

Massachusetts Governor Signs Mass Leads Act Promoting Clean Energy

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On November 20, Massachusetts Governor Maura Healey signed The Mass Leads Act promoting a clean energy grid, advancing equity, and protecting ratepayers. We expect the governor to sign the Siting Bill within a few days. Together, the Leads Act and the Siting Bill make important changes that impact development – particularly energy infrastructure development – in the Commonwealth.

Perhaps best known for its \$4 billion price tag and for loosening waterfront development restrictions to allow a soccer stadium for the New England Revolution in Everett, MA, the Leads Act also protects the integrity of the permitting process by insulating approved projects from common ex post facto attacks, establishes a new permit regulatory office, adopts tax exemptions for data centers, and promotes “climatetech.”

Key Provisions of the Mass Leads Act

- **Designated Port Areas.** Section 295 of the Act removes land in Everett and Boston from the Mystic River Designated Port Area (DPA) to allow for development of a professional soccer stadium and a waterfront park on land that otherwise would have been limited to maritime industrial use. It also directs DEP, in consultation with the Office of Coastal Zone Management, to review existing DPA boundaries and designation criteria by July 31, 2025, then update the regulations governing DPA uses and boundary adjustments.
- **Permit Extension.** Section 280 of the Act extends certain permits, licenses, determinations, and approvals from municipal, regional, and state government entities concerning the use or development of real property, including environmental permits. This extension only applies to permits, etc., that were in effect or existence between January 1, 2023, and January 1, 2025. The extension is for a period of two years in addition to the lawful term of the approval.
- **Zoning Freeze.** Section 171 of the Act amends G.L. c. 40A, § 6 to clarify that projects with a special permit or site plan approval are subject to the zoning regulation in effect at the time of

approval if that use or construction commences within three years.

In the case of construction, the zoning freeze continues only if construction is carried through to completion as continuously and expeditiously as is reasonable. ***This is a critical change from existing law, which protects a project with a special permit or site plan approval from zoning changes for only one year.***

Development opponents sometimes try to kill approved projects by amending the zoning before work under the special permit or site plan approval can start. Notably, this “delay and amend” strategy has been employed against battery energy storage systems, a critical component of the Commonwealth’s efforts to address climate change through new energy infrastructure.

- **Previously Disturbed Land and Phased Development.** The Act clarifies that construction involving the redevelopment of previously disturbed land is deemed to have commenced upon substantial investment in site preparation or infrastructure construction, and construction of phased developments must proceed expeditiously, but not continuously, among phases. ***This is also a significant change: it resolves a common issue that arises when determining what constitutes the commencement of “construction” for purposes of timely exercising an approval.***
- **Establishment of Permit Regulatory Office.** Section 40 of the Act creates a permit regulatory office within the Executive Office of Economic Development. The director of the permit regulatory office will serve as an ombudsman to new and expanding businesses while working with other state agencies to expedite the process of obtaining state licenses, permits, and other approvals.
- **Data Center Tax.** Section 214 (complemented by Section 47) of the Act amends G.L. c. 64H, § 6 by establishing a Sales and Use Tax Exemption for:
 - Sales of eligible data center equipment for use in a qualified data center.
 - Computer software for use in a qualified data center.
 - Electricity for use or consumption in the operation of a qualified data center.
 - Construction costs incurred for the construction, renovation or refurbishment of a qualified data center.

Section 214 applies only to costs incurred after effective date of Act. The Secretary of the Executive Office of Economic Development must establish the qualifications necessary to obtain a qualified data center designation.

- **Climatech.** The Act expands scope of the Massachusetts Clean Energy Technology Center to include “climatech,” defined as “clean energy and any other advanced and applied technologies that contribute to the decarbonization of the economy, reduce and mitigate greenhouse gas emissions or mitigate the impacts of climate change through adaptation, resiliency and environmental sustainability.” This applies to a broader array of technology than currently is covered by G.L. c. 23J. The Act creates a tax credit program for certified climatech companies.

The Leads Act provides important protection and economic support for pending and future development. And while it includes a significant amount of funding, ***access to most of those programs are available only for projects in municipalities that are in compliance or interim compliance with the MBTA Communities Act, G.L. c. 40A, § 3A.***

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