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**HOUSE BILL 2429**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Representative Ramel

1 AN ACT Relating to the process to make recommendations for a  
2 project by the energy facility site evaluation council; and amending  
3 RCW 80.50.030, 80.50.071, 80.50.080, 80.50.090, and 80.50.100.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 80.50.030 and 2022 c 183 s 3 are each amended to  
6 read as follows:

7 (1) The energy facility site evaluation council is created and  
8 established.

9 (2) The chair of the council shall be appointed by the governor  
10 with the advice and consent of the senate, shall have a vote on  
11 matters before the council, shall serve for a term coextensive with  
12 the term of the governor, and is removable for cause. The chair may  
13 designate a member of the council to serve as acting chair in the  
14 event of the chair's absence. The salary of the chair shall be  
15 determined under RCW 43.03.040. The chair is a "state employee" for  
16 the purposes of chapter 42.52 RCW. As applicable, when attending  
17 meetings of the council, members may receive reimbursement for travel  
18 expenses in accordance with RCW 43.03.050 and 43.03.060, and are  
19 eligible for compensation under RCW 43.03.250.

20 (3) (a) The council shall consist of the chair of the council and:

1 (i) The director of the department of ecology or the director's  
2 designee;

3 (ii) The director of the department of fish and wildlife or the  
4 director's designee;

5 (iii) The director of the department of commerce or the  
6 director's designee;

7 (iv) The chair of the utilities and transportation commission or  
8 the chair's designee; and

9 (v) The commissioner of public lands or the commissioner's  
10 designee.

11 (b) The directors, administrators, or their designees, of the  
12 following departments, agencies, and commissions, or their statutory  
13 successors, may participate as councilmembers at their own discretion  
14 provided they elect to participate no later than sixty days after an  
15 application is filed:

16 (i) Department of agriculture;

17 (ii) Department of health;

18 (iii) Military department; and

19 (iv) Department of transportation.

20 (4) The appropriate county legislative authority of every county  
21 wherein an application for a proposed site is filed shall appoint a  
22 member or designee as a voting member to the council. The member or  
23 designee so appointed shall sit with the council only at such times  
24 as the council considers the proposed site for the county which he or  
25 she represents, and such member or designee shall serve until there  
26 has been a final acceptance or rejection of the proposed site.

27 (5) The city legislative authority of every city within whose  
28 corporate limits an energy facility is proposed to be located shall  
29 appoint a member or designee as a voting member to the council. The  
30 member or designee so appointed shall sit with the council only at  
31 such times as the council considers the proposed site for the city  
32 which he or she represents, and such member or designee shall serve  
33 until there has been a final acceptance or rejection of the proposed  
34 site.

35 (6) For any port district wherein an application for a proposed  
36 port facility is filed subject to this chapter, the port district  
37 shall appoint a member or designee as a nonvoting member to the  
38 council. The member or designee so appointed shall sit with the  
39 council only at such times as the council considers the proposed site  
40 for the port district which he or she represents, and such member or

1 designee shall serve until there has been a final acceptance or  
2 rejection of the proposed site. The provisions of this subsection  
3 shall not apply if the port district is the applicant, either singly  
4 or in partnership or association with any other person.

5 (7) A quorum of the council consists of a majority of members  
6 appointed for business to be conducted. Majority consensus by a  
7 quorum of the council is required to conduct the business of the  
8 council pursuant to RCW 80.50.040. No member of the council,  
9 including the chair, may unilaterally conduct the council's business.

10 **Sec. 2.** RCW 80.50.071 and 2022 c 183 s 8 are each amended to  
11 read as follows:

12 (1) The council shall receive all applications for energy  
13 facility site certification, provided that such applications contain  
14 sufficient information for the council to complete its evaluation of  
15 all potential impacts under chapter 43.21C RCW, the state  
16 environmental policy act. If an application does not contain  
17 sufficient information for the council to make a threshold  
18 determination required by RCW 43.21C.030, the application must be  
19 rejected and not processed until such information is submitted. Each  
20 applicant shall pay actual costs incurred by the council in  
21 processing an application.

22 (a) Each applicant shall, at the time of application submission,  
23 pay to the council for deposit into the energy facility site  
24 evaluation council account created in RCW 80.50.390 an amount up to  
25 (~~fifty thousand dollars~~) \$50,000, or such greater amount as  
26 specified by the council after consultation with the applicant. The  
27 council shall charge costs against the deposit if the applicant  
28 withdraws its application and has not reimbursed the council for all  
29 actual expenditures incurred in considering the application.

30 (b) The council may commission its own independent consultant  
31 study to measure the consequences of the proposed energy facility on  
32 the environment or any matter that it deems essential to an adequate  
33 appraisal of the site. The council shall provide an estimate of the  
34 cost of the study to the applicant and consider applicant comments.

35 (c) In addition to the deposit required under (a) of this  
36 subsection, applicants must reimburse the council for actual  
37 expenditures that arise in considering the application, including the  
38 cost of any independent consultant study. The council shall submit to  
39 each applicant an invoice of actual expenditures made during the

1 preceding calendar quarter in sufficient detail to explain the  
2 expenditures. The applicant shall pay the council the amount of the  
3 invoice by the due date.

4 (2) Each certificate holder shall pay the actual costs incurred  
5 by the council for inspection and determination of compliance by the  
6 certificate holder with the terms of the certification relative to  
7 monitoring the effects of construction, operation, and site  
8 restoration of the facility.

9 (a) Each certificate holder shall, within (~~thirty~~) 30 days of  
10 execution of the site certification agreement, pay to the council for  
11 deposit into the energy facility site evaluation council account  
12 created in RCW 80.50.390 an amount up to (~~fifty thousand dollars~~)  
13 \$50,000, or such greater amount as specified by the council after  
14 consultation with the certificate holder. The council shall charge  
15 costs against the deposit if the certificate holder ceases operations  
16 and has not reimbursed the council for all actual expenditures  
17 incurred in conducting inspections and determining compliance with  
18 the terms of the certification.

19 (b) In addition to the deposit required under (a) of this  
20 subsection, certificate holders must reimburse the council for actual  
21 expenditures that arise in administering this chapter and determining  
22 compliance. The council shall submit to each certificate holder an  
23 invoice of the expenditures actually made during the preceding  
24 calendar quarter in sufficient detail to explain the expenditures.  
25 The certificate holder shall pay the amount of the invoice by the due  
26 date.

27 (3) If an applicant or certificate holder fails to provide the  
28 initial deposit, or if subsequently required payments are not  
29 received within thirty days following receipt of the invoice from the  
30 council, the council may (a) in the case of the applicant, suspend  
31 processing of the application until payment is received; or (b) in  
32 the case of a certificate holder, suspend the certification.

33 (4) All payments required of the applicant or certificate holder  
34 under this section are to be made to the council for deposit into the  
35 energy facility site evaluation council account created in RCW  
36 80.50.390. All such funds shall be subject to state auditing  
37 procedures. Any unexpended portions of the deposit shall be returned  
38 to the applicant within (~~sixty~~) 60 days following the conclusion of  
39 the application process or to the certificate holder within (~~sixty~~)  
40 60 days after a determination by the council that the certificate is

1 no longer required and there is no continuing need for compliance  
2 with its terms. For purposes of this section, "conclusion of the  
3 application process" means after the governor's decision granting or  
4 denying a certificate and the expiration of any opportunities for  
5 judicial review.

6 (5) (a) Upon receipt of an application for an energy facility site  
7 certification proposing an energy plant or alternative energy  
8 resource that is connected to electrical transmission facilities of a  
9 nominal voltage of at least one hundred fifteen thousand volts, the  
10 council shall notify in writing the United States department of  
11 defense. The notification shall include, but not be limited to, the  
12 following:

13 (i) A description of the proposed energy plant or alternative  
14 energy resource;

15 (ii) The location of the site;

16 (iii) The placement of the energy plant or alternative energy  
17 resource on the site;

18 (iv) The date and time by which comments must be received by the  
19 council; and

20 (v) Contact information of the council and the applicant.

21 (b) The purpose of the written notification is to provide an  
22 opportunity for the United States department of defense to comment  
23 upon the application, and to identify potential issues relating to  
24 the placement and operations of the energy plant or alternative  
25 energy resource, before a site certification application is approved.  
26 The time period set forth by the council for receipt of such comments  
27 shall not extend the time period for the council's processing of the  
28 application.

29 (c) In order to assist local governments required to notify the  
30 United States department of defense under RCW 35.63.270, 35A.63.290,  
31 and 36.01.320, the council shall post on its website the appropriate  
32 information for contacting the United States department of defense.

33 **Sec. 3.** RCW 80.50.080 and 2013 c 23 s 282 are each amended to  
34 read as follows:

35 After the council has received a site application, the attorney  
36 general shall appoint an assistant attorney general as a counsel for  
37 the environment. The counsel for the environment shall represent the  
38 public and its interest in protecting the quality of the environment.  
39 Costs incurred by the counsel for the environment in the performance

1 of these duties shall be charged to the office of the attorney  
2 general, and shall not be a charge against the appropriation to the  
3 energy facility site evaluation council. He or she shall be accorded  
4 all the rights, privileges, and responsibilities of an attorney  
5 representing a party in a formal action. In the event that the  
6 council commences an adjudication pursuant to RCW 80.50.090, the  
7 counsel for the environment shall take one of three positions in  
8 final briefing for the adjudication: (1) Full support for the  
9 application for site certification; (2) qualified support for the  
10 application for site certification with recommended modifications; or  
11 (3) opposition to approval of the application for site certification.  
12 This section shall not be construed to prevent any person from being  
13 heard or represented by counsel in accordance with the other  
14 provisions of this chapter.

15 **Sec. 4.** RCW 80.50.090 and 2022 c 183 s 9 are each amended to  
16 read as follows:

17 (1) The council shall conduct an informational public hearing in  
18 the county of the proposed site as soon as practicable but not later  
19 than (~~sixty~~) 60 days after receipt of an application for site  
20 certification. However, the place of such public hearing shall be as  
21 close as practical to the proposed site.

22 (2) Subsequent to the informational public hearing, the council  
23 shall conduct a public hearing to determine whether or not the  
24 proposed site is consistent and in compliance with city, county, or  
25 regional land use plans or zoning ordinances on the date of the  
26 application.

27 (3)(a) After the submission of an environmental checklist and  
28 prior to issuing a threshold determination that a facility is likely  
29 to cause a significant adverse environmental impact under chapter  
30 43.21C RCW, the director must notify the project applicant and  
31 explain in writing the basis for its anticipated determination of  
32 significance. Prior to issuing the threshold determination of  
33 significance, the director must give the project applicant the option  
34 of withdrawing and revising its application and the associated  
35 environmental checklist to clarify or make changes to features of the  
36 proposal that are designed to mitigate the impacts that were the  
37 basis of the director's anticipated determination of significance.  
38 The director shall make the threshold determination based upon the  
39 changed or clarified proposal following the applicant's submittal.

1 The director must provide an opportunity for public comment on a  
2 project for which a project applicant has withdrawn and revised the  
3 application and environmental checklist and subsequently received a  
4 threshold determination of nonsignificance or mitigated determination  
5 of nonsignificance.

6 (b) The notification required under (a) of this subsection is not  
7 an official determination by the director and is not subject to  
8 appeal under chapter 43.21C RCW.

9 (4) Prior to the issuance of a council recommendation to the  
10 governor under RCW 80.50.100 a public hearing, conducted as an  
11 adjudicative proceeding under chapter 34.05 RCW, the administrative  
12 procedure act, shall be held. Such an adjudicative proceeding may not  
13 be commenced until the council has completed its environmental  
14 analysis under chapter 43.21C RCW, including the issuance of a final  
15 environmental impact statement when applicable.

16 (a) At such public hearing any person shall be entitled to be  
17 heard in support of or in opposition to the application for  
18 certification by raising one or more specific issues, provided that  
19 the person has raised the issue or issues in writing with specificity  
20 during the application review process or during the public comment  
21 period that will be held prior to the start of the adjudicative  
22 hearing. A person's right to be heard in support of or in opposition  
23 to the application for certification includes the right to call any  
24 witness with relevant information, without limitation by a witness's  
25 personal or professional affiliation or employment, except for the  
26 councilmembers or council staff.

27 (b) If the environmental impact of the proposed facility in an  
28 application for certification is not significant or will be mitigated  
29 to a nonsignificant level under RCW 43.21C.031, the council may limit  
30 the topic of the public hearing conducted as an adjudicative  
31 proceeding under this section to whether any land use plans or zoning  
32 ordinances with which the proposed site is determined to be  
33 inconsistent under subsection (2) of this section should be  
34 preempted.

35 (5) After expedited processing is granted under RCW 80.50.075,  
36 the council must hold a public meeting to take comments on the  
37 proposed application prior to issuing a council recommendation to the  
38 governor.

1 (6) Additional public hearings shall be held as deemed  
2 appropriate by the council in the exercise of its functions under  
3 this chapter.

4 **Sec. 5.** RCW 80.50.100 and 2022 c 183 s 10 are each amended to  
5 read as follows:

6 (1)(a) The council shall report to the governor its  
7 recommendations as to the approval or rejection of an application for  
8 certification within (~~twelve~~) 24 months of receipt by the council  
9 of an application deemed complete by the director, or such later time  
10 as is mutually agreed by the council and the applicant.

11 (b) The council shall review and consider comments received  
12 during the application process in making its recommendation.

13 (c) In the case of an application filed prior to December 31,  
14 2025, for certification of an energy facility proposed for  
15 construction, modification, or expansion for the purpose of providing  
16 generating facilities that meet the requirements of RCW 80.80.040 and  
17 are located in a county with a coal-fired electric generation  
18 facility subject to RCW 80.80.040(3)(c), the council shall expedite  
19 the processing of the application pursuant to RCW 80.50.075 and shall  
20 report its recommendations to the governor within (~~one hundred~~  
21 ~~eighty~~) 180 days of receipt by the council of such an application,  
22 or a later time as is mutually agreed by the council and the  
23 applicant.

24 (d) Time limits set forth under this section restart in the event  
25 that the applicant makes substantive changes to the scope or design  
26 of the energy facility that is the subject of the application for  
27 certification.

28 (2) If the council recommends approval of an application for  
29 certification, it shall also submit a draft certification agreement  
30 with the report. The council shall include conditions in the draft  
31 certification agreement to implement the provisions of this chapter  
32 including, but not limited to, conditions to protect state, local  
33 governmental, or community interests, or overburdened communities as  
34 defined in RCW 70A.02.010 affected by the construction or operation  
35 of the facility, and conditions designed to recognize the purpose of  
36 laws or ordinances, or rules or regulations promulgated thereunder,  
37 that are preempted or superseded pursuant to RCW 80.50.110 as now or  
38 hereafter amended.



1           (3) (a) Within 60 days of receipt of the council's report the  
2 governor shall take one of the following actions:

3           (i) Approve the application and execute the draft certification  
4 agreement; or

5           (ii) Reject the application; or

6           (iii) Direct the council to reconsider certain aspects of the  
7 draft certification agreement.

8           (b) The council shall reconsider such aspects of the draft  
9 certification agreement by reviewing the existing record of the  
10 application or, as necessary, by reopening the adjudicative  
11 proceeding for the purposes of receiving additional evidence. Such  
12 reconsideration shall be conducted expeditiously. The council shall  
13 resubmit the draft certification to the governor incorporating any  
14 amendments deemed necessary upon reconsideration. Within 60 days of  
15 receipt of such draft certification agreement, the governor shall  
16 either approve the application and execute the certification  
17 agreement or reject the application. The certification agreement  
18 shall be binding upon execution by the governor and the applicant.

19           (4) The rejection of an application for certification by the  
20 governor shall be final as to that application but shall not preclude  
21 submission of a subsequent application for the same site on the basis  
22 of changed conditions or new information.

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