

**BERKSHIRE REGIONAL PLANNING COMMISSION**  
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Executive Director

October 28, 2009

The Honorable Michael W. Morrissey  
Co-Chair, Joint Committee on Telecommunications, Utilities and Energy  
State House, Room 413D  
Boston, MA 02133

The Honorable Barry R. Finegold  
Co-Chair, Joint Committee on Telecommunications, Utilities and Energy  
State House, Room 473B  
Boston, MA 02133

RE: H. 3065 and S. 1504: An Act Relative to Comprehensive Wind Siting Reform

Dear Senator Morrissey and Representative Finegold:

We appreciate the opportunity to review and comment on the most recent version of the potential Comprehensive Wind Siting Reform Act, which we received on September 24<sup>th</sup>. In our letter of July 1 to you on this legislation, we had indicated that “. . . as the bill has been drafted, we feel we must oppose it.” In our July 1 letter, we indicated some major concerns and then a number of other issues we had with the bill. While we respect that efforts have been made to address the issue of local control, which was one of our major concerns, all other changes and modifications made in the bill address what we would consider to be relatively minor clarifications we had suggested in our July 1 letter.

After careful consideration of the bill as revised, we must continue to indicate our opposition to it. The reasons for opposition, not in any order of importance, are:

- The local permitting sections are not necessary as the local permitting process has not been an impediment to the siting of wind energy facilities in the Berkshires. While two projects have been held up in the Berkshires, none of the delay was due to local permitting. If a wind facility developer believes a local decision was unfair, they have an existing mechanism to petition the Department of Public Utilities to be classified as a Public Service Corporation and for DPU to reconsider the local decisions so the EFSB process seems to be redundant to that. Given that already 14 of the 32 Berkshire municipalities have agreed, through participation in the Green Communities Act, to consider renewable energy generation as an as-of-right use, we question that this legislation is even needed.
- We believe that removing any process to come to grips with the issue of potentially siting wind energy projects on State lands protected under Article 97 actually weakens the bill. We have always acknowledged that this would be a difficult discussion but feel that removing this from

the bill does not eliminate the need for it. If anything, taking out the requirement for a study of those lands identifying which may be suitable and unsuitable for wind energy development leads to increased uncertainty and fears over what may be proposed for those lands. As we had indicated in our July 1 letter, a land management plan is needed which is a counterpart to the Oceans Management Plan. The revised legislation does not acknowledge that need and, in fact, moves further away from it by eliminating the Article 97 lands study from the bill.

- We believe the bill gives disproportionate deference and favoritism to wind energy through 1) exemption of a single industry (wind energy) from local & state environmental controls; 2) Public Service Corporation status given to "any person or entity to generate and transmit electricity derived from wind"; and 3) lowering the threshold to 2 megawatts for coverage by Section 69T at the expense of other energy forms, including other renewable energies.
- We are opposed to the inequality in the bill for the appeal rights and process between parties of interest (abutters, etc.) and project developers. We appreciate that the project developer's appeal is now through the normal judicial process but believe that should apply to all parties.
- We are opposed to the Non-Adjudicatory processes before the EFSB which are embedded in the legislation.
- As we stated in our July 1 letter, we strongly believe that the State should develop wind energy facility siting standards prior to enactment of this legislation. The lack of confidence in the State's ability to fashion appropriate and fair standards, regardless of the composition of the advisory group, is a major impediment.
- The bill lacks a sensible time table for becoming fully effective. We think that the standards and regulations will be difficult to develop and even after they are developed and approved by the EFSB, a period of several months will be needed to bring communities up to some level of understanding and ability to proceed with their responsibilities. We continue to have a significant number of other timing issues with various aspects of the bill as drafted and do not believe it is workable from that standpoint.

The Commission remains committed to supporting the adoption of wind and other forms of renewable energy and is actively working with its member communities on facilitating such enactment. This legislation however is deeply flawed and unacceptable as written and, in fact, does not appear to be necessary.

Sincerely,



Nathaniel W. Karns, AICP  
Executive Director

Cc: The Honorable Benjamin Downing, State Senator  
The Honorable Daniel E. Bosley, State Representative, 1<sup>st</sup> Berkshire  
The Honorable Denis Guyer, State Representative, 2<sup>nd</sup> Berkshire  
The Honorable Christopher Speranzo, State Representative, 3<sup>rd</sup> Berkshire  
The Honorable Smitty Pignatelli, State Representative, 4<sup>th</sup> Berkshire  
Mr. Thomas Philbin, Massachusetts Municipal Association  
Ms. Jennifer Ryan, Mass Audubon  
Ms. Eleanor Tillinghast, Green Berkshires  
Mr. Tad Ames, Berkshire Natural Resources Council  
Mr. Kenneth Kimmell, Executive Office of Energy & Environmental Affairs  
Massachusetts Association of Regional Planning Agencies