
SUBSTITUTE SENATE BILL 6471

State of Washington

61st Legislature

2010 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senators Fraser, Rockefeller, Pridemore, Marr, and Kline)

READ FIRST TIME 02/03/10.

1 AN ACT Relating to the energy facility site evaluation council;
2 amending RCW 80.50.020, 80.50.030, and 80.50.071; and creating a new
3 section.

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

5 **Sec. 1.** RCW 80.50.020 and 2007 c 325 s 1 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Applicant" means any person who makes application for a site
10 certification pursuant to the provisions of this chapter.

11 (2) "Application" means any request for approval of a particular
12 site or sites filed in accordance with the procedures established
13 pursuant to this chapter, unless the context otherwise requires.

14 (3) "Person" means an individual, partnership, joint venture,
15 private or public corporation, association, firm, public service
16 company, political subdivision, municipal corporation, government
17 agency, public utility district, or any other entity, public or
18 private, however organized.

1 (4) "Site" means any proposed or approved location of an energy
2 facility, alternative energy resource, or electrical transmission
3 facility.

4 (5) "Certification" means a binding agreement between an applicant
5 and the state which shall embody compliance to the siting guidelines,
6 in effect as of the date of certification, which have been adopted
7 pursuant to RCW 80.50.040 as now or hereafter amended as conditions to
8 be met prior to or concurrent with the construction or operation of any
9 energy facility.

10 (6) "Associated facilities" means storage, transmission, handling,
11 or other related and supporting facilities connecting an energy plant
12 with the existing energy supply, processing, or distribution system,
13 including, but not limited to, communications, controls, mobilizing or
14 maintenance equipment, instrumentation, and other types of ancillary
15 transmission equipment, off-line storage or venting required for
16 efficient operation or safety of the transmission system and overhead,
17 and surface or subsurface lines of physical access for the inspection,
18 maintenance, and safe operations of the transmission facility and new
19 transmission lines constructed to operate at nominal voltages of at
20 least 115,000 volts to connect a thermal power plant or alternative
21 energy facilities to the northwest power grid. However, common carrier
22 railroads or motor vehicles shall not be included.

23 (7) "Transmission facility" means any of the following together
24 with their associated facilities:

25 (a) Crude or refined petroleum or liquid petroleum product
26 transmission pipeline of the following dimensions: A pipeline larger
27 than six inches minimum inside diameter between valves for the
28 transmission of these products with a total length of at least fifteen
29 miles;

30 (b) Natural gas, synthetic fuel gas, or liquefied petroleum gas
31 transmission pipeline of the following dimensions: A pipeline larger
32 than fourteen inches minimum inside diameter between valves, for the
33 transmission of these products, with a total length of at least fifteen
34 miles for the purpose of delivering gas to a distribution facility,
35 except an interstate natural gas pipeline regulated by the United
36 States federal power commission.

37 (8) "Electrical transmission facilities" means electrical power
38 lines and related equipment.

1 (9) "Independent consultants" means those persons who have no
2 financial interest in the applicant's proposals and who are retained by
3 the council to evaluate the applicant's proposals, supporting studies,
4 or to conduct additional studies.

5 (10) "Thermal power plant" means, for the purpose of certification,
6 any electrical generating facility using any fuel(~~(, including nuclear~~
7 ~~materials,)) for distribution of electricity by electric utilities.~~

8 (11) "Energy facility" means an energy plant or transmission
9 facilities: PROVIDED, That the following are excluded from the
10 provisions of this chapter:

11 (a) Facilities for the extraction, conversion, transmission or
12 storage of water, other than water specifically consumed or discharged
13 by energy production or conversion for energy purposes; and

14 (b) Facilities operated by and for the armed services for military
15 purposes or by other federal authority for the national defense.

16 (12) "Council" means the energy facility site evaluation council
17 created by RCW 80.50.030.

18 (13) "Counsel for the environment" means an assistant attorney
19 general or a special assistant attorney general who shall represent the
20 public in accordance with RCW 80.50.080.

21 (14) "Construction" means on-site improvements, excluding
22 exploratory work, which cost in excess of two hundred fifty thousand
23 dollars.

24 (15) "Energy plant" means the following facilities together with
25 their associated facilities:

26 (a) Any nuclear power facility where the primary purpose is to
27 produce and sell electricity.

28 (b) Any nonnuclear stationary thermal power plant with generating
29 capacity of three hundred fifty thousand kilowatts or more, measured
30 using maximum continuous electric generating capacity, less minimum
31 auxiliary load, at average ambient temperature and pressure, and
32 floating thermal power plants of one hundred thousand kilowatts or
33 more(~~(, including associated facilities. For the purposes of this~~
34 ~~subsection, "floating thermal power plants" means a thermal power plant~~
35 ~~that is)) suspended on the surface of water by means of a barge,~~
36 vessel, or other floating platform;

37 ((~~b~~)) (c) Facilities which will have the capacity to receive

1 liquefied natural gas in the equivalent of more than one hundred
2 million standard cubic feet of natural gas per day, which has been
3 transported over marine waters;

4 ~~((e))~~ (d) Facilities which will have the capacity to receive more
5 than an average of fifty thousand barrels per day of crude or refined
6 petroleum or liquefied petroleum gas which has been or will be
7 transported over marine waters, except that the provisions of this
8 chapter shall not apply to storage facilities unless occasioned by such
9 new facility construction;

10 ~~((d))~~ (e) Any underground reservoir for receipt and storage of
11 natural gas as defined in RCW 80.40.010 capable of delivering an
12 average of more than one hundred million standard cubic feet of natural
13 gas per day; and

14 ~~((e))~~ (f) Facilities capable of processing more than twenty-five
15 thousand barrels per day of petroleum or biofuel into refined products.

16 (16) "Land use plan" means a comprehensive plan or land use element
17 thereof adopted by a unit of local government pursuant to chapter
18 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by
19 chapter 325, Laws of 2007.

20 (17) "Zoning ordinance" means an ordinance of a unit of local
21 government regulating the use of land and adopted pursuant to chapter
22 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state
23 Constitution, or as otherwise designated by chapter 325, Laws of 2007.

24 (18) "Alternative energy resource" ~~((means))~~ includes energy
25 facilities of the following types: (a) Wind; (b) solar energy; (c)
26 geothermal energy; (d) landfill gas; (e) wave or tidal action; or (f)
27 biomass energy based on solid organic fuels from wood, forest, or field
28 residues, or dedicated energy crops that do not include wood pieces
29 that have been treated with chemical preservatives such as creosote,
30 pentachlorophenol, or copper-chrome-arsenic.

31 (19) "Secretary" means the secretary of the United States
32 department of energy.

33 (20) "Preapplication process" means the process which is initiated
34 by written correspondence from the preapplicant to the council, and
35 includes the process adopted by the council for consulting with the
36 preapplicant and with cities, towns, and counties prior to accepting
37 applications for all transmission facilities.

1 (21) "Preapplicant" means a person considering applying for a site
2 certificate agreement for any transmission facility.

3 (22) "Biofuel" has the same meaning as defined in RCW 43.325.010.

4 **Sec. 2.** RCW 80.50.030 and 2001 c 214 s 4 are each amended to read
5 as follows:

6 (1) There is created and established the energy facility site
7 evaluation council.

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

19 (b) The chair or a designee shall execute all official documents,
20 contracts, and other materials on behalf of the council. The
21 Washington state department of community, trade, and economic
22 development shall provide all administrative and staff support for the
23 council. The director of the department of community, trade, and
24 economic development has supervisory authority over the staff of the
25 council and shall employ such personnel as are necessary to implement
26 this chapter. Not more than three such employees may be exempt from
27 chapter 41.06 RCW.

28 (3)(a) The council shall consist of the directors, administrators,
29 or their designees, of the following departments, agencies,
30 commissions, and committees or their statutory successors:

31 (i) Department of ecology;

32 (ii) Department of fish and wildlife;

33 (iii) Department of community, trade, and economic development;

34 (iv) Utilities and transportation commission; and

35 (v) Department of natural resources.

36 (b) The directors, administrators, or their designees, of the
37 following departments, agencies, and commissions, or their statutory

1 successors, may participate as councilmembers at their own discretion
2 provided they elect to participate no later than sixty days after an
3 application is filed:

- 4 (i) Department of agriculture;
- 5 (ii) Department of health;
- 6 (iii) Military department; and
- 7 (iv) Department of transportation.

8 (c) Council membership is discretionary for agencies that choose to
9 participate under (b) of this subsection only for applications that are
10 filed with the council on or after May 8, 2001. For applications filed
11 before May 8, 2001, council membership is mandatory for those agencies
12 listed in (b) of this subsection.

13 (4) The appropriate county legislative authority of every county
14 wherein an application for a proposed site is filed shall appoint a
15 member or designee as a voting member to the council. The member or
16 designee so appointed shall sit with the council only at such times as
17 the council considers the proposed site for the county which he or she
18 represents, and such member or designee shall serve until there has
19 been a final acceptance or rejection of the proposed site.

20 (5) The city legislative authority of every city within whose
21 corporate limits an energy (~~(plant)~~) facility is proposed to be located
22 shall appoint a member or designee as a voting member to the council.
23 The member or designee so appointed shall sit with the council only at
24 such times as the council considers the proposed site for the city
25 which he or she represents, and such member or designee shall serve
26 until there has been a final acceptance or rejection of the proposed
27 site.

28 (6) For any port district wherein an application for a proposed
29 port facility is filed subject to this chapter, the port district shall
30 appoint a member or designee as a nonvoting member to the council. The
31 member or designee so appointed shall sit with the council only at such
32 times as the council considers the proposed site for the port district
33 which he or she represents, and such member or designee shall serve
34 until there has been a final acceptance or rejection of the proposed
35 site. The provisions of this subsection shall not apply if the port
36 district is the applicant, either singly or in partnership or
37 association with any other person.

1 **Sec. 3.** RCW 80.50.071 and 2006 c 196 s 5 are each amended to read
2 as follows:

3 (1) The council shall receive all applications for energy facility
4 site certification. ~~((The following fees or charges for application
5 processing or certification monitoring shall be paid by the applicant
6 or certificate holder:))~~ Each applicant shall pay such reasonable costs
7 as are actually and necessarily incurred by the council in processing
8 an application.

9 (a) ~~((A fee of twenty five thousand dollars for each proposed site,
10 to be applied toward the cost of the independent consultant study
11 authorized in this subsection, shall accompany the application and
12 shall be a condition precedent to any further consideration or action
13 on the application by the council))~~ Each applicant shall, at the time
14 of application submission, deposit fifty thousand dollars, or such
15 greater amount as may be specified by the council after consultation
16 with the applicant. Costs that may be charged against the deposit
17 include, but are not limited to, independent consultants costs,
18 councilmember's wages, employee benefits, costs of a hearing examiner,
19 costs of a court reporter, staff salaries, wages and employee benefits,
20 goods and services, travel expenses, and miscellaneous direct expenses
21 as arise directly from processing an application.

22 ~~((The council shall commission its own independent consultant study
23 to measure the consequences of the proposed energy facility on the
24 environment for each site application. The council shall direct the
25 consultant to study any matter which it deems essential to an adequate
26 appraisal of the site. The full cost of the study shall be paid by the
27 applicant: PROVIDED, That said costs exceeding a total of the twenty-
28 five thousand dollars paid pursuant to subsection (1)(a) of this
29 section shall be payable subject to the applicant giving prior approval
30 to such excess amount.))~~

31 (b) ~~((Each applicant shall, in addition to the costs of the
32 independent consultant provided by subsection (1)(a) of this section,
33 pay such reasonable costs as are actually and necessarily incurred by
34 the council and its members as designated in RCW 80.50.030 in
35 processing the application. Such costs shall include, but are not
36 limited to, council member's wages, employee benefits, costs of a
37 hearing examiner, a court reporter, additional staff salaries, wages
38 and employee benefits, goods and services, travel expenses within the~~

1 ~~state and miscellaneous expenses, as arise directly from processing~~
2 ~~such application))~~ The council may commission its own independent
3 consultant study to measure the consequences of the proposed energy
4 facility on the environment or any matter that it deems essential to an
5 adequate appraisal of the site. The council shall provide an estimate
6 of the cost of the study to the applicant and consider applicant
7 comments.

8 ~~((Each applicant shall, at the time of application submission,~~
9 ~~deposit twenty thousand dollars, or such lesser amount as may be~~
10 ~~specified by council rule, to cover costs provided for by subsection~~
11 ~~(1)(b) of this section. Reasonable and necessary costs of the council~~
12 ~~directly attributable to application processing shall be charged~~
13 ~~against such deposit.))~~

14 (c) The council shall submit to each applicant a statement of such
15 expenditures ~~((actually))~~ made during the preceding calendar quarter
16 which shall be in sufficient detail to explain such expenditures. The
17 applicant shall pay the state treasurer the amount of such statement to
18 restore the total amount on deposit to the originally established
19 level: PROVIDED, That such applicant may, at the request of the
20 council, increase the amount of funds on deposit to cover anticipated
21 expenses during peak periods of application processing. Any funds
22 remaining unexpended at the conclusion of application processing shall
23 be refunded to the applicant, or at the applicant's option, credited
24 against required deposits of certificate holders.

25 ~~((e))~~ (2) Each certificate holder shall pay such reasonable costs
26 as are actually and necessarily incurred by the council for inspection
27 and determination of compliance by the certificate holder with the
28 terms of the certification relative to monitoring the effects of
29 construction ~~((and))~~, operation, and site restoration of the facility.

30 (a) Each certificate holder, within thirty days of execution of the
31 site certification agreement, shall have on deposit ~~((twenty))~~ fifty
32 thousand dollars, or such ~~((other))~~ greater amount as may be specified
33 by the council ~~((rule, to cover costs provided for by subsection (1)(c)~~
34 ~~of this section))~~ after consultation with the certificate holder.
35 ~~((Reasonable and necessary costs of the council directly attributable~~
36 ~~to))~~ Costs that may be charged against the deposit include, but are not
37 limited to, those specified in subsection (1)(a) of this section as
38 arise from inspection and determination of compliance by the

1 certificate holder with the terms of the certification (~~relative to~~
2 ~~monitoring the effects of construction and operation of the facility~~
3 ~~shall be charged against such deposit~~)).

4 (b) The council shall submit to each certificate holder a statement
5 of such expenditures actually made during the preceding calendar
6 quarter which shall be in sufficient detail to explain such
7 expenditures. The certificate holder shall pay the state treasurer the
8 amount of such statement to restore the total amount on deposit to the
9 originally established level: PROVIDED, That if the actual(~~7~~
10 ~~reasonable, and necessary~~) expenditures for inspection and
11 determination of compliance in the preceding calendar quarter have
12 exceeded the amount of funds on deposit, such excess costs shall be
13 paid by the certificate holder.

14 ~~((+2))~~ (3) If an applicant or certificate holder fails to provide
15 the initial deposit, or if subsequently required payments are not
16 received within thirty days following receipt of the statement from the
17 council, the council may (a) in the case of the applicant, suspend
18 processing of the application until payment is received; or (b) in the
19 case of a certificate holder, suspend the certification.

20 ~~((+3))~~ (4) All payments required of the applicant or certificate
21 holder under this section are to be made to the state treasurer who
22 shall make payments as instructed by the council from the funds
23 submitted. All such funds shall be subject to state auditing
24 procedures. Any unexpended portions thereof shall be returned to the
25 applicant or certificate holder.

26 NEW SECTION. **Sec. 4.** Rule making costs incurred by the energy
27 facility site evaluation council in implementing and administering this
28 act shall be proportionately divided among the certificate holders and
29 applicants directly affected by this act.

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