

**SENATE . . . . . No. 2364**

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**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act relative to clarifying property tax exemptions for solar and wind systems.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Section 5 of chapter 59 of the General Laws, as appearing in the 2016  
2 Official Edition, is hereby amended by striking out clause Forty-fifth and inserting in place  
3 thereof the following clause:-

4           Forty-fifth, A solar or wind powered system that is capable of producing not more than  
5 125 per cent of the annual electricity needs of the real property upon which it is located;  
6 provided, however, that the real property shall include contiguous or non-contiguous real  
7 property within the same municipality that is owned or leased by the owner of the real property.

8           Any other solar or wind powered system capable of producing energy shall not be exempt  
9 unless the owner has made a payment to the municipality where the system is located in lieu of  
10 taxes in accordance with an executed agreement. A municipality, acting through the board or  
11 officer authorized by its legislative body, may execute an agreement for the payment in lieu of  
12 taxes with the owner of a solar or wind powered system in the municipality where the solar or  
13 wind powered system is located; provided, however, that, unless otherwise provided by the

14 agreement: (i) a notice of the payment in lieu of tax owed for each fiscal year shall be mailed to  
15 the owner and due on the dates by which a tax assessed under this chapter would be payable  
16 without interest; and (ii) the provisions of law that relate to billing and collecting a tax assessed  
17 under this chapter shall apply to the payment in lieu of taxes, including the payment of interest.  
18 An exemption under this clause shall be allowed only for a period of 20 years from the date of  
19 installation of the system; provided, however, that upon a written agreement between the owner  
20 of the solar or wind powered system and the municipality where the system is located, an  
21 exemption with a period greater than 20 years may be allowed; provided further, that an  
22 exemption shall not be allowed for any year within that period where the solar or wind powered  
23 system is not capable of producing energy as required by this clause.

24           Annually and not later than March 1, each owner shall make a declaration under oath and  
25 on a form prescribed by the department of revenue to the assessors stating the: (i) type of system;  
26 (ii) capacity of the system; (iii) percentage of the annual electricity needs of the real property that  
27 was met by the system; and (iv) power generated for the previous calendar year.

28           This clause shall not apply to: (i) projects developed under section 1A of chapter 164; or  
29 (ii) solar and wind powered systems, including projects developed under section 139 said of  
30 chapter 164, for which the owner has signed an agreement with the municipality to make a  
31 payment in lieu of taxes under subsection (b) of section 38H of chapter 59 before July 1, 2018.

32           SECTION 2. Section 38H of said chapter 59, as so appearing, is hereby amended by  
33 inserting after the word “thereof”, in line 91, the following words:- ; provided, however, that for  
34 the purposes of this subsection, a “generation facility” shall not include a facility that generates  
35 electricity through solar or wind power.

36 SECTION 3. (a) The department of revenue, in consultation with the department of  
37 energy resources, shall solicit input from the public and issue guidance on the method for the  
38 valuation and assessment of taxes on solar and wind facilities capable of producing more than  
39 125 per cent of the annual energy needs of the real property on which they are located. The  
40 guidance may include, but shall not be limited to: (i) standardized formulas for the calculation of  
41 property taxes; (ii) recommendations from state and regional stakeholders on the appropriate  
42 terms and schedule for payment in lieu of tax agreements; and (iii) guidelines for a standardized  
43 payment in lieu of taxes agreement, which may be based on a specified payment rate per kilowatt  
44 alternating current of installed rated capacity of the solar or wind powered system or such  
45 system's annual gross electricity revenues, including any receipt of net metering credits as  
46 defined in section 138 of chapter 164 or Massachusetts RPS-eligible renewable energy  
47 certificates received by the owner of a solar or wind powered system.

48 (b) A municipality may consider the guidance issued pursuant to this section in  
49 determining whether to enter into or execute an agreement for payment in lieu of taxes with the  
50 owner of a solar or wind powered system in the municipality in which the system is located;  
51 provided, however, this section shall not require a municipality to adopt such guidance. The  
52 department of revenue, in consultation with the department of energy resources, shall  
53 periodically review and update the guidance.

54 SECTION 4. Notwithstanding clause Forty-fifth of section 5 of chapter 59 of the General  
55 Laws, the owner of a solar or wind powered system and the municipality in which the system is  
56 located shall not be required to amend, modify or renegotiate an existing payment in lieu of tax  
57 agreement that was entered into or executed before the effect date of this act.

58           SECTION 5. The guidance required by section 3 shall be issued not more than 9 months  
59 after the effective date of this act.

60           SECTION 6. This act shall take effect on July 1, 2018.