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MEMORANDUM SUPPORTING MODEL STATE STATUTE ON RAPID AND EFFICIENT SITING OF UTILITY-SCALE RENEWABLE GENERATION*

It is indisputable that the planet's average temperature is increasing, primarily due to humanity's emissions of greenhouse gases into the atmosphere. While there are a variety of aspects of human activity that result in carbon emissions, electric generation is the second largest source in the United States—accounting for 25% of carbon emissions as of 2020.¹ Currently, about 60% of the electricity generated in the United States comes from carbon-emitting energy sources.² In order to make meaningful reductions in the carbon emissions of the United States, zero-carbon energy sources, primarily renewable sources such as wind and solar power, must rapidly replace fossil fuels in electricity generation.³ It is therefore of critical importance to promote policies that will allow renewable energy to overcome barriers to entry and be generated at utility scale within the next two decades.⁴

I. The Current Landscape for Siting Decisions

One of the primary obstacles to the utility-scale adoption of renewable generation is an inefficient (and often politicized) siting process. The siting of electric generation facilities is regulated by state and local governments.⁵ However, current state and local procedures for the siting of renewable generation facilities, if any, are plagued by a number of issues that make siting renewable generation facilities a lengthy, inefficient, and often costly process that has the potential to discourage development of utility-scale renewable generation in otherwise promising locations. Some of the most common issues⁶ with renewable generation siting are:

* This model law and accompanying memorandum were drafted by Daniel Loud and Daniel Mach. Peer review was provided by Craig Gannett of Davis Wright Tremaine.

¹ *Sources of Greenhouse Gas Emissions*, U.S. ENVIRONMENTAL PROTECTION AGENCY (last visited April 25, 2022).

² In 2020, 20% of electricity was generated from coal, 39% from natural gas, and 1% from petroleum. The remaining 40% was generated from nuclear and renewable energy. *Id.*

³ For example, the Biden Administration has set a stated goal of developing as much as 30 gigawatts of offshore wind generation. See *Fact Sheet: Biden Administration Jumpstarts Offshore Wind Energy Projects to Create Jobs*, THE WHITE HOUSE (Mar. 29, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/29/fact-sheet-biden-administration-jumpstarts-offshore-wind-energy-projects-to-create-jobs/>.

⁴ Specifically, this time-frame is necessary to keep the global average temperature below the 2°C increase contemplated by the Paris Agreement.

⁵ See generally 16 U.S.C. § 824 (providing for federal regulation of *interstate transmission*).

⁶ The conclusions set forth in this memorandum are based on an initial survey of the renewable energy siting regimes in thirteen states: Arizona, California, Illinois, Iowa, Massachusetts, Minnesota, New York, New Mexico, North Dakota, Ohio, Oregon, Texas, and Washington. Another state, New Mexico, only has a process in place with regard to siting decisions on state lands.

Lack of a Dedicated Regulatory Framework

The root problem in some states is that there is no state-wide regulatory framework for the siting of renewable generation facilities. This can mean the state does not have an agency with authority over siting decisions,⁷ a lack of any statute setting out policies for the siting of renewable energy generation facilities, or both. Typically, the state will neither have a dedicated agency nor established policies. In general, when the state does not have a dedicated regime for siting renewable energy facilities, local governments exercise authority under the state's zoning laws. A lack of a dedicated regime for siting renewable generation facilities can create several issues. First, and most obviously, the state would lack a codified policy that promotes siting of such facilities. Second, relying on local zoning ordinances leaves siting decisions open to undue local interference, as set out below. Finally, unclear procedures and policies leave the siting process open to inefficiencies and unreasonable delays.

Local Interference

Where local governments exercise authority over siting decisions, they often use their discretion to restrict or outright prohibit the siting of renewable generation facilities.⁸ In many cases, these restrictions arise in rural counties where the availability of large parcels of open land otherwise makes siting practicable. Particularly in states where municipalities exercise home rule—that is, where local governments are allowed to act without the express authority of the state in a manner similar to federalism—there are very few limitations on the bases for restricting renewable energy siting.⁹

It should be further noted that some states have enacted statutes that expressly empower local authorities to block siting. For example, Ohio enacted legislation in 2021 providing counties with (1) the power to designate “restricted areas” where renewable energy facilities cannot be sited, and (2) a referendum process for all siting decisions by the relevant state authority.¹⁰ Similarly, in Illinois, counties are expressly given exclusive authority over siting decisions for renewable energy facilities.¹¹

⁷ For example, North Dakota has a dedicated state agency but it lacks significant authority. In North Dakota, siting decisions for renewable generation facilities by the Public Service Commission do not preempt local zoning decisions. N.D. Century Code § 49-22-16(2).

⁸ HILLARY AIDUN ET AL., *OPPOSITION TO RENEWABLE ENERGY FACILITIES IN THE UNITED STATES: MARCH 2022 EDITION 2* (Mar. 2022) (noting an 18% increase in such restrictions from 2019).

⁹ Where municipalities do exercise home rule and there are no contrary state mandates, potential developers of renewable generation facilities have been forced to rely on legal theories that require a high bar for showing arbitrariness of the municipality's decision. See, e.g., *Ecogen, LLC v. Town of Italy*, 438 F. Supp. 2d 149, 158 (W.D.N.Y. 2006) (dismissing a challenge to a moratorium on wind farm development under the Due Process Clause where the court was “not able to say that it [was] so arbitrary or irrational as to violate plaintiff's substantive due process rights.”)

¹⁰ Dylan F. Borchert et al., *Ohio General Assembly passes S.B. 52: Changes to wind and solar siting requirements*, BRICKER & ECKLER (July 14, 2021), <https://www.bricker.com/insights-resources/publications/ohio-general-assembly-passes-sb-52-changes-to-wind-and-solar-siting-requirements>.

¹¹ Ill. Counties. Code § 5-12020.

Inefficient Siting Procedures

Even where states have attempted to provide a state-wide siting procedure for renewable generation facilities, these processes can often be quite lengthy and inefficient. For example, in Oregon, the Energy Facility Siting Council may only make siting decisions after *two* notice and comment periods and an adjudicatory hearing for contested cases.¹² In Massachusetts, every siting decision takes the form of an adjudication, wherein the applicant must prove with documentary evidence and witnesses that the facility is appropriate.¹³ Further, even in states with less onerous procedures, few states have established deadlines for the relevant state authority to make a siting decision.¹⁴ Given the urgency of adopting renewable generation at utility-scale within the next two decades, lengthy procedures for approving siting applications pose a substantial obstacle even in states where procedures to site renewable generation facilities are in place.

II. Overview of the Model Statute

The model statute accompanied by this memorandum is intended to provide a state-wide regime for the rapid siting of renewable generation facilities that are capable of generating renewable energy at utility-scale. The model statute has two parallel goals: (1) providing a state-wide authority with procedures for rapidly siting utility-scale renewable generation facilities, and (2) maintaining local authority within reasonable bounds for siting of any other renewable generation facilities.

State-Wide Authority

The model statute is primarily intended to create a state-wide authority (or otherwise restructure an existing authority) that has the authority to make rapid siting decisions. The model statute refers to this entity as the Renewable Energy Siting Board (the “Board”). There are three primary functions of the Board contemplated by the model statute.

First, and most obviously, the Board is empowered to review siting applications for all renewable energy generation and storage facilities generating above a certain threshold of generation (specifically, 25 megawatts). The model statute is designed to insure that siting applications are approved except where there are one or more clear bases for disapproval, and provides a strict timeline for making all siting decisions.

Second, the model statute requires the Board to (also within a brief timeline) designate so-called “Priority Areas” for the development of renewable generation facilities. The purpose of this

¹² OAR 345-020 *et seq.*

¹³ Mass. Gen. L. ch. 25 § 4.

¹⁴ The initial survey of state procedures identified only two states, California and New York, which require siting decisions to be made within a specific period of time.

mechanism is to essentially kick-start the environmental and other review processes for areas where renewable generation facilities are likely to be sited, and to insure that projects to be located in such Priority Areas have a less burdensome path to approval.

Finally, the Board has the authority to identify new sources of renewable energy that may be subject to the statute. This section is intended to make the model statute applicable to sources of energy that, while potentially promising, are not yet capable of being used at utility scale (e.g., geothermal, tidal, or improved storage technologies).

Continued Local Involvement

While the model statute is intended to create a state-wide regime for siting renewable generation facilities that can generate electricity at utility-scale, the model statute also contemplates continued meaningful involvement by the relevant local governments. There are two primary ways in which the model statute is intended to pursue this goal.

First, jurisdiction over siting decisions is divided between the Board and local authorities. Each entity has its own set of siting applications over which it maintains exclusive jurisdiction, and then there is one sizeable area where the entities have overlapping jurisdiction and the decision is left to the applicant. Local authorities maintain authority primarily through a basic division between “utility scale” and “non-utility scale” generation facilities. The model statute allows local authorities, whether in the form of commissions modeled after the Board or in the form of their current zoning boards, to maintain jurisdiction over smaller projects (excluding home-scale projects).

Conversely, the model statute provides the Board with exclusive jurisdiction over particularly large projects generating over 75 megawatts of electricity. However, smaller utility-scale projects—those generating between 25 and 75 megawatts—may be considered by the Board or local authorities at the election of the applicant.¹⁵ This concurrent authority is expected to encourage cooperation with local siting authorities while providing reasonable bounds. Where possible, prospective developers of a renewable generation facility prefer to establish a good working relationship with the local authorities that they will be interacting with for years to come after the project is constructed. However, the option of going to the Board means that applicants can circumvent local authorities that have proven particularly uncooperative or hostile to renewable generation.

Second, the model statute is intended to standardize local decision-making, while maintaining local discretion. This is true in both the procedural and substantive aspects of local decision-making. For example, local authorities are authorized to establish their own procedures for evaluating siting applications, and are given more leeway to deny an application than the state-

¹⁵ This model has been attempted by the State of Washington. See Wash Stat. § 80.50.001. While the drafters believe that the system does have benefits, the drafters also determined that some areas of exclusive jurisdiction were necessary for efficient siting decisions.

wide Board.¹⁶ However, both procedural and substantive decisions by local governments must be made in accordance with the state-wide policy of encouraging renewable generation, and may not create unreasonable restrictions on the same. This is intended to strike a careful balance between maintaining local involvement, while preventing arbitrary restrictions on the siting of renewable generation facilities.

III. Section-By-Section Overview of the Model Statute

The following summarizes each section of the model statute, and highlights the key policy judgments reflected in them:

Section 1: Policy

The first section of the model statute establishes a state-wide policy in favor of rapidly siting facilities capable of generating renewable energy. As will be seen in the remainder of the model statute, this express policy is a factor that siting authorities shall be required to consider when making siting decisions.

The one area for alternative articulations of the policy is Subsection (c). This Subsection may be altered to reflect any current carbon emission reduction goals that the State has in place. If the State does not have any such goals in place, the Subsection may simply express a desire to make “maximum contributions” to the United States’ emission reductions.

Section 2: Definitions

“Renewable Generation Facility”- This definition is broader than the generating facility itself. It also includes the energy storage and transmission facilities that are necessary to deliver the resulting electricity to the grid in a timely manner.¹⁷

“Utility-Scale Renewable Generation Facility”- This term creates a division between utility-scale and non-utility-scale generation based on the generation capacity of renewable energy facilities. As discussed below, this definition implements a basic division of authority between state-wide and local authorities. While, as set forth in Section 7(a), localities maintain exclusive authority over non-utility scale renewable generation facilities (except on state lands), the Board and local authorities maintain concurrent jurisdiction over a subset of Utility-Scale Generation Facilities. This is intended to provide applicants with a choice as to the most efficient siting pathway.

¹⁶ Whereas the Board may only deny an application based on one of four specified findings, local authorities may deny an application based more broadly on concerns regarding the “public health or safety.”

¹⁷ As discussed *infra*, in certain limited instances the consideration of certain transmission methods (i.e. wires) is less extensive than generation or storage facilities.

“Energy Source”- This definition includes two proven sources of renewable energy: solar and wind.¹⁸ One other established source of renewable energy, hydroelectric energy, is excluded because hydroelectric generation is nearly exclusively under federal jurisdiction.¹⁹ In addition to these proven sources of energy, the definition incorporates Section 4(e) of the model statute (discussed *infra*), which authorizes the Board to identify new energy sources as technological developments allow those sources to generate electricity at utility scale.

Section 3: The Renewable Energy Siting Board

This Section creates a Renewable Energy Siting Board (the “Board”) for states that do not currently have such a dedicated agency.

The composition of the Board is intended to emphasize expertise in the area of energy siting. For this reason, four state officials overseeing other departments with related responsibilities make up a majority of the seats on the Board. To provide an opportunity for other perspectives, including that of the general public, the Governor is authorized to appoint three additional members of the Board.

In turn, the Board is authorized to establish a three-person panel that makes a recommendation to the full Board. Most importantly, this three-person panel would consist of two Board members plus one appointed member of the affected municipality. This would allow the Board to include a community representative even where the Board has exclusive jurisdiction. While not required, it is expected that the Board would establish such a panel in the case of particularly contentious siting applications.

Section 4: Authority of the Board

Jurisdiction- The expansive jurisdiction of the Board is one of the most important policies underlying the model statute. Particularly, the Board’s jurisdiction vis-à-vis local authorities is of critical importance. For proposed facilities generating between 25 and 75 megawatts of electricity, the Board has concurrent jurisdiction with local authorities. This is primarily a method of checking local interference and laying a foundation for local cooperation. The creation of an optional state-wide siting authority will allow applicants to take their Siting Applications away from uncooperative or unreasonably restrictive local authorities, which in turn may encourage cooperation from local authorities. In addition, however, the Board maintains exclusive jurisdiction over proposed facilities generating more than 75 megawatts. This reflects a policy judgment that certain projects may be of such importance to the state’s overall energy profile that they should be left to the sole jurisdiction of the state, not a local authority that may understandably bend to local political pressure in response to such a large project. Additionally, the Board is granted exclusive jurisdiction over siting facilities that are located entirely on state lands, even if transmission facilities may extend to lands not owned or leased by the state.

¹⁸ As of 2021, these two energy sources accounted for approximately 12% of electricity generated in the United States. *What is U.S. Electricity Generation by Energy Source?*, U.S. Energy Information Association, <https://www.eia.gov/tools/faqs/faq.php?id=427&t=3> (last visited July 26, 2022).

¹⁹ See the Federal Water Power Act, 16 U.S.C. § 791 *et seq.*

Priority Areas- The model statute includes a mandate for the Board to, within one year of the passage of the model statute, designate Priority Areas for the siting of renewable energy. These Priority Areas, as provided in Section 4(c), must be capable of generating either 85% of the state's extant renewable energy goal or 85% of the state's total energy usage by 2040. This section, therefore, is an invitation for the Board to develop a comprehensive plan for siting of renewable generation in accordance with the state's needs and interests.

The process for designating Priority Areas includes an extensive review of the environmental, social, historical, socioeconomic, and racial profile of any putative Priority Areas, as well as an analysis of where the most renewable energy can be generated and easily deployed onto the grid. It is expected that the Board will designate Priority Areas that allow for the development of considerable renewable generation, while providing for minimal interference with the local environment and taking special care to not place the entirety of new facilities within predominantly racial, socioeconomic, or tribal minority areas. The Board is also authorized to impose reasonable mitigation measures on facilities located within the Priority Areas.

While the considerations implicated in Section 4(b) are admittedly vast, they are intended to provide for the most efficient possible approval for Renewable Generation Facilities located within designated Priority Areas. This intention is reflected in the definition of "Siting Application" and Section 6(e), which provides that any grounds put forward by the Board for rejecting a Siting Application within a Priority Area must be based on facts that could not have reasonably been raised when the Priority Area was designated.

The reference to Priority Areas in the definition of "Siting Applications" is intended to indicate that the siting process will be expedited for all facilities located within Priority Areas, even when such Applications are considered by a local authority. While local authorities are not under an obligation similar to Section 6(e), it is expected that Section 7(e)'s reference to the "State's policy of advancing the rapid adoption of renewable energy" will include consideration of whether the project is to be sited within a Priority Area. However, as a practical matter, it is expected that most applicants will submit Siting Applications for facilities in Priority Areas to the Board, since that body has already expressed a clear preference for siting facilities in that area.

Board Regulations- The Board is authorized to promulgate regulations necessary to implement the statute, consistent with the state's administrative procedure act. The model statute further provides that all regulations, to the extent applicable, must be consistent with the State's policy of rapidly siting renewable generation.

New Energy Sources- The Board is authorized to identify new generation, storage, and transmission technologies that fall within the definition of "Energy Source." This is necessary so that the statute will cover new technologies that may be commercialized after the date of enactment.

Section 5: Siting Application Requirements

This Section sets forth the requirements for a complete siting application. These apply to both the Board and local governments, as specified in Section 5(a) This is, primarily, a restriction on local

discretion. Although Section 7(d) prohibits municipalities from establishing siting procedures that contradict the state's policy of rapidly siting renewable generation, the uniform definition of "Siting Application" is intended to limit onerous or unnecessarily costly application requirements that may deter interested developers.

The majority of the requirements for a Siting Application are broadly concerned with the applicant's financial and technical ability to undertake the proposed project. The definition reflects this focus for two reasons. First, a detailed discussion of the environmental, social, and other implications of the proposed facility will typically be the subject of extensive comments and hearings, and it is unclear what additional insight the Siting Application could provide for the relevant decision-maker. Second, as discussed in the below paragraph, it is anticipated that such factors will typically be considered when the Board selects Priority Areas as set forth in Section 4(b).

The most significant policy judgment reflected in the definition of "Siting Application" is subpart (iii), which provides that a Siting Application does *not* need to include a lengthy review of the characteristics of the proposed site when the facility is proposed to be sited within a Priority Area. It is expected that facilities located within Priority Areas will move forward on the most expedited basis possible, with limited review of factors specific to the applicant's proposal. (See Section 6(e)).

Section 6: Siting Application Approval Procedures

This Section sets forth the procedures the Board is subject to when reviewing Siting Applications. This Section contains two main elements, both of which are intended to result in more rapid siting of renewable generation: (1) siting procedures that strongly favor the approval of applications, and (2) a clear substantive mandate governing siting decisions.

Procedures- The model statute includes a series of procedural requirements that are intended to provide for rapid determinations on all Siting Applications. While the statute includes a number of intermediate deadlines and requirements, the most important policy is the requirement that all final decisions on Siting Applications be made within 180 days of the Board's receipt of a completed Siting Application. The model statute provides no grounds for an extension of this deadline, and all internal deadlines (e.g. comments must be received and hearings must be held within 90 days) are likewise not to be extended. This policy is a direct response to the issues highlighted in Part I of this memorandum, where lengthy approval procedures can take years.

Substance- In addition to aggressive procedures, the model statute provides a clear substantive mandate for the Board's determinations. Specifically, Section 6(d) of the model statute provides "[t]he Board shall approve the Siting Application *unless*" (emphasis added) specific, identified harms to the affected area or technical/financial issues outweigh the state's policy of rapidly siting renewable generation facilities. Put another way, the statute provides that all Siting Applications are presumptively approved.

In drafting Section 6(d), it was important to specify the considerations that could lead the Board to reject a Siting Application. This is an exclusive list of considerations and should be applied

narrowly. Further, Sections 6(d)(i-iv) specifically provide that the Board should consider whether any reasonable mitigation measures may be imposed on the proposed facility to allow approval. The Board should undertake an expansive review of any mitigation measures before rejecting a Siting Application.

Section 6 is also drafted to prevent what would effectively be a reconsideration of the Board's designation of Priority Areas. There are two sections that implement this policy. First, Section 6(e) expressly provides that, where the proposed facility is located within a Priority Area, the Board must limit its consideration of the factors in Section 6(d) to issues that are *unique* to the specific Siting Application or should reasonably have been raised when the Priority Area was designated. In other words, the Board may not reconsider general factors such as the predominant use of the affected area. Second, Section 6(f) limits the geographic scope of the Board's considerations to the "affected area." The "affected area" is defined differently depending on whether the proposed facility is located in a Priority Area. For facilities located in a Priority Area, the affected area is any area within five miles of the facility. For facilities outside of a Priority Area, the affected area is any area where the facility could have a reasonably foreseeable effect—an intentionally broader standard to reflect the same consideration set forth in Section 6(e). In both Sections 6(e) and 6(f), a facility is considered to be entirely within a Priority Area even if some transmission from the facility extends beyond the area.

Section 7: Municipal Authority

In many ways, Section 7 is a modified version of Sections 3 through 5, applied to municipalities. Section 7 is designed to maintain some local discretion, but also limit the discretion of uncooperative or hostile local authorities.

Jurisdiction- Municipalities (defined in Section 2(d) as any political subdivisions with zoning authority) have two main areas of jurisdiction. First, Municipalities may consider all Siting Applicants for non-Utility-Scale Renewable Generation Facilities (except those located on state lands). Second, and more importantly, Municipalities maintain concurrent jurisdiction with the Board for all Siting Applications proposing facilities that would generate between 25 and 75 megawatts of electricity. As discussed above, the Board's concurrent jurisdiction is included to rein in hostile Municipalities. However, conversely, the model statute also provides an avenue for applicants to build positive relationships with Municipalities that wish to encourage renewable generation or, in some cases, skeptical Municipalities that are in a position to impose reasonable conditions. In addition to defining municipalities' jurisdiction vis-à-vis the Board, Section 7(a) provides for how conflicts among municipalities should be resolved when a proposed Renewable Generation Facility crosses into multiple municipalities.

Local Siting Authorities- Section 7(b) provides Municipalities with the authority to create their own siting authorities that are modeled after the Board, or otherwise rely on their extant zoning authorities. Further, Section 7(c) authorizes Municipalities to develop their own procedures for considering Siting Applications. Both of these Subsections are included to provide for continued discretion to Municipalities.

Procedures- While Section 7(c) authorizes Municipalities to promulgate their own procedures for considering Siting Applications, the model statute provides two limitations on siting procedures. First, in the same manner as the Board, Municipalities' procedures must provide for a final decision on all Siting Applications within 180 days of completion. Second, and more broadly, the Municipalities' procedures may not contradict the state's policy of rapidly siting renewable generation or impose unreasonable barriers to siting renewable generation. This is an intentionally broad standard; it reflects the policy that Municipalities, despite maintaining discretion, may not use that discretion to substantially limit opportunities for siting renewable generation or make the application process onerous to the point of deterring applicants.

Substance- Section 7(e) of the model statute provides the substantive standard that Municipalities must use to approve or deny Siting Applications. The Subsection is closely modeled after Section 6(d). For example, the Siting Application is presumptively approved and may only be rejected if the state's policy in rapidly siting renewable generation is outweighed by certain considerations. However, there are two changes that are intended to provide Municipalities with greater discretion. First, the evidentiary standard for the Municipality has been lowered from "clear and convincing evidence" to "substantial evidence." Second, rather than five specified considerations, the Municipality may reject a Siting Application based on specific, adverse impacts on public health or safety. While this is a broader standard, the "specified, adverse" language is intended to require the Municipality to deny any Siting Applications based on reasoned and specific findings that could be thoroughly reviewed on appeal.

Section 8: Appellate Review

While understanding that the separation of powers would prevent legislatures in most states from ordering courts how to organize their dockets, Section 8 reflects a policy of guaranteeing the fastest possible review of all decisions on Siting Applications and the designation of Priority Areas. Several elements of Section 8 are drafted to accomplish this policy.

Supreme Court Jurisdiction- Perhaps most notably, Section 8 provides that all final decisions on Siting Applications by the Board and the designation of Priority Areas may exclusively be reviewed by the state's Supreme Court. The state supreme court's exclusive jurisdiction is included in the model statute so that the aforementioned decisions will not be limited by potentially years of appeals. Other less critical and time-sensitive determinations (e.g. the Board's regulations or identifications of new renewable energy sources) may be reviewed in accordance with the state's administrative procedure act.

Procedures- Several procedural requirements in Section 8 are intended to provide for the fastest possible review of decisions on Siting Applications by the Board and the designation of Priority Areas. The model statute imposes a 30-day limitations period, and requires that all challenges to a single determination be consolidated into a single action. Further, to the extent allowed under the state's constitution, the model statute provides that the state Supreme Court should set the earliest possible hearing date on such cases and expedite the issuance of a decision to the extent possible.

Standard of Review- Section 8(d) provides for summary review of decisions on Siting Applications by the Board and the designation of Priority Areas, solely on the record. Section 8(d) further limits the grounds on which the state Supreme Court may overturn a decision. There are two overarching grounds for reversal. First, the determination may be substantively deficient. As a standard for review, Sections 8(d)(i-iii) expressly reference the sections of the model statute setting forth the standards by which the Board or parallel municipal authority must make their determinations (i.e. Sections 4(b) and 6(d)). Further, the relevant authority's application of the aforementioned standards must be "clearly erroneous," an intentionally exacting standard. Second, the court may reverse a procedurally deficient determination, subject to a deferential "harmless error" standard. Under both grounds, Section 8(d) provides that decisions on Siting Applications and the designation of Priority Areas should be presumptively affirmed.

Finally, for the avoidance of doubt, Section 8(d) is intended to supersede any applicable state environmental review and administrative procedure acts.