 approves the facility under section (f) or (g), it shall affirm the decision of the wind energy
212 permitting board, but may modify conditions or impose additional conditions upon the approval
213 to address claims brought by the party seeking additional review of the wind energy permitting
214 board decision.

215 (j) An application filed by a person proposing to construct a wind energy facility that does not
216 comply with the standards established under section 17 shall also be governed by subsections (d)
217 through (g), inclusive; provided, however, that:

218 (1) the hearing officer shall hold a public hearing and close the public comment period within
219 120 days from the date that the division determines that the application is complete;

220 (2) the hearing officer shall hold evidentiary hearings as needed to resolve genuine disputes of
221 material facts within 240 days from the date the division determines that the application is
222 complete; and

223 (3) the division shall issue a decision within 120 days of the close of the public comment period
224 or evidentiary hearing.

225 (k) Approval of an application shall not be granted if, after exhaustion of all appeals, a permit is
226 not granted by the affected municipality pursuant to chapter 25D or, if a permit was not sought
227 pursuant to chapter 25D, any other relevant local permitting law or regulation.

228 (l) The regulations promulgated pursuant to section 17 shall include clear and concise application
229 requirements, including but not limited to, pre-application survey requirements developed by the
230 division in consultation with the department of fish and game and the department of
231 environmental protection, and may provide for pre-application consultation and site visits. No
232 application shall be considered complete until surveys, if required, are determined by the
233 department of fish and game or the department of environmental protection to be complete.
234 Sufficient data shall be required from the applicant by these regulations to enable the division to
235 determine whether the facility meets the standards established under section 17, and if it does
236 not, whether it meets the standards set forth in subsection (g); provided, however, that these
237 regulations shall not require any data related to the necessity or cost of the proposed generating

238 facility, except for data related to the costs or economic feasibility associated with the mitigation,
239 control or reduction of the environmental impacts of the proposed generating facility, so that the
240 division can make an informed determination as to the ability of the applicant to afford to
241 comply with conditions imposed by an agency, municipality or the state.

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

250 (n) Any interested party aggrieved by a decision of the division under this section may appeal
251 therefrom to the superior court department of the trial court, pursuant to the provisions of section
252 14 of chapter 30A. The decision of the superior court or justice shall be final.

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

255 Section 19. Sections 17 and 18 shall not preclude or obligate an applicant for a facility from
256 seeking and obtaining board approvals and certificates under sections 69K through 69O ½,
257 inclusive, of chapter 164 in lieu of proceeding under sections 17 and 18.

258 SECTION 4. The General Laws are hereby amended by inserting after chapter 25C the following
259 new chapter:-

260 Chapter 25D.

261 Wind Energy Permitting

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

264 "Department", the department of energy resources established pursuant to chapter 25A.

265 "Division", the division of green communities established pursuant to section 2 of chapter 25A.

266 "Expedited permitting", the expedited procedure set forth in section 4 that a person proposing to
267 construct a wind energy facility with a capacity of at least 2 megawatts or related test towers may
268 follow to receive a permit from a host municipality.

269 "Facility", a wind energy facility.

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

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

277 “Local governmental body”, a city, town, district, regional school district or county, or an agency
278 or authority thereof, including a housing authority, board, commission, department or
279 instrumentality of a city, town district, regional school district or county, and any other agency
280 which is not a state agency or building authority; or a combination of 2 or more such cities,
281 towns, districts, regional school districts or counties, or agencies or authorities thereof.

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

283 “Regional planning agency”, a regional planning district established pursuant to chapter 40B, the
284 cape cod commission established pursuant to section 18 of chapter 716 of the acts of 1989 as
285 amended or the martha’s vineyard commission established pursuant to chapter 831 of the acts of
286 1977, within such district or commission area or any other regional planning district hereafter
287 established by the general court.

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

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

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

300 Section 2. The department, in consultation with the regional planning agencies, shall identify
301 local governmental bodies containing significant wind resource areas; provided, that prior to a
302 final determination that a local governmental body contains a significant wind resource area, the
303 division shall hold at least 1 public hearing in the region containing the host municipality and
304 offer a period for public comment. A local governmental body identified as being a significant

305 wind resource area may establish a wind energy permitting board to conduct local permitting of a
306 wind energy facility, within 30 days of receipt of a letter of intent from an applicant seeking to
307 file an application under this chapter.

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

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

325 (b) A proposal to develop a wind energy facility or related test towers that complies with the
326 standards established under section 17 of chapter 25A shall be eligible for the expedited
327 permitting set forth in this section and section 18 of said chapter 25A. A proposal that does not
328 comply with the standards established under said section 17 of said chapter 25A shall be
329 governed by the procedure set forth in subsection (g).

330 (c) The project proponent shall file an application with the wind energy permitting board and the
331 clerk of the host municipality in lieu of separate applications to the local boards. The proponent
332 shall also file the application with the clerk of an abutting local governmental body. The
333 application shall identify all provisions of local laws or regulations from which a waiver is
334 sought. Within 60 days of receipt, the chairman of the wind energy permitting board, or the
335 chairman's designee, shall determine whether the application is complete and inform the
336 proponent of that decision. If the application is incomplete, the proponent shall be allowed 30
337 days or such longer time as may be mutually agreed upon to complete the application. After the
338 expiration of this period, the proponent may elect to go forward with the information provided,
339 and the procedures and timelines in this section shall apply.

340 (d) The wind energy permitting board shall immediately notify each local board, as applicable, of
341 the filing of an application by sending a copy thereof to the applicable local boards for their

342 recommendations and shall, within 60 days of the wind energy permitting board's determination
343 that an application is complete or the expiration of the additional information period described in
344 subsection (c), and in compliance with the notice and publication provisions of section 11 of
345 chapter 40A, hold a public hearing and a written public comment period of not less than 45 days
346 on the application. The wind energy permitting board shall request the recommendations of the
347 local boards as are deemed necessary or helpful in making its decision upon such application and
348 shall have the same power to issue a permit or other approval as any local board or official who
349 would otherwise act with respect to such application, including, but not limited, to the power to
350 attach conditions to said permit or approval as are consistent with this section and all other laws
351 and regulations.

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

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

366 (g) A wind energy facility that does not comply with the standards established under section 17
367 of chapter 25A shall be governed by subsections (a) through (f), inclusive, except that the
368 deadline for a decision shall be 180 days. If the applicant states that the project complies with
369 the standards in said section 17 of said chapter 25A, but the wind energy permitting board
370 determines through a vote or interim written decision within the 120 day period that the
371 application does not comply with those standards, the deadline for decision shall be extended so
372 that the deadline is 180 days from the filing of the application unless a municipal board has made
373 a timely referral of an application to a regional planning agency pursuant to subsection (l).

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

377 (i) The applicant shall offer the host municipality, or its designee the option of entering into a
378 legally enforceable purchase and sale agreement for not more than 10 per cent of the electricity

379 generated on site for use by the host municipality or its designee; provided, however, that the
380 wind energy permitting board may accept other forms of mitigation in lieu thereof, including, but
381 not limited to, a purchase and sale agreement for electricity between the applicant and a
382 municipality, a county, a regional planning agency or other regional governmental entity, a
383 municipal electric cooperative or a municipal aggregator of energy. The host municipality may
384 enter into legally enforceable agreements with the applicant for additional mitigation measures.

385 (j) A local governmental body that has approved an application pursuant to this section by the
386 relevant wind energy permitting board shall be deemed to have met the green community
387 eligibility requirements set forth in clauses (2) and (3) of subsection (c) of section 10 of chapter
388 25A, and if the local governmental body acting jointly on a regional basis seeks a waiver of any
389 of the other eligibility requirements under said subsection (c) of said section 10 of said chapter
390 25A, it shall be entitled to a finding that the local governmental body acting jointly on a regional
391 basis has committed to alternative measures that advance the purposes of the green communities
392 program as effectively as adherence to the requirements.

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

396 (l) In areas where regional planning agencies have regulatory authority, a local wind energy
397 permitting board or planning board shall refer an application to the regional planning agency in
398 accordance with the special act establishing the regional planning agency. Prior to the regional
399 planning agency's final determination on the application, the local wind energy permitting board
400 may review and hold public hearings and meetings on the application; provided, however, that
401 no final determination shall be made until the regional planning agency has issued an approval or
402 approval with conditions. Notwithstanding any general or special law to the contrary, in areas
403 where regional planning agencies have regulatory authority, a wind energy permitting board and
404 regional planning agency may hold joint hearings concerning a proposed facility so that both
405 boards may review a project simultaneously.

406 A wind energy permitting board shall file its written decision with the clerk of the local
407 governmental body within 60 days of the date on which a regional planning agency issues its
408 final decision of approval or approval with conditions. Failure of the wind energy permitting
409 board to file a written decision or an agreed upon extension within the 60 day period shall result
410 in a constructive approval of the application by the wind energy permitting board. If a regional
411 planning agency denies a development of regional impact permit to a proposed wind energy
412 facility, the wind energy permitting board shall not issue any permits for such a facility and no
413 constructive approval shall result.

414 (m) (i) An interested party who is substantially and specifically aggrieved by a decision of the
415 wind energy permitting board or a regional planning agency granting a permit or permit with

416 conditions to the applicant, or constructively approving such a permit may appeal the decision to
417 the division. The appeal shall be filed with the division no later than 30 days after the wind
418 energy permitting board's decision is filed with the city or town clerk or rendered by a regional
419 planning agency, and shall be governed by section 18 of chapter 25A. Any interested party
420 aggrieved by a decision of the division under this section may appeal therefrom to the superior
421 court department of the trial court, pursuant to the provisions of section 14 of chapter 30A. The
422 decision of the superior court or justice shall be final.

423 (ii) The applicant or any other proponent of a wind energy facility aggrieved by a decision of the
424 wind energy permitting board denying a permit or granting a permit with conditions, may appeal
425 therefrom to the superior court department of the trial court, pursuant to the provisions of section
426 14 of chapter 30A. The decision of the superior court or justice shall be final.

427 Section 5. The division shall, with the approval of the department, promulgate regulations for
428 the administration and enforcement of this chapter; provided further, that said regulations shall
429 establish the criteria for the determination required pursuant to section 2; and provided further,
430 that prior to the promulgation of final regulations, the division shall hold at least 1 public hearing
431 and offer a period for public comment.

432 SECTION 5. Section 138 of chapter 164 of the General Laws, as appearing in the 2008 Official
433 Edition, is hereby amended by striking out in lines 39, 40, 41, 57, 58, and 59, each time they
434 appear, the words "net metering facility owned or operated by a customer which is a
435 municipality or other governmental entity," and inserting in place thereof the following words:-
436 net metering facility of a municipality or other governmental entity.

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

439 "Net metering facility of a municipality or other governmental entity," a Class II or III net
440 metering facility: (1) that is owned or operated by a municipality or other governmental entity; or
441 (2) of which the municipality or other governmental entity is assigned 100 percent of the output
442 and which is on land owned by the municipality or other governmental entity.

443 SECTION 7. Said section 138 of said chapter 164, as so appearing, is hereby further amended
444 by striking out, in lines 48 and 49, the words "if a customer is a municipality or other
445 governmental entity," and inserting in place thereof the words:- for a Class III net metering
446 facility of a municipality or other governmental entity,.

447 SECTION 8. Section 139 of said chapter 164, as so appearing, is hereby amended by striking
448 out in lines 9, 11, 12 and 13, each time it appears, the words "wind or solar."

449 SECTION 9. Subsection (f) of said section 139 of said chapter 164, as so appearing, is hereby
450 amended by striking out the first sentence and inserting in place thereof the following 3

451 sentences:- The aggregate net metering capacity of facilities that are not net metering facilities of
452 a municipality or other governmental entity shall not exceed 1 per cent of the distribution
453 company's peak load. The aggregate net metering capacity of net metering facilities of a
454 municipality or other governmental entity shall not exceed 2 per cent of the distribution
455 company's peak load. The maximum amount of generating capacity eligible for net metering by
456 a municipality or other governmental entity is 10 megawatts.

457 SECTION 10. Subsection (g) of said section 139 of said chapter 164, as so appearing, is hereby
458 amended by adding the following words:- including adoption of a system that provides proposed
459 net metering facilities of a municipality or other governmental entity an assurance of net
460 metering eligibility at the time they meet criteria established by the department. Nothing herein
461 shall limit the department's authority to adopt rules and regulations relating to other proposed net
462 metering facilities.

463 SECTION 11. Notwithstanding any general or special law to the contrary, the division of wind
464 energy siting shall promulgate regulations under section 17 and 18 of chapter 25D of the General
465 Laws within 275 days of the effective date of this act.

466 SECTION 12. Notwithstanding any general or special law to the contrary, no application may be
467 submitted to or reviewed through the streamlined permitting process established in this act until
468 all necessary regulations are promulgated.

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

472 SECTION 14. Notwithstanding any general or special law to the contrary, nothing in this act
473 shall be construed to allow the permitting process contained in chapter 25D of the General Laws
474 or sections 17 to 19, inclusive, of chapter 25A of the General Laws to apply to land that is under
475 protection pursuant to Article XLIX, as appearing in Article XCVII of the Amendments to the
476 Constitution of the Commonwealth.