

**BERKSHIRE REGIONAL PLANNING COMMISSION**  
1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201  
TELEPHONE (413) 442-1521 · FAX (413) 442-1523  
[www.berkshireplanning.org](http://www.berkshireplanning.org)

KYLE HANLON, Chair  
SHEILA IRVIN, Vice-Chair  
MARIE RAFTERY, Clerk  
CHARLES P. OGDEN, Treasurer

NATHANIEL W. KARNS, A.I.C.P.  
Executive Director

The next meeting of the  
**Berkshire Regional Planning Commission  
Regional Issues Committee**  
will be held on:  
**Wednesday, January 17, 2018 at 4:00 p.m.**  
BRPC Office, 1 Fenn Street, Suite 201, Pittsfield, MA

**AGENDA**

- I. **Call to Order**
- II. **Approval of Meeting Minutes**
  - **October 11, 2017**
  - **November 15, 2017**
- III. **Bills Dealing with Property Tax Exemption for Solar and Wind Energy Systems**
- IV. **Housing Issues – Tiny Houses? Accessory Dwellings? Age Friendly Housing & Housing Assistance to Age in Place? Need for Up-to-Date or New Workforce Rental Housing? Other?**
- V. **Next Committee Meeting**
  - **Date – Wednesday, February 7, 14, 21 or 28th?**
- VI. **Adjournment**

City and Town Clerks: Please post this notice pursuant to M.G.L. Chapter 39, Section 23B

# **HOUSE . . . . . No. 3906**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, September 18, 2017.

The committee on Revenue to whom were referred the petition (accompanied by bill, House, No. 1487) of Gailanne M. Cariddi and others relative to tax exemptions, the petition (accompanied by bill, House, No. 2651) of Frank I. Smizik and others relative to the renewable energy property tax exemption, and the petition (accompanied by bill, House, No. 3310) of Gailanne M. Cariddi and others relative to property tax exemptions for solar and wind systems, reports recommending that the accompanying bill (House, No. 3906) ought to pass.

For the committee,

JAY R. KAUFMAN.

**HOUSE . . . . . No. 3906**

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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, Any solar or wind powered system that is capable of producing not more than  
5 125 per cent of the annual energy needs of the real property upon which it is located, which shall  
6 include contiguous or non-contiguous real property owned or leased by the owner, or in which  
7 the owner otherwise holds an interest. Any other solar or wind powered system capable of  
8 producing energy shall be exempt provided that the owner has made to the city or town where  
9 the system is located a payment in lieu of taxes. A city or town, acting through the board or  
10 officer authorized by its legislative body, may execute an agreement for the payment in lieu of  
11 taxes with the owner of a solar or wind powered system in the municipality where the solar or  
12 wind powered system is located. Unless otherwise provided by such agreement, (1) a notice of

13 the payment in lieu of tax owed for each fiscal year shall be mailed to the owner and due on the  
14 dates by which a tax assessed under this chapter would be payable without interest; (2) all  
15 provisions of law regarding billing and collecting a tax assessed under this chapter shall apply to  
16 the payment in lieu of taxes, including the payment of interest; and (3) upon issuance of the  
17 notice, the owner shall have the remedies provided by section 59, section 64 and all other  
18 applicable provisions of law for the abatement and appeal of taxes upon real estate. An  
19 exemption under this clause shall be allowed only for a period of 20 years from the date of  
20 installation of the system; provided, however, that no exemption shall be allowed for any year  
21 within that period where the solar or wind powered system is not capable of producing energy as  
22 required by this clause. Each owner shall annually, on or before March 1, make a declaration  
23 under oath to the assessors regarding the system and power generated for the previous calendar  
24 year. This clause shall not apply to (1) projects developed under section 1A of chapter 164 or (2)  
25 solar and wind powered systems for which the owner has signed an agreement with the city or  
26 town to make a payment in lieu of taxes under section 38H(b) of chapter 59 prior to July 1, 2018.

27 SECTION 2. Subsection (b) of section 38H of said chapter 59, as so appearing, is hereby  
28 amended by inserting after the first sentence the following sentence:- For purposes of this  
29 subsection, a generation facility shall not include a facility powered by sun or wind to generate  
30 electricity.

31 SECTION 3. This act shall apply to taxes assessed for fiscal years beginning on or after  
32 July 1, 2018.

# SENATE . . . . . No. 2160

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## The Commonwealth of Massachusetts

—————  
In the One Hundred and Ninetieth General Court  
(2017-2018)  
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SENATE, Monday, September 18, 2017

The committee on Revenue to whom was referred the petitions (accompanied by bill, Senate, No. 1613) of Michael J. Rodrigues, Alan Silvia and Jennifer L. Flanagan for legislation relative to clarifying property tax exemptions for solar and wind systems; and (accompanied by bill, Senate, No. 1615) of Michael J. Rodrigues, Mark C. Montigny, Susan Williams Gifford, Christopher M. Markey and others for legislation relative to solar and wind property tax exemptions,- reports the accompanying bill (Senate, No. 2160).

For the committee,  
Michael D. Brady

# SENATE . . . . . No. 2160

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## The Commonwealth of Massachusetts

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

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

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32 July 1, 2018.

KYLE HANLON, Chair  
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MARIE RAFTERY, Clerk  
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NATHANIEL W. KARNS, A.I.C.P.  
Executive Director

## MINUTES OF THE REGIONAL ISSUES COMMITTEE - Draft

October 11, 2017

*At Berkshire Regional Planning Commission Office  
1 Fenn Street, Ste. 201, Pittsfield, MA 01201*

### I. Call to Order

The meeting was called to order at 4:01 p.m. by Chair Mullen.

The following Committee Members were present:

James Mullen, New Marlborough, Chair  
C.J. Hoss, Pittsfield, Vice Chair  
Larysa Bernstein, North Adams  
Bob Bott, Mt. Washington  
Andrew Groff, Williamstown  
Kyle Hanlon, North Adams  
Sarah Hudson, Tyringham  
Pam Kueber, Lenox  
Gwen Miller, Lenox

Staff Present:

Nat Karns, Executive Director

### II. Approval of Minutes of August 23, 2017 Meeting

A motion was made by Kyle Hanlon, seconded by CJ Hoss, to approve the minutes. Modifications were requested to the 1<sup>st</sup> full paragraph on the second page. The corrected minutes were approved with two abstentions.

### III. Short Term Housing Rentals

Jamie Mullen opened the discussion about the issue of short term rentals and suggested that the Committee was looking for ideas and possible language both for our communities and the legislature.

Nat Karns reported on the workshop for their local officials held by the Franklin Regional Council of Governments. This topic is more confusing because both the new (9<sup>th</sup>) edition of the building code is under consideration for adoption and there are revisions being considered to the health code as it may pertain to some forms of short-term rentals. The advice given at the FRCOG workshop was for communities to hold off on doing anything until these new regulations are adopted. Each set of regulations defines things differently and it seems like it would be useful if there were a common set of thresholds that helped define the various forms of short-term rentals. These definitions and thresholds all have implications due to health code, building code (especially which use group is appropriate for what type of use) and zoning regulations. They did provide a list of how each community in Franklin County dealt with short term rentals. The building code defines any stay of 30 days or less as a transient residential use, which then kicks things into a building code use group which has much more stringent requirements than a single-family use.

The Health Code treats “lodging houses” as being letting 5 or fewer rooms for short-term rentals and requires they meet some minimal standards. These include that the septic system be adequately sized and that annual pumping reports must be provided, the rooms meet basic temperature limits in both the summer and winter, there be screens on all windows, and there be smoke and CO detectors. The health code requires that if there is a hot tub, there must be a certified pool/spa operator, the same as if there were a large pool at a hotel. They must meet the requirements for a public water supply with annual testing and then less frequent fuller testing.

For the building code, the 9<sup>th</sup> edition is promised momentarily. Currently, any change of use requires an application be filed with the building commissioner. There are four residential use categories – single and two-family; R-1 which covers hotels and motels; R-2 which covers dormitories and multi-family with more than 16 occupants; and R-3 which are miscellaneous uses. No one seems to know where short-term rentals fall. The current code indicates that any applicant for a change to any transient use group would trigger a sprinkler system and this includes both change in use and expansion. The R-3 use group includes lodging houses that don’t have separate living units and may include renting out a number of bedrooms. If are renting five or fewer rooms, the standards are close to the single-family standards. Under the new edition of the building code there apparently will be a point system which allows more flexibility in how to accomplish requirements using a performance system. This would require that a certain number of points be achieved in order to comply but some flexibility in how to achieve that. What triggers a change in use becomes critical .

Zoning deals more with the traditional community and neighborhood impacts, such as on affordable housing supply, traffic, parking, lighting, etc. Communities make choices regarding areas that may not be compatible with more transient use. Both the House and Senate bills allow communities to set maximum numbers of units, limit the areas in which they may be rented out, and to require that the units have to be owner-occupied for some portion of the year. Questions would include whether an “inn-keeper” is require; whether a very large house with many bedrooms such be treated the same as a much smaller unit. It would seem more appropriate to regulate some things on the basis of the physical aspects, such as number of bedrooms, of the home or apartment.

Bob Bott asked whether someone wanted to convert a part of a large single family home into a short-term rental, would zoning allow that, does the building code allow it, and what health permits are needed? There was a Land Court decision involving the Town of Hull in which the town prevailed. This involved whether your town’s bylaws had language which precluded uses not otherwise allowed in the bylaw, versus allowing other similar uses. In the Hull case, since there wasn’t any language which allowed short-term rentals and the town’s bylaw prohibited uses not listed as permitted, then short-term rental was not allowed. The distinction in the Hull case was more complicated because it revolved around whether the use was in fact a commercial use or was a residential use.

Manchester-by-the-Sea and Dennis both regulate short-term rentals through general bylaws rather than deal with them through zoning. Both require a license and registration and each year the units being rented have to be inspected.

The two bills under active consideration are more focused on the collection of taxes rather than many of the issues our communities are concerned about. At some point, during the duration, frequency, and minimal use versus maximum use a short-term rental may become more of a commercial use. There is a website, [Hostcompliance.com](http://Hostcompliance.com), which can assist a community in thinking through the issues of regulating short-term rentals. They have an instructional video and use algorithms to track usage. Their advise is to focus on your community’s values in establishing any regulations. But they find it is impossible to track duration of stays as it is impossible to get the data. One of the bills requires that the owner maintain a log of rentals. There are some things which are enforceable, for instance Cambridge requires that short-term rental hosts must get a business license and must show that license number in their on-line listing. Each town has to establish its own fee for a business license. The hosting entities, such as Airbnb, require that the person listing the unit must sign off on being in compliance with all state and local regulations. The hosting platforms provide the casualty and loss insurance and if you are not in compliance then you are effectively at risk that your insurance is not valid. The Senate bill requires an affidavit from the owner that they have insurance which covers short-term rentals and most homeowners insurance does not cover short-term rentals. Both bills have a lodging tax which goes to the state general fund and both allow a local option lodging tax, with 50% of that having to go to affordable housing (probable mechanism would be a local housing trust fund).

In Massachusetts, because the landlord-tenant laws are so favorable to renters, no one with short-term rental units would want them to be rented to any single party for more than 30 days as that would kick the unit into the protections of that law. The duration of stays is not an issue in communities, it is the frequency of rentals and how much time it is rented versus being owner-occupied. One of the bills sets the total length of time being rented over the course of the year by how many days it was offered, rather than how many actually occupied on a short-term basis and that seems problematic since units are often not rented for every day they are offered for rental.

The House bill collects are taxes through the hosting entities. The Senate bill is more complicated and has a number of different categories which allow the capture of more taxes but which would be more problematic in capturing the revenues. In both cases the specifics of what and how to regulate these come back to the municipalities to determine.

The committee agreed that the important things for the legislature to focus on are getting the tax aspects done and to clarify the health and building codes so that they are clear, reasonable and enforceable.

Final discussions included that one of the difficulties in this topic is that everything that is in the building code comes from “spilled blood” somewhere. There may be a concern that is the fees and costs are too much, then it may make it not financially feasible to rent out units in the short-term market. There are concerns about taking long-term rental units off the market and the impact of that on housing affordability and availability. Strict enforcement of the building code could push property owners out of the short-term rental market. There is a bigger issue with the lack of affordable housing. Investor owners are purchasing modest homes to convert to short-term rentals; not very expensive homes, so this does impact the availability of workforce housing. People do benefit from renting their units out but frequency and duration can come into play. There is a difference in the occasional renter owner and the investor owner. There are equity issues between the small country inn that has to comply with various codes and pay lodging taxes and a short-term rental unit. Is there really any difference between a purely investor owned unit which is being rented out constantly and small inn? Both are businesses at that point. The non-owner occupied unit is the real issue as it is basically a commercial use. These can have impacts on other residents in the neighborhood.

Is there evidence of any significant neighborhood issues from short-term rentals and any impact on service levels in the community? Lenox has not heard of any issues from their police or fire departments.

There is a danger that the state or a community could overregulate short term rentals and drive them underground. The State does need to set up a taxing system and a fairly minimalist regulatory system, allowing the communities to determine what best fits their circumstances.

It was agreed that we should draft a short letter, requesting that the state pass legislation to collect the transient room tax and to sort out the state code issues, but also not in an overly restrictive manner. The legislation should explicitly allow municipalities to set up a local regulatory framework as the community sees fit. It is not helpful to suggest what communities should do until the state law is established.

#### **IV. Next Committee Meeting Date, Time & Topic**

The next meeting will in November, with a date to be established via Doodle poll, on a Wednesday at 4 p.m. The Committee will review a letter to be provided to the Commission which meets on November 16<sup>th</sup>, wrapping up its views on short-term rental legislation. They will also begin discussion of housing issues, including Tiny Houses and increasing the affordable housing stock, perhaps in innovative ways.

#### **V. Adjournment**

Due to loss of a quorum, the meeting was adjourned at 5:03 p.m.

#### **Material Sent or Provided to the Committee**

- Agenda for October 11, 2017 Meeting
- Draft minutes for August 23, 2017 Meeting
- Cape Cod Municipal Management Association letter, 8/24/2017
- Workshop Flyer on Short Term Rentals – Franklin Regional Council of Governments
- New Report: Airbnb Hosts Earned Nearly \$2 Million During 2017 Tanglewood Music Festival
- Short Term Rental Proposed Legislation
- Zoning for Inn/B&B for FCCIP member towns

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Executive Director

## MINUTES OF THE REGIONAL ISSUES COMMITTEE - Draft

November 15, 2017

*At Berkshire Regional Planning Commission Office  
1 Fenn Street, Ste. 201, Pittsfield, MA 01201*

### I. Call to Order

The meeting was called to order at 4:08 p.m. by Chair Mullin.

The following Committee Members were present:

James Mullen, New Marlborough, Chair  
Larysa Bernstein, North Adams  
Bob Bott, Mt. Washington  
Andrew Groff, Williamstown  
Kyle Hanlon, North Adams  
Sarah Hudson, Tyringham  
Sheila Irvin, Pittsfield  
Pam Kueber, Lenox  
Gwen Miller, Lenox  
Marie Raftery, Stockbridge  
Chris Rembold, Great Barrington  
Eleanor Tillinghast, Mt. Washington

Staff Present:

Nat Karns, Executive Director

### II. Approval of Minutes of October 11, 2017 Meeting

As the minutes were not yet prepared, this was tabled to the next meeting.

### III. Approval of Letter on Short Term Housing Rentals

The Committee recognized the draft letter on short term rentals that had been provided in the packet and worked from a revised draft provided by Pam Kueber. Both active bills are entitled “a bill to regulate” so that term is used in the letter. In Lenox, at least, the revenue issue isn’t just not collecting tax on the units rented through websites but also that there are indications that revenue from traditional lodging taxes are decreased due to this untaxed competition. There is an estimate that Lenox is losing between \$100,000 and \$200,000 annually due to that loss of customers in traditional lodging. The \$4.2 million of lost room revenue is Airbnb’s estimate of the revenue the state currently does not collect from people staying at sites rented out through Airbnb in Berkshire County. That sentence should be modified to read “potentially generating \$4.2 million in room tax revenue had it been collected.” This is also an issue of levelling the playing field between traditional lodging and the website-based rentals.

One potential area of concern, at least in Lenox, is the impact on the supply of workforce housing available. They are doing to do some focused local research on how much of an impact this might be. The Committee felt this was a possible impact for other communities and the letter should raise it but not in a manner which singled out Lenox. It had been

brought up that communities are spending a lot of time to create affordable housing but the short term rental market may be acting to reduce the supply of moderate priced housing already in the community. Lenox has identified a number of pros and cons in its community discussions thus far. The “pros” are: short term rentals provide a supplementary income to limited income households; they provide a product desired by visitors; they provide an opportunity for moderate income people to live in a higher cost community; they increase spending in local businesses; and they help raise property values (which conversely can also be a “con”). “Cons” are: impact on the availability and affordability of moderate priced houses; impacts on neighborhoods; the unlevel playing field with traditional lodging; and a lack of even modest inspections for health and safety issues.

There was discussion about the code application and enforcement issues that currently exist. Each community is probably experiencing a different level of concern in this area. The B&B and small inn owners feel the current situation is very inequitable – they have to spend a lot on improvements and inspections while website-based rentals with similar impacts and degrees of risk do not. There is a lack of periodic inspections and there is possibly an enhanced public safety risk as older homes may not have any up-to-date safety measures (modern fire and CO detectors, for instance) while newer homes would have at least those.

Based on the previous meetings, there appear to be at least four codes in play: building, fire, health, and housing codes. There are not common definitions nor thresholds across these. This creates considerable confusion and uncertainty for the property owner, the local building official, and the local health boards. Because of this confusion and uncertainty, the building officials and health boards have tended to take a hands-off approach to the web-based rentals.

Nat indicated that it seems illogical that if a single family home is primarily owner occupied and they choose to rent it out for a single less than thirty day period, because of that short-term rental, it is considered a change in use and they are supposed to, under the building code, be reclassified in the same category as a hotel or motel, triggering a fire suppression system. It seems that it is still being used as a single family house from a building code standpoint. While it might need to meet some standards, the current situation seems excessive. There should be a declination of standards across all the lodging types that is more refined. The small inns and B&Bs also shouldn't be required to meet the same standards as a large, multi-story hotel.

It is possible that the local officials are both confused about which code requirements should apply and also do not agree with what the codes indicate so they end up not enforcing short-term rentals. This is apparently an issue across the entire region based on the discussion.

There are community and neighborhood issues as well and these are best determined and regulated, if desired, at the local level. There can be an impact on neighborhood character. Neighborhood impacts are definitely not appropriate for regulation at a state-wide level. It was agreed that the letter should be clear that neighborhood and community impacts can vary widely and regulation of that is best set at the community level.

Kyle Hanlon moved to approve the letter as amended as a result of the discussion. Sarah Hudson seconded the motion which carried unanimously.

The full Commission will consider the letter, as modified, at its meeting on the following evening.

## **V. Next Committee Meeting Date, Time & Topic**

The next topic which had been pending had been “housing” with various possible subtopics including tiny houses, age-friendly housing, and the missing middle housing market.

Eleanor Tillinghast asked if the Committee might look at the two pieces of legislation which are under active consideration clarifying the property tax exemptions for solar and wind energy systems on private property. The Department of Revenue had interpreted that they should be subject to personal property tax but the Appellant Tax Board has found differently and thus these are exempt from taxation. The legislature is trying to clarify this. Because of the ruling, the municipalities are in a weakened position in negotiating PILOT agreements. She is interested in the Committee drafting letters on the legislation for the Commission to consider.

The Committee agree they would like to know more about this. Both Great Barrington and Pittsfield have a lot of these projects and it is a potential source of revenue for communities. Neither bill precludes communities from signing PILOT agreements but it would give them more leverage in negotiations with developers. This is an active issue in the House and Senate. It also came up in Sheffield in regards to the solar project at Berkshire School. Projects only providing electricity for the premises, even if they are net-metered, are not subject to taxation. The bill numbers are S.2160 and H.3906. We will determine the status of the legislation before the next meeting.

The next meeting will at 4 p.m. on Wednesday, December 13<sup>th</sup>.

## **VI. Adjournment**

Upon a motion by Marie Raftery, seconded by Kyle Hanlon, the meeting was adjourned at 5:02 p.m.

### **Material Sent or Provided to the Committee**

- Agenda for November 15, 2017 Meeting
- Draft letter to Co-Chairs Brady & Kaufman – no changes – November 17, 2017
- Draft letter to Co-Chairs Brady & Kaufman – track changes – November 17, 2017
- From 9<sup>th</sup> edition page – amendments to 8<sup>th</sup> edition section online

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