

Legislative Update: Renewable Energy and Agricultural Land Prepared for the January 2023 MMA Annual Business Meeting and Trade Show

On August 11, 2022, the Governor signed into law [Chapter 179 of the Acts of 2022](#) (“An Act Driving Clean Energy and Offshore Wind”). This Act is aimed at promoting the research into and adoption of clean energy technologies such as solar, wind, geothermal energy, wave and tidal energy, advanced hydropower, and energy storage. Two provisions of the Act are particularly relevant to municipalities.

First, Section 41 of the Act amends G.L. c. 61A to clarify that classified Agricultural/Horticultural land may be used to site a “renewable energy generating source” so long as the source “does not impede the continued use of the land for agricultural or horticultural purposes...” However, the Legislature has now extended the zoning exemption afforded to agricultural uses under G.L. c. 40A, § 3 (the “Zoning Act”) to all “renewable energy generating sources,” which includes:

- (1) Solar photovoltaic or solar thermal electric energy;
- (2) Wind energy;
- (3) Ocean thermal, wave or tidal energy;
- (4) Fuel cells utilizing renewable fuels;
- (5) Landfill gas;
- (6) Waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use;
- (7) Naturally flowing water and hydroelectric;
- (8) Low emission advanced biomass power conversion technologies using fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuel including but not limited to biodiesel, organic refuse-derived fuel, or algae; or
- (9) Geothermal energy.

Specifically, the Act inserts a new Section 2A(d) in Chapter 61A, which provides:

Renewable energy generating sources located on land primarily and directly for agricultural purposes pursuant to [General Laws Chapter 61A] section 1 or land used primarily for horticultural purposes pursuant to [General Laws Chapter 61A] section 2 shall be subject to the provisions afforded to land used for agriculture under section 3 of chapter 40A.

Based upon this language, enforcement of zoning requirements applicable to renewable energy generating sources may be limited if applicable to land classified as Agricultural/Horticultural under G.L. c. 61A. Note that the provisions of this Act do not address other categories of so-called Chapter Lands (including Forest Land, G.L. c.61 and Recreational Land G.L. c. 61B).

Second, the Act authorizes the Department of Energy Resources to establish a “demonstration project” of not more than 10 communities that will permit a municipality to “adopt and amend general or zoning ordinances or by-laws that require new building construction or major renovation projects to be fossil fuel-free, and enforce restrictions and prohibitions on new building construction and major renovation projects that are not fossil fuel-free, including through the withholding or conditioning of building permits; provided, that said restrictions and prohibitions shall not apply to research laboratories for scientific or medical research, or to hospitals or medical offices regulated by the department of public health as a health care facility.” See Section 84 of the Act.

Eligibility for this demonstration project is limited to municipalities that have received local approval (approval from Town Meeting/City or Town Council (and if applicable, Mayor), have submitted a home rule petition to the General Court on the subject matter of this section, and either (a) met the 10% housing affordability threshold under G.L. c. 40B or have been granted safe harbor status through an approved Housing Production Plan by the Department of Housing of Community Development, or (b) has approved a zoning by-law that provides for at least one (1) district of reasonable size in which multi-family housing is permitted as of right.

The Department of Energy Resources has published its draft regulation and model rule for the Fossil Fuel Free Demonstration Project, which can be read [here](#). DOER will conduct a public hearing on February 8, 2023, to receive verbal comments on the proposed regulations, and communities and individuals may submit written comments to DOER by February 10, 2023.

Please contact Attorney [Carolyn Murray](#), Attorney [Jonathan Murray](#) or Attorney [Lauren Goldberg](#) at 617.556.0007 with any further questions.

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