



COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS SENATE  
STATE HOUSE, BOSTON 02133-1053

SENATOR BENJAMIN B. DOWNING  
BERKSHIRE, HAMPSHIRE & FRANKLIN  
STATE HOUSE, ROOM 413-F  
TEL. (617) 722-1625  
FAX (617) 722-1523

20 BANK ROW, SUITE 202  
PITTSFIELD, MA 01201  
TEL. (413) 442-4008  
FAX (413) 442-4077

COMMITTEES:  
REVENUE (CHAIR)  
HIGHER EDUCATION (VICE CHAIR)  
SENATE COMMITTEE ON WAYS & MEANS  
ECONOMIC DEVELOPMENT & EMERGING TECHNOLOGIES  
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## UPDATED STATEMENT FROM SENATOR BENJAMIN B. DOWNING ON THE WIND ENERGY SITING REFORM ACT

**(November 24, 2009)** - Since this legislative session began in January there is no issue I have devoted anywhere near as much time and thought to as the Wind Energy Siting Reform Act. My focus has held for several reasons. First, I have focused on this legislation because of the potential impact to my district. Second, I have dedicated my time to this bill, potential amendments, alternative proposals, and the many issues associated with it, because I owe my constituents – both those who support and oppose the proposal – the comfort of knowing I have done my homework, understand the implications of moving forward, and have thought the issue through.

I should say at the outset, I have *not yet determined my final position on the bill*. There continue to be significant issues in the current proposal, or that arise from the current proposal, which must be addressed. Understanding these issues is what my research has been about and what I am continuing to do. Before I highlight some of those issues, I believe a few points should be made.

First, many of those who have written have made a passionate and persuasive case that before wind energy development is expedited, the Legislature should act on conservation and energy efficiency. I agree and in many respects, during last session, we took major steps forward in these areas. The focus of the 2008 Green Communities Act – itself the centerpiece of last session's environmental legislation – was, and in implementation is, efficiency and conservation. Among the many provisions of this legislation was a requirement that electric companies boost investment in energy efficiency and conservation efforts; a further provision required funds raised through the Regional Greenhouse Gas Initiative (RGGI) be used on conservation and efficiency; and still further, the state's building code was directed to fully adopt the International Energy Conservation Code. These are just a few of the efforts undertaken to prioritize efficiency and conservation that were included in the legislation, along with incentives for any number of renewable energy sources, including solar, hydro, wind, and others. These policy steps should not be the end of our work with energy conservation and renewable energy generation in Massachusetts, but in sum total they do represent the most progressive energy policy in the nation.

Despite its sweeping size and scope, the Green Communities Act was only one of several major environmental and energy initiatives passed by the Legislature last session. Others included: the Green Jobs Act, which I was the lead Senate sponsor of; the Clean Energy Biofuels Act, which provided incentives for non-corn, second generation biofuels, held to the highest environmental standards; the Environmental Bond, which was twice as large as its previous iteration and made a record investment in our parks, open space and state environmental assets; and finally the Global Warming Solutions Act, which committed Massachusetts to reducing our CO<sub>2</sub> emissions eighty percent by the year 2050.

In this flurry of activity, some wanted to expedite or alter the siting process for all renewable energy development, or selected types of renewable energy. I joined with others in arguing against these proposals, saying that the issue was too complex to simply be added on as an amendment to larger legislative vehicles. The decision to address the issues related to siting, in particular of wind energy developments, separate, was recognition by a majority of my colleagues that the argument I made with others was compelling and accurate.

This brings me back to the current deliberations surrounding the Wind Energy Reform Siting Act. The redrafted bill released by the Joint Committee on Telecommunications, Utilities and Energy on November 16<sup>th</sup> updates recommendations made by a Commission established in the Green Communities Act, composed of legislators, administration officials, environmental advocates and wind energy developers. The redrafted bill is now before the Senate Committee on Ways and Means. Deliberations on this proposal are an ongoing process, but I want to be clear about one thing: this proposal will not emerge from Senate Ways and Means, let alone reach the Senate floor for a vote, until January 2010 at the earliest. Until that point, I intend to continue working with my colleagues to improve the bill until I am confident it protects the interests of western Massachusetts.

Personally, I have heard from over 150 constituents who have written individual letters on the issue and many more who have signed petitions. This is not surprising, considering that many of the potential sites the Executive Office of Energy and Environmental Affairs (EEA) identified as having significant wind to facilitate development were located in my Berkshire, Hampshire and Franklin Senate District. However, it is important to note that many of these potential sites are located on conservation land protected by Article 97 of the Massachusetts Constitution, and the permitting process that would be created by the Wind Energy Reform Siting Act *is not applicable* to Article 97 lands.

I have paired my personal research on this topic with participation in local wind energy forums and numerous meetings with community leaders, environmentalists, local officials, Administration officials, wind energy developers and, most importantly, residents of the impacted communities I represent. I am continuing these meetings, while also collaborating and discussing the issue with colleagues, in particular with the Berkshire delegation, the Chairs of Senate Ways and Means and Telecommunications, Utilities and Energy, and others. I continue to be available to discuss the bill with anyone interested, regardless of their position on the matter.

The key points of the legislation I am working on are: local control, host community/region input in siting standards, and host community/region benefit. I believe the redrafted bill has language that addresses many of my original concerns and dramatically improves the bill.

Areas of significant improvement in the bill are those sections that deal with local control. In the original bill the state Energy Facilities Siting Board (EFSB) could override a community's decision to reject or not approve a project. I offered language to the Committee, drafted in consultation with the Massachusetts Municipal Association that changed this, forcing developers to appeal local decisions in Land Court and not at the EFSB. This text was incorporated into the redrafted bill, vastly improving local control in siting wind projects. As the bill currently reads, the EFSB cannot overturn a decision by a local board to deny permitting to a project.

Another area of the bill I have worked to improve is the process for developing siting standards. As I listened to various concerns with this section a few things became clear:

- *The EFSB should not be both drafting and enforcing the standards;*
- *The process to develop the standards should be as public and open as possible; and*
- *Western Massachusetts must have multiple voices in the standards development process.*

Considering these points, I filed amendments with the Committee to strip ESFB of the authority to draft the standards and gave that authority to an Advisory Group comprised of a diverse membership, including the Berkshire Natural Resources Council and the Berkshire County Regional Planning Commission. My suggestions were largely adopted by the Committee. If the Act passes in its current form, the Advisory Group will be required to hold public hearings in affected regions to solicit input on siting standards. Additionally, I am working to include a representative from the hilltowns of Franklin and Hampshire Counties on the Advisory Group.

In the community benefits section of the bill, I have secured language directing applicants to offer the host municipality or its designee the option of entering into a purchase and sale agreement for up to 10 percent of the energy generated on site. While I believe this mandate ensures our western communities will directly benefit from a local and affordable energy source, I will continue to look at this section and spell out more clearly what benefits communities can negotiate, as hosts of these developments.

Finally, many of my constituents I spoke with and listened to were deeply concerned about the potential for wind energy development on Article 97 conservation lands. In my mind, they made a compelling case and as such I suggested to the Committee that all references to Article 97 conservation land be stricken from the bill. As stated previously, this change has been incorporated into the current draft; the bill before the Senate Committee on Ways and Means does not allow projects to be sited on conservation land protected by Article 97 using the permitting process created in the Act.

I strongly believe that the natural resources of the Berkshires cannot be completely forsaken for energy production. However, I also believe that we have a responsibility to do all we can – improve energy efficiency, conservation, and yes, encourage smart renewable energy development – to address the massive challenge presented by global climate change. While the Wind Energy Siting Reform Act won't singlehandedly solve the problem, done right, I believe it could be part of the solution.

In the end, my final position on the bill is not simply an environmental decision, an energy policy decision, or an economic decision. Rather, this decision is about whether or not this legislation balances those three needs in a sustainable fashion. Until a vote is scheduled, I am going to reserve judgment and continue to work to improve the legislation. In the end, it is my hope that we can find that balance so I can support the bill, but I will not be blinded by that hope. I will continue to work to ensure that the needs of western Massachusetts are met and the voice of the 48 communities I represent is heard throughout this debate.

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