
SENATE BILL 5912

State of Washington

57th Legislature

2001 Regular Session

By Senators Fraser, Morton, Regala, Patterson, Oke, Kohl-Welles and Haugen

Read first time 02/07/2001. Referred to Committee on Environment, Energy & Water.

1 AN ACT Relating to energy facilities; amending RCW 80.50.100,
2 80.50.030, 90.48.262, 90.48.160, 90.48.260, and 82.12.022; adding a new
3 section to chapter 82.16 RCW; adding a new section to chapter 80.50
4 RCW; adding new sections to chapter 80.52 RCW; adding a new chapter to
5 Title 80 RCW; creating a new section; recodifying RCW 80.50.160,
6 80.50.300, and 80.50.310; repealing RCW 80.50.010, 80.50.020,
7 80.50.030, 80.50.040, 80.50.060, 80.50.071, 80.50.075, 80.50.080,
8 80.50.090, 80.50.100, 80.50.105, 80.50.110, 80.50.120, 80.50.130,
9 80.50.140, 80.50.150, 80.50.175, 80.50.180, 80.50.190, 80.50.900,
10 80.50.901, 80.50.902, 80.50.903, and 80.50.904; prescribing penalties;
11 making appropriations; providing effective dates; providing expiration
12 dates; and declaring an emergency.

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

14 NEW SECTION. **Sec. 1.** (1) The legislature finds that energy
15 supply, generation and distribution systems, and technologies have
16 changed greatly since the enactment of the energy facility siting laws
17 thirty years ago. Experience during this time with these laws has
18 demonstrated that a state council with the primary responsibility for
19 providing siting approval for energy facilities is warranted, but that

1 the current council membership as well as some of the required
2 statutory procedures can be improved.

3 (2) The legislature intends by this act to:

4 (a) Modify siting procedures to emphasize early identification and
5 resolution of issues with the participation of all the interested
6 public, with the objective of decreasing reliance on costly trial-like
7 adjudicatory proceedings;

8 (b) Provide for state review of energy facility site applications
9 through procedures that are more expeditious and predictable than the
10 current procedures;

11 (c) Provide greater deference to the siting standards adopted by
12 the local jurisdictions in which the facilities are sought to be sited;

13 (d) Provide for greater consideration of statewide energy needs and
14 interests, as reflected in the state's energy strategy and policies,
15 when facility siting applications are reviewed by the council;

16 (e) Decrease the size of the council and change its membership from
17 that composed exclusively of state agency representatives to a
18 governor-appointed citizen council, while providing the council the
19 means to obtain the siting expertise of state agencies; and

20 (f) Authorize siting procedures that provide the public a clearer
21 and more meaningful process for participating in review of siting
22 applications.

23 NEW SECTION. **Sec. 2.** The definitions in this section apply
24 throughout this chapter unless the context clearly requires otherwise.

25 (1) "Applicant" means any person who makes application for a site
26 certification under this chapter.

27 (2) "Application" means any request for approval of a particular
28 site or sites filed in accordance with the procedures established under
29 this chapter.

30 (3) "Associated facilities" means storage, transmission, handling,
31 or other related and supporting facilities connecting an energy plant
32 with the existing energy supply, processing, or distribution system,
33 including, but not limited to, communications, controls, mobilizing or
34 maintenance equipment, instrumentation, and other types of ancillary
35 transmission equipment, off-line storage or venting required for
36 efficient operation or safety of the transmission system and overhead,
37 and surface or subsurface lines of physical access for the inspection,
38 maintenance, and safe operations of the transmission facility and new

1 transmission lines constructed to operate at nominal voltages in excess
2 of two hundred thousand volts to connect a thermal power plant to the
3 northwest power grid. However, "associated facilities" does not
4 include common carrier railroads or motor vehicles.

5 (4) "Certification" means a binding agreement between an applicant
6 and the state which shall embody compliance to the siting guidelines,
7 requirements, and conditions to be met prior to or concurrent with the
8 construction or operation of any energy facility.

9 (5) "Construction" means on-site improvements, excluding
10 exploratory work, which cost in excess of two hundred fifty thousand
11 dollars.

12 (6) "Council" means the energy facility site evaluation council
13 created by section 3 of this act.

14 (7) "Director" means the staff director appointed under section 3
15 of this act.

16 (8) "Energy facility" means an energy plant or transmission
17 facilities. However, the following are not energy facilities for the
18 purposes of this chapter:

19 (a) Facilities for the extraction, conversion, transmission, or
20 storage of water, other than water specifically consumed or discharged
21 by thermal energy production or conversion for energy purposes; and

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

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

26 (a) Any stationary thermal power plant with the following
27 generating capacity: (i) Two hundred fifty thousand kilowatts or more,
28 measured using maximum continuous electric generating capacity, less
29 minimum auxiliary load, at average ambient temperature and pressure;
30 (ii) from below two hundred fifty thousand to twenty-five thousand
31 kilowatts when alternative jurisdiction is sought under section 5 of
32 this act; and (iii) equal or greater than two hundred fifty thousand
33 kilowatts when measured as the combined generating capacity of two or
34 more thermal power plants that the council determines have been planned
35 and designed by common owners. However, this subsection (9)(a) does
36 not include on-site electrical generating facilities principally used
37 to generate electricity for the site owner's exclusive use;

38 (b) Floating thermal power plants of fifty thousand kilowatts or
39 more;

1 (c) Facilities which will have the capacity to receive liquified
2 natural gas in the equivalent of more than one hundred million standard
3 cubic feet of natural gas per day, that has been transported over
4 marine waters;

5 (d) Facilities which will have the capacity to receive more than an
6 average of fifty thousand barrels per day of crude or refined petroleum
7 or liquified petroleum gas that has been or will be transported over
8 marine waters. However, this does not include storage facilities
9 unless occasioned by such new facility construction;

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

14 (f) Facilities capable of processing more than twenty-five thousand
15 barrels per day of petroleum into refined products; and

16 (g) Facilities, other than those regulated by federal law, that
17 exclusively use renewable resources with a generating capacity of at
18 least one thousand kilowatts when alternative jurisdiction is sought
19 under section 5 of this act.

20 (10) "Independent consultants" means those persons who have no
21 financial interest in the applicant's proposals and who are retained by
22 the council to evaluate the applicant's proposals, supporting studies,
23 or to conduct additional studies.

24 (11) "Notice of intent" means the notice required under section 6
25 of this act of intent to file an application for site certification.

26 (12) "Person" means an individual, partnership, joint venture,
27 private or public corporation, association, firm, public service
28 company, political subdivision, municipal corporation, government
29 agency, public utility district, or any other entity, public or
30 private, however organized.

31 (13) "Renewable resource" means: (a) Water; (b) wind; (c) solar
32 energy; (d) geothermal energy; (e) landfill gas; or (f) biomass energy
33 based on solid organic fuels from wood, forest, or field residues, or
34 dedicated energy crops that do not include wood pieces that have been
35 treated with chemical preservatives such as creosote,
36 pentachlorophenol, or copper-chrome-arsenic.

37 (14) "Site" means any proposed or approved location of an energy
38 facility.

1 (15) "Thermal power plant" means, for the purpose of certification,
2 any electrical generating facility using any fuel, including nuclear
3 materials, for distribution of electricity by electric utilities.

4 (16) "Transmission facility" means any of the following together
5 with their associated facilities:

6 (a) Crude or refined petroleum or liquid petroleum product
7 transmission pipeline of the following dimensions: A pipeline larger
8 than six inches minimum inside diameter between valves for the
9 transmission of these products with a total length of at least fifteen
10 miles; and

11 (b) Natural gas, synthetic fuel gas, or liquified petroleum gas
12 transmission pipeline of the following dimensions: A pipeline larger
13 than fourteen inches minimum inside diameter between valves, for the
14 transmission of these products, with a total length of at least fifteen
15 miles for the purpose of delivering gas to a distribution facility,
16 except an interstate natural gas pipeline regulated by the United
17 States federal energy regulatory commission.

18 NEW SECTION. **Sec. 3.** (1) There is created and established the
19 energy facility site evaluation council.

20 (2)(a) The chair of the council shall be appointed by the governor
21 with the advice and consent of the senate, shall have a vote on matters
22 before the council, shall serve for a term coextensive with the term of
23 the governor, and is removable for cause. The chair may designate a
24 member of the council to serve as acting chair in the event of the
25 chair's absence. The chair is a "state employee" for the purposes of
26 the ethics laws in chapter 42.52 RCW.

27 (b) The chair or the chair's designee shall execute all official
28 documents, contracts, and other materials on behalf of the council.
29 The department of community, trade, and economic development shall
30 provide all administrative and staff support for the council. The
31 director of the department of community, trade, and economic
32 development shall appoint a staff director who has supervisory
33 authority over the staff of the council and shall employ such personnel
34 as are necessary to implement this chapter. Not more than three such
35 employees may be exempt from chapter 41.06 RCW.

36 (3) The council shall consist of five members, one of whom shall be
37 the chair appointed as provided in subsection (2) of this section. The
38 members shall be appointed by the governor and serve with the advice

1 and consent of the senate. Each member shall have a vote on matters
2 before the council. Members shall serve full or part time as the
3 workload demands, and shall serve staggered terms of four years. The
4 governor shall initially appoint one member for one year, one member
5 for two years, one member for three years, and one member for four
6 years. If a council position becomes vacant, the governor shall
7 appoint a member for the unexpired term. Members are removable for
8 cause by the governor. Members are "state employees" for the purposes
9 of the ethics laws in chapter 42.52 RCW. As applicable, when attending
10 meetings of the council, members may receive reimbursement for travel
11 expenses in accordance with RCW 43.03.050 and 43.03.060, and are
12 eligible for compensation under RCW 43.03.250.

13 (4) The council shall create a state agency advisory work group,
14 working in cooperation with state agencies, including agencies
15 identified in section 7 of this act, and the governor, to be composed
16 of representatives of state agencies that may have expertise relating
17 to a particular application for energy facility site certification.

18 (5) The council shall create a local advisory work group, working
19 in cooperation with local governments, to be composed of nonelected
20 representatives of local governments, and the communities they serve,
21 that may have an interest in a particular application for energy
22 facility site certification or can advise on local or regional impacts
23 of the proposed project.

24 (6) The work groups created in subsections (4) and (5) of this
25 section are not subject to the provisions of chapter 42.30 RCW.

26 NEW SECTION. **Sec. 4.** The council has the following powers:

27 (1) To adopt, amend, or rescind suitable rules pursuant to chapter
28 34.05 RCW, and to carry out this chapter and the policies and practices
29 of the council in connection therewith;

30 (2) To adopt rules concerning time limits for any action required
31 or authorized by this chapter;

32 (3) To develop and apply environmental and ecological guidelines in
33 relation to the type, design, location, construction, and operational
34 conditions of certification of energy facilities subject to this
35 chapter;

36 (4) To commission or require any studies relating to the proposed
37 site or facility;

1 (5) To contract with state and local agencies to provide technical
2 assistance and expertise related to siting decisions;

3 (6) To establish rules of practice for the conduct of public
4 hearings under the administrative procedure act, chapter 34.05 RCW;

5 (7) To prescribe the form, content, and necessary supporting
6 documentation for site certification;

7 (8) To receive applications for energy facility locations and to
8 investigate the sufficiency thereof;

9 (9) To make and contract, when applicable, for independent studies
10 of sites proposed by the applicant;

11 (10) To conduct hearings on the proposed location of the energy
12 facilities;

13 (11) To issue orders relating to the review of applications,
14 including final orders approving or rejecting applications for
15 certification;

16 (12) To present state concerns and interests to other states,
17 regional organizations, and the federal government on the location,
18 construction, and operation of any energy facility which may affect the
19 environment, health, or safety of the citizens of the state of
20 Washington; and

21 (13) To serve as an interagency coordinating body for energy-
22 related issues.

23 NEW SECTION. **Sec. 5.** (1) This chapter applies to the construction
24 of energy facilities, which includes the new construction of energy
25 facilities and the reconstruction or enlargement of existing energy
26 facilities, where the net increase in physical capacity or dimensions
27 resulting from such reconstruction or enlargement meets or exceeds
28 those capacities or dimensions defined in section 2(9) of this act.
29 Except as provided in subsection (4) of this section, no construction
30 of such energy facilities may be undertaken without first obtaining
31 certification in the manner provided in this chapter.

32 (2) This chapter shall not apply to normal maintenance and repairs
33 that do not increase the capacity or dimensions beyond those set in
34 section 2 of this act except as required in a site certification.

35 (3) Notices of intent and applications for certification shall be
36 upon forms prescribed by the council and shall be supported by such
37 information and technical studies as the council may require.

1 (4)(a) As an alternative to any other process required by state or
2 local law, local governments or applicants may elect to transfer the
3 application to the siting process established in this chapter for the
4 siting of the following energy plants: (i) Stationary thermal power
5 plants with generating capacities from less than two hundred fifty
6 thousand to twenty-five thousand kilowatts; and (ii) energy facilities
7 that exclusively use renewable resources with a generating capacity
8 greater than one thousand kilowatts.

9 (b) Any local government with jurisdiction over a proposed energy
10 plant described in (a) of this subsection may require applicants to use
11 the process established in this chapter.

12 NEW SECTION. **Sec. 6.** (1) Each applicant for site certification
13 shall submit to the director a notice of intent to file an application.
14 The notice of intent shall provide information about the proposed site
15 and the proposed facility sufficient for the preparation of the
16 director's project order.

17 (2) The director shall cause public notice to be given upon receipt
18 of a notice of intent. The public notice shall provide a description
19 of the proposed site and facility in sufficient detail to inform the
20 public of the site location and proposed use, describe the
21 characteristics of the energy facility proposed for the site, and
22 solicit public comments on the notice of intent.

23 (3) Following review of the notice of intent and any public
24 comments received in response to the notice of intent, the director may
25 hold a preapplication conference with state agencies and local
26 governments that have regulatory or advisory responsibility with
27 respect to the facility. After the preapplication conference, the
28 director shall issue a project order identifying the statutes,
29 administrative rules and standards, local ordinances, application
30 requirements, and study requirements for the site certificate
31 application. A project order is not a final order and is not subject
32 to judicial review. A project order may be amended at any time by
33 either the director or the council.

34 NEW SECTION. **Sec. 7.** (1) Applications for site certification
35 shall be made to the council in a form prescribed by the council. The
36 application shall include such information as the council may require
37 and that is required by the project order.

1 (2) Copies of the notice of intent and of the application shall be
2 sent by the council for comment, recommendations, and identification of
3 applicable regulatory permits and standards to the following:

4 (a) Department of ecology;

5 (b) Department of fish and wildlife;

6 (c) Department of natural resources;

7 (d) Department of community, trade, and economic development;

8 (e) Utilities and transportation commission;

9 (f) Any other state agency that has regulatory responsibility with
10 respect to the facility proposed in the application;

11 (g) Any city or county within whose jurisdiction the facility is
12 proposed to be located or will be substantially affected by the
13 application; and

14 (h) Any other state agency or unit of general or special purpose
15 local government responsible for managing real property upon or across
16 which the facility is proposed to be located.

17 (3) The director shall consider comments timely received on the
18 notice of intent filing in making a determination of whether the
19 application is complete and in preparing the draft proposed order on
20 the application required in section 10 of this act.

21 (4) The director shall notify the applicant whether the application
22 is complete. When the director determines an application is complete,
23 the director shall notify the applicant and provide notice to the
24 public.

25 NEW SECTION. **Sec. 8.** (1) All expenses of the council, director,
26 and staff to the council and director that are necessarily incurred in
27 processing an application and in monitoring compliance with the site
28 certification shall be paid by the applicant or certificate holder.
29 These expenses may include expenses of consultants preparing studies or
30 analyses, reimbursement of state agency expenses in providing expert
31 consultation, legal expenses, and administrative expenses of the
32 council, director, and staff related to the review and decision of the
33 council.

34 (2) By January 1st of each odd-numbered year, the council by order
35 shall establish a schedule of fees which those persons submitting a
36 notice of intent must submit with the notice to recover the council's
37 actual cost of evaluating the notice of intent and developing a cost
38 reimbursement agreement and application requirements.

1 (3) Before submitting a site certification application, the
2 applicant may request from the director an estimate of the costs
3 expected to be incurred in processing the application. The estimate
4 shall be based upon processing the application in compliance with the
5 time limits provided under section 9 of this act, or such decreased
6 period as the applicant and director agree are appropriate for the
7 application. The director shall inform the applicant of that amount
8 and require the applicant to make periodic payments of such costs
9 pursuant to a cost reimbursement agreement. The cost reimbursement
10 agreement shall provide for payment of twenty-five percent of the
11 estimated costs when the applicant files the application.

12 (4) The cost reimbursement agreement shall include provision for
13 reducing or remitting a portion of the fees when the processing
14 deadlines of section 9 of this act or alternative deadlines provided in
15 the cost reimbursement agreement are exceeded for reasons not
16 attributable to actions or inaction by the applicant.

17 (5) Each holder of a site certificate shall pay an annual fee to
18 each agency, in an amount determined by the agency to cover the
19 reasonable compliance and monitoring responsibilities under the site
20 certification agreement.

21 (6) If an applicant or certificate holder fails to provide the
22 initial payment or subsequently required payments or fees, the council
23 may:

24 (a) In the case of the applicant, suspend processing of the
25 application until payment is received; or

26 (b) In the case of a certificate holder, suspend the certification.

27 (7) The state general fund shall be credited with all receipts paid
28 to the state under this chapter. Such funds shall be used only by the
29 council for the purposes set forth in this chapter. All expenditures
30 shall be authorized by law.

31 NEW SECTION. **Sec. 9.** (1) This section and section 8 of this act
32 govern deadlines for council decisions upon applications for site
33 certificates. The deadlines provided in subsection (2) of this section
34 apply unless a decreased period is provided for through the cost
35 reimbursement agreement between the applicant and the council. In
36 addition, deadlines may be extended upon the request or consent of the
37 applicant.

1 (2) The council shall either approve or reject an application for
2 a site certificate within the following periods dated from the later of
3 the completion of the application, or upon the filing of a substantial
4 revision, for the following types of facilities:

5 (a) For applications receiving expedited processing under section
6 15 of this act, six months;

7 (b) Within nine months for a combustion turbine power plant, except
8 that such period shall be six months when the applicant demonstrates by
9 letter from the governing body of the city or county in which the
10 proposed plant is to be sited that the plant conforms to all local
11 siting standards;

12 (c) Within twenty-four months for any thermal power plant other
13 than that described in (b) of this subsection;

14 (d) Within nine months for any electrical energy generating
15 facility exclusively using renewable resources;

16 (e) Within twelve months for any new electrical transmission line;

17 (f) Within six months for any stationary thermal power plant that
18 commits to meet or exceed a carbon dioxide standard as established by
19 the department of ecology in rule; and

20 (g) Within twenty-four months for any associated facility other
21 than that described in (e) of this subsection, and for any other energy
22 or transmission facility.

23 NEW SECTION. **Sec. 10.** (1) Based upon its review of the
24 application and comments received, the director shall issue a draft
25 proposed order on the application.

26 (2) Following issuance of the draft proposed order, the director
27 shall hold two or more public hearings on the application, at least one
28 of which shall be in the area of the proposed site. The director shall
29 provide notice to the public and state and local agencies at least
30 twenty days before each public hearing. The notice shall be provided
31 in a manner reasonably calculated to inform interested persons about
32 the existence and nature of the application, and shall:

33 (a) Include a description of the facility and the facility's
34 general location;

35 (b) Include the name of an agency representative to contact and the
36 telephone number where additional information may be obtained;

37 (c) Include the draft environmental impact statement if required or
38 available; and

1 (d) Include a prominent notice stating that failure to raise an
2 issue in person or in writing before the close of the record of the
3 public hearing with sufficient specificity to afford the council a
4 sufficient opportunity to address the issue precludes consideration of
5 the issue in the adjudicative proceeding.

6 (3) The applicant and agencies shall confer in a timely manner with
7 the objective of identifying all applicable standards and permits which
8 relate to the siting of the facility. Within sixty days of receipt of
9 the notice under section 7(2) of this act each state and local agency
10 shall identify in writing to the council those standards which the
11 application does not meet or those permits which could not be issued
12 for the facility as proposed. The applicant may elect one of the
13 following options:

14 (a) It may choose to amend its application to meet the standard or
15 permit requirement;

16 (b) It may raise compliance with the standard or permit as an issue
17 in the adjudicative proceeding by requesting a variance by the council
18 in the site certification;

19 (c) It may negotiate with the responsible agency or local
20 government to come to agreement on the disputed standard or permit;

21 (d) It may request that the council provide additional time for the
22 applicant following which the applicant may choose either option (a) or
23 (b) of this subsection.

24 (4) Any issue that may be the basis for an adjudicative proceeding
25 shall be raised by the close of the public record before the issuance
26 of the director's proposed order on the application.

27 (5) The public record shall remain open for twenty days following
28 the last public hearing.

29 (6) After reviewing the application, the information provided in
30 any site study completed under this chapter, the information on
31 environmental impacts provided through compliance with chapter 43.21C
32 RCW, testimony provided at the public hearing and other information
33 provided by the public, and after considering the comments and
34 information provided by state agencies and local governments, the
35 director shall issue a proposed order recommending approval or
36 rejection of the application. A recommendation for approval may
37 include proposed conditions to be binding upon issuance of site
38 certification, and shall identify any proposed variances by the council
39 to state or local standards.

1 NEW SECTION. **Sec. 11.** (1) Following receipt of the proposed order
2 from the director, the council shall conduct an adjudicative
3 proceeding. The provisions governing adjudicative proceedings under
4 chapter 34.05 RCW shall govern the council's conduct of the
5 adjudicative proceeding except as is otherwise provided by this
6 chapter. The ex parte communications provisions of RCW 34.05.455 shall
7 apply to the proceeding, except that members of the council and staff
8 to the council may communicate with staff of state agencies having
9 expertise on technical matters relating to the application. The
10 council and the state agency advisory work group shall develop
11 procedures for noting the substance of such communications in the
12 course of the adjudicative proceeding, and for timely making this
13 record accessible to the parties and the public.

14 (2) The applicant shall be a party to the adjudicative proceeding.
15 A state or local agency responsible for administering a standard for
16 which the applicant seeks a council variance shall also be a party.
17 The council may permit any other person to intervene as a party only if
18 the person, or the person's representative, appeared in person or in
19 writing at a public hearing held by the council on the site
20 certification application, or the person or representative seeks to
21 raise new issues related to material differences between the draft
22 proposed order and the proposed order. The council may impose limits
23 on the intervenor's participation in the proceedings pursuant to RCW
24 34.05.443. Issues that may be the basis for an adjudicative proceeding
25 are limited to those raised on the record of the public hearing, and
26 issues regarding the adequacy of the draft environmental impact
27 statement, unless:

28 (a) The director failed to follow the requirements of section 10 of
29 this act; or

30 (b) The action recommended in the proposed order, including any
31 recommended conditions of the approval, differs materially from that
32 described in the draft proposed order, in which case only new issues
33 related to such differences may be raised.

34 (3) If the applicant requests a material project change or changes,
35 such as significant increases in generating capacity, level of air or
36 water emissions, or other such changes that may have environmental or
37 health and safety impacts, in the application after commencement of the
38 adjudicatory hearing and before the council's final decision, the
39 council may remand the application to the director for modification of

1 the director's proposed order. The director shall hold a further
2 public hearing on the changes to the application under the procedures
3 of section 10 of this act.

4 (4) If no person requests party status to challenge the director's
5 proposed order, the adjudicative proceeding shall be concluded. The
6 director shall forward to the council the complete record of
7 information obtained in the public hearing or hearings, any site
8 studies or analyses prepared under this chapter or chapter 43.21C RCW,
9 and written comments provided by any person concerning the application.

10 NEW SECTION. **Sec. 12.** (1) At the conclusion of the adjudicatory
11 hearing, the council shall issue a proposed final order and provide
12 public notice of the order. When an environmental impact statement
13 under chapter 43.21C RCW is required on the application, the council
14 shall issue a final statement that includes a response to public
15 comments on the draft and any additional environmental impact
16 information provided in the adjudicatory hearing. The council shall
17 accept public comments on the proposed order and final environmental
18 impact statement for a minimum of fourteen days following issuance of
19 the notice, and shall include such comments in the record.

20 (2) The council shall thereafter consider the comments and
21 expeditiously issue a final order, either approving or rejecting the
22 application. The council may approve an application upon determining
23 that:

24 (a) The public interest warrants state certification of the
25 facility siting;

26 (b) All applicable state and local siting standards will be met or
27 that the certification provides for a variance to applicable standards;
28 and

29 (c) The application is consistent with the state energy policy in
30 RCW 43.21F.015, and, if adopted and in effect at the time of the
31 council decision, the revised state energy strategy required by chapter
32 . . . (Senate Bill No. 5167), Laws of 2001.

33 (3) The council may include in the order a standard or requirement
34 that constitutes a variance to an otherwise applicable state or local
35 standard, upon finding that the variance will adequately protect
36 against the harm sought to be prevented by the state or local standard
37 being varied. In adopting such a variance the council shall seek to

1 incorporate the substantive requirements of the state or local standard
2 as nearly as is practicable.

3 (4) If approving the site certification, the final order shall
4 include:

5 (a) Any conditions imposed upon site certification;

6 (b) An identification of all state and local standards applicable
7 to the location of the facility, and the state agencies and local
8 governments responsible for administering and monitoring compliance
9 with the standards; and

10 (c) Those standards made applicable to the facility by the site
11 certification that constitute variances to otherwise applicable state
12 and local standards, and the state agencies or local governments
13 responsible for administering and monitoring compliance with the
14 standards constituting variances.

15 NEW SECTION. **Sec. 13.** (1) At the conclusion of the public hearing
16 on the proposed final order, the council shall issue a final order,
17 either approving or rejecting the application. The council's decision
18 shall be based upon the public record and the final environmental
19 impact statement. The council may include in the order a standard or
20 requirement that constitutes a variance to an otherwise applicable
21 state or local standard, upon finding that the variance will adequately
22 protect against the harm sought to be prevented by the state or local
23 standard being varied. In adopting such a variance the council shall
24 seek to incorporate the substantive requirements of the state or local
25 standard as nearly as is practicable.

26 (2) If approving the site certification, the final order shall
27 include:

28 (a) Any conditions imposed upon site certification;

29 (b) An identification of all state and local standards applicable
30 to the location of the facility, and the state agencies and local
31 governments responsible for administering and monitoring compliance
32 with the standards; and

33 (c) Those standards made applicable to the facility by the site
34 certification that constitute variances to otherwise applicable state
35 and local standards, and the state agencies or local governments
36 responsible for administering and monitoring compliance with the
37 standards constituting variances.

1 (3) The council shall make its decision on the final order by the
2 affirmative vote of at least three members approving or rejecting an
3 application for a site certification.

4 (4) Rejection or approval of an application, including any
5 conditions imposed upon an approval, shall be subject to judicial
6 review as provided by section 14 of this act.

7 NEW SECTION. **Sec. 14.** (1) A final order on an application for
8 certification shall be subject to judicial review under chapter 34.05
9 RCW and this section. Petitions for review of such a decision shall be
10 filed in the Thurston county superior court. All petitions for review
11 of a decision under section 13 of this act shall be consolidated into
12 a single proceeding before the Thurston county superior court. The
13 Thurston county superior court shall certify the petition for review to
14 the supreme court upon the following conditions:

15 (a) Review can be made on the administrative record;

16 (b) Fundamental and urgent interests affecting the public interest
17 and development of energy facilities are involved which require a
18 prompt determination;

19 (c) Review by the supreme court would likely be sought regardless
20 of the determination of the Thurston county superior court; and

21 (d) The record is complete for review.

22 The Thurston county superior court shall assign a petition for
23 review of a final order for hearing at the earliest possible date and
24 shall expedite such petition in every way possible. If the court finds
25 that review cannot be limited to the administrative record as set forth
26 in (a) of this subsection because there are alleged irregularities in
27 the procedure before the council not found in the record, but finds
28 that the standards set forth in (b), (c), and (d) of this subsection
29 are met, the court shall proceed to take testimony and determine such
30 factual issues raised by the alleged irregularities and certify the
31 petition and its determination of such factual issues to the supreme
32 court. Upon certification, the supreme court shall assign the petition
33 for hearing at the earliest possible date, and it shall expedite its
34 review and decision in every way possible.

35 (2) Objections raised by any party in interest concerning
36 procedural error by the council or director shall be filed with the
37 council within sixty days of the commission of such error, or within
38 thirty days of the first public hearing or meeting of the council or

1 director at which the general subject matter to which the error is
2 related is discussed, whichever comes later, or such objection shall be
3 deemed waived for purposes of judicial review as provided in this
4 section.

5 (3) The rules adopted by the council are subject to judicial review
6 under chapter 34.05 RCW.

7 NEW SECTION. **Sec. 15.** (1) Any person required to file an
8 application for certification of an energy facility under this chapter
9 may apply to the council for an expedited processing of such an
10 application. The application for expedited processing shall be
11 submitted to the council in such form and manner and accompanied by
12 such information as may be prescribed by council rule. The council may
13 grant an applicant expedited processing of an application for
14 certification upon finding that:

15 (a) The environmental impact of the proposed energy facility;
16 (b) The area potentially affected;
17 (c) The cost and magnitude of the proposed energy facility; and
18 (d) The degree to which the proposed energy facility represents a
19 change in use of the proposed site,
20 are not significant enough to warrant a full review of the application
21 for certification under this chapter.

22 (2) Upon granting an applicant expedited processing of an
23 application for certification, a notice of intent is not required and
24 the council is not required to:

25 (a) Commission an independent study;
26 (b) Hold an adjudicative proceeding under chapter 34.05 RCW, on the
27 application; nor
28 (c) Hold more than one public hearing under section 10 of this act.

29 (3) The council shall adopt rules governing the expedited
30 processing of an application for certification under this section.

31 NEW SECTION. **Sec. 16.** (1) Subject to the conditions set forth
32 therein, any certification shall bind the state and each of its
33 departments, agencies, divisions, bureaus, commissions, boards, and
34 political subdivisions, as to the approval of the site and the
35 construction and operation of the proposed energy facility.

36 (2) The certification shall authorize the person named therein to
37 construct and operate the proposed energy facility subject only to the

1 conditions set forth in such certification. The duration of the
2 certification shall be the life of the facility.

3 (3) The certification shall contain conditions for the protection
4 of the public health, safety, and environmental quality, and to ensure
5 compliance with the standards identified in the final order. The
6 certification shall also set a limit on the time for completion of
7 construction, which shall be no greater than six years from the date of
8 entry of the council final order or the final disposition of judicial
9 review of the council decision, whichever occurs later. The time limit
10 for completing construction may be extended by the council and director
11 for good cause.

12 (4) The site certification shall require the applicant and
13 administering agencies and local governments to abide by local
14 ordinances, state laws, and rules of the council in effect on the date
15 the site certification is executed, except that upon a clear showing of
16 a significant threat to the public health, safety, or environmental
17 quality that requires application of later-adopted laws or rules, the
18 council may require compliance with such later-adopted laws or rules.
19 The site certification shall also provide that, as for permits
20 addressed in the site certification, the facility shall comply with
21 applicable state and federal laws adopted in the future to the extent
22 required by such laws.

23 (5) After issuance of the site certification and upon submission by
24 the applicant of the proper applications and payment of the proper
25 fees, each state agency, county, city, and political subdivision shall
26 promptly issue the permits, licenses, or other approvals identified in
27 the site certification, subject only to the conditions set forth in the
28 site certification. After the site certification is issued, the only
29 issue to be decided in an administrative or judicial review of a state
30 agency or local government permit for which compliance with governing
31 law was considered and determined in the site certification proceeding
32 shall be whether the permit is consistent with the terms of the site
33 certification.

34 (6) Each state agency or local government that issues a permit,
35 license, or other approval shall continue to exercise enforcement
36 authority over the permit, license, or other approval.

37 (7) Nothing in this chapter shall be construed to preempt the
38 jurisdiction of any state agency or local government over matters that
39 are not included in and governed by the site certification. Such

1 matters which are not subject to preemption under this chapter include
2 land management responsibilities of state agencies and local
3 governments for publicly owned lands, employee health and safety,
4 building and fire code compliance, road construction standards, wage
5 and hour or other labor regulations, water rights permits or changes,
6 local government fees and charges, or other design or operational
7 issues that do not relate to siting the facility.

8 NEW SECTION. **Sec. 17.** (1) No city or county comprehensive plan or
9 zoning ordinance may preclude the siting of energy facilities.

10 (2) The council may adopt standards by rule to guide cities and
11 counties in determining whether a particular comprehensive plan or
12 zoning ordinance provision may have a preclusionary effect on the
13 siting of one or more types of energy facilities. In adopting the
14 rules the council should be guided by the administrative and judicial
15 standards developed regarding the siting of essential public facilities
16 under RCW 36.70A.200.

17 NEW SECTION. **Sec. 18.** In reviewing and making decisions under
18 this chapter regarding an application that includes transmission
19 facilities for petroleum products, the council shall give appropriate
20 weight to city or county facility siting standards adopted for the
21 protection of sole source aquifers.

22 **Sec. 19.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to
23 read as follows:

24 (1) The council shall report to the governor its recommendations as
25 to the approval or rejection of an application for certification within
26 twelve months of receipt by the council of such an application, or such
27 later time as is mutually agreed by the council and the applicant. If
28 the council recommends approval of an application for certification, it
29 shall also submit a draft certification agreement with the report. The
30 council shall include conditions in the draft certification agreement
31 to implement the provisions of this chapter, including, but not limited
32 to, conditions to protect state or local governmental or community
33 interests affected by the construction or operation of the energy
34 facility, and conditions designed to recognize the purpose of laws or
35 ordinances, or rules or regulations promulgated thereunder, that are

1 preempted or superseded pursuant to RCW 80.50.110 as now or hereafter
2 amended.

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

5 (a) Approve the application and execute the draft certification
6 agreement; or

7 (b) Reject the application; or

8 (c) Direct the council to reconsider certain aspects of the draft
9 certification agreement.

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

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

25 (4) This section applies only to council recommendations first
26 reported to the governor on or before May 1, 2001. The council created
27 by section 3 of this act shall conduct any reconsideration and further
28 proceedings under subsection (2) of this section when the governor on
29 or after October 1, 2001, directs such reconsideration.

30 NEW SECTION. Sec. 20. (1) An application filed with the energy
31 facility site evaluation council before January 1, 2001, may elect to
32 have the application processed and a decision made based upon the laws
33 in effect after October 1, 2001. However, the applicant shall make the
34 election in writing before July 1, 2001.

35 (2) For applications filed with the energy facility site evaluation
36 council before October 1, 2001, other than those described under
37 subsection (1) of this section and those provided expedited processing
38 under section 32 of this act, the council and council staff may

1 initiate any preliminary site studies, environmental studies, and
2 public information meetings, but shall not commence an adjudicatory
3 hearing. The hearing and determination under RCW 80.50.090 is not
4 applicable to such applications.

5 NEW SECTION. **Sec. 21.** All rules of the energy facility site
6 evaluation council as it exists before October 1, 2001, remain in full
7 force and effect for applications filed with the council before October
8 1, 2001, and may be adopted, modified, or rescinded by the council as
9 it exists after October 1, 2001, in implementing the provisions of
10 sections 1 through 18 of this act.

11 NEW SECTION. **Sec. 22.** Monitoring responsibilities concerning site
12 certifications entered before October 1, 2001, shall be transferred to
13 those agencies responsible for the applicable standards and permits.
14 Certificate holders shall reimburse such agencies for the performance
15 of their monitoring and enforcement duties.

16 NEW SECTION. **Sec. 23.** The legislature intends that section 22 of
17 this act be used to facilitate the continued monitoring and enforcement
18 of site certificates created under chapter 80.50 RCW and the
19 certificates issued during the transition from chapter 80.50 RCW to the
20 new process created in this act.

21 NEW SECTION. **Sec. 24.** (1) The courts are authorized to grant such
22 restraining orders, and such temporary and permanent injunctive relief
23 as is necessary to secure compliance with this chapter and/or with a
24 site certification agreement issued under this chapter. The court may
25 assess civil penalties in an amount not less than one thousand dollars
26 per day nor more than twenty-five thousand dollars per day for each day
27 of construction or operation in material violation of this chapter, or
28 in material violation of any site certification agreement issued under
29 this chapter. The court may charge the expenses of an enforcement
30 action relating to a site certification agreement under this section,
31 including, but not limited to, expenses incurred for legal services and
32 expert testimony, against any person found to be in material violation
33 of the provisions of such certification. However, the expenses of a
34 person found not to be in material violation of the provisions of such
35 certification, including, but not limited to, expenses incurred for

1 legal services and expert testimony, may be charged against the person
2 or persons bringing an enforcement action or other action under this
3 section.

4 (2) Willful violation of any provision of this chapter is a gross
5 misdemeanor.

6 (3) Any person knowingly making any false statement,
7 representation, or certification in any document submitted to the
8 council or director for a purpose described in this chapter is guilty
9 of a crime, and upon conviction thereof shall be punished by a fine of
10 up to ten thousand dollars and costs of prosecution.

11 (4) Every person who violates the provisions of certificates and
12 permits issued or administered by the council shall incur, in addition
13 to any other penalty as provided by law, a penalty in an amount of up
14 to five thousand dollars a day for every such violation. Each and
15 every such violation shall be a separate and distinct offense, and in
16 case of a continuing violation, every day's continuance is a separate
17 and distinct violation. Every act of commission or omission which
18 procures, aids, or abets in the violation is considered a violation
19 under this section and subject to the penalty provided in this section.
20 The penalty provided in this section shall be imposed by a notice in
21 writing, either by certified mail with return receipt requested or by
22 personal service, to the person incurring the same from the council
23 describing such violation with reasonable particularity. The council
24 may, upon written application therefor received within fifteen days
25 after notice imposing any penalty is received by the person incurring
26 the penalty, and when deemed in the best interest to carry out the
27 purposes of this chapter, remit or mitigate any penalty provided in
28 this section upon such terms as the council deems proper, and has
29 authority to ascertain the facts upon all such applications in such
30 manner and under such regulations as it may deem proper. Any person
31 incurring any penalty under this section may appeal the penalty to the
32 council. Appeals shall be filed within thirty days of receipt of
33 notice imposing any penalty unless an application for remission or
34 mitigation is made to the council. When an application for remission
35 or mitigation is made, such appeals shall be filed within thirty days
36 of receipt of notice from the council setting forth the disposition of
37 the application. Any penalty imposed under this section becomes due
38 and payable thirty days after receipt of a notice imposing the same
39 unless application for remission or mitigation is made or an appeal is

1 filed. When an application for remission or mitigation is made, any
2 penalty incurred under this section becomes due and payable thirty days
3 after receipt of notice setting forth the disposition of the
4 application unless an appeal is filed from such disposition. Whenever
5 an appeal of any penalty incurred under this section is filed, the
6 penalty becomes due and payable only upon completion of all review
7 proceedings and the issuance of a final order confirming the penalty in
8 whole or in part. If the amount of any penalty is not paid to the
9 council within thirty days after it becomes due and payable, the
10 attorney general, upon the request of the council, shall bring an
11 action in the name of the state of Washington in the superior court of
12 Thurston county or of any county in which such violator may do
13 business, to recover such penalty. In all such actions the procedure
14 and rules of evidence are the same as an ordinary civil action except
15 as otherwise provided in this chapter. All penalties recovered under
16 this section shall be paid into the state treasury and credited to the
17 general fund.

18 (5) Civil proceedings to enforce this chapter may be brought by the
19 attorney general or the prosecuting attorney of any county affected by
20 the violation on his or her own motion or at the request of the
21 council. Criminal proceedings to enforce this chapter may be brought
22 by the prosecuting attorney of any county affected by the violation on
23 his or her own motion or at the request of the council.

24 (6) The remedies and penalties in this section, both civil and
25 criminal, shall be cumulative and shall be in addition to any other
26 penalties and remedies available at law, or in equity, to any person.

27 **Sec. 25.** RCW 80.50.030 and 1996 c 186 s 108 are each amended to
28 read as follows:

29 (1) There is created and established the energy facility site
30 evaluation council.

31 (2)(a) The chairman of the council shall be appointed by the
32 governor with the advice and consent of the senate, shall have a vote
33 on matters before the council, shall serve for a term coextensive with
34 the term of the governor, and is removable for cause. The chairman may
35 designate a member of the council to serve as acting chairman in the
36 event of the chairman's absence. The chairman is a "state employee"
37 for the purposes of chapter 42.52 RCW. As applicable, when attending
38 meetings of the council, members may receive reimbursement for travel

1 expenses in accordance with RCW 43.03.050 and 43.03.060, and are
2 eligible for compensation under RCW 43.03.250.

3 (b) The chairman or a designee shall execute all official
4 documents, contracts, and other materials on behalf of the council.
5 The Washington state department of community, trade, and economic
6 development shall provide all administrative and staff support for the
7 council. The director of the department of community, trade, and
8 economic development has supervisory authority over the staff of the
9 council and shall employ such personnel as are necessary to implement
10 this chapter. Not more than three such employees may be exempt from
11 chapter 41.06 RCW.

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

15 ~~((a))~~ (i) Department of ecology;

16 ~~((b))~~ (ii) Department of fish and wildlife;

17 ~~((c) Department of health;~~

18 ~~(d) Military department;~~

19 ~~(e))~~ (iii) Department of community, trade, and economic
20 development;

21 ~~((f))~~ (iv) Utilities and transportation commission;

22 ~~((g))~~ (v) Department of natural resources(~~(~~

23 ~~(h) Department of agriculture;~~

24 ~~(i) Department of transportation)).~~

25 (b) The following departments, agencies, commissions, and
26 committees or their statutory successors may, at their own discretion,
27 participate as full members of the council:

28 (i) Department of health;

29 (ii) Military department;

30 (iii) Department of agriculture; and

31 (iv) Department of transportation.

32 (4) The appropriate county legislative authority of every county
33 wherein an application for a proposed site is filed shall appoint a
34 member or designee as a voting member to the council. The member or
35 designee so appointed shall sit with the council only at such times as
36 the council considers the proposed site for the county which he or she
37 represents, and such member or designee shall serve until there has
38 been a final acceptance or rejection of the proposed site.

1 (5) The city legislative authority of every city within whose
2 corporate limits an energy plant is proposed to be located shall
3 appoint a member or designee as a voting member to the council. The
4 member or designee so appointed shall sit with the council only at such
5 times as the council considers the proposed site for the city which he
6 or she represents, and such member or designee shall serve until there
7 has been a final acceptance or rejection of the proposed site.

8 (6) For any port district wherein an application for a proposed
9 port facility is filed subject to this chapter, the port district shall
10 appoint a member or designee as a nonvoting member to the council. The
11 member or designee so appointed shall sit with the council only at such
12 times as the council considers the proposed site for the port district
13 which he or she represents, and such member or designee shall serve
14 until there has been a final acceptance or rejection of the proposed
15 site. The provisions of this subsection shall not apply if the port
16 district is the applicant, either singly or in partnership or
17 association with any other person.

18 **Sec. 26.** RCW 90.48.262 and 1975-'76 2nd ex.s. c 108 s 41 are each
19 amended to read as follows:

20 (~~(1)~~) The powers established under RCW 90.48.260 shall be
21 implemented by the department through the adoption of rules in every
22 appropriate situation. The permit program authorized under RCW
23 90.48.260(1) shall constitute a continuation of the established permit
24 program of RCW 90.48.160 and other applicable sections within chapter
25 90.48 RCW. The appropriate modifications as authorized in (~~this 1973~~
26 ~~amendatory act~~) RCW 90.48.010, 90.48.120, 90.48.140, 90.48.144,
27 90.48.160, and 90.48.260 are designed to avoid duplication and other
28 wasteful practices and to insure that the state permit program contains
29 all required elements of and is compatible with the requirements of any
30 national permit system.

31 (~~(2)~~) ~~Permits for energy facilities subject to chapter 80.50 RCW~~
32 ~~shall be issued by the energy facility site evaluation council:~~
33 ~~PROVIDED, That such permits shall become effective only if the governor~~
34 ~~approves an application for certification and executes a certification~~
35 ~~agreement pursuant to said chapter. The council shall have all powers~~
36 ~~necessary to establish and administer a point source discharge permit~~
37 ~~program pertaining to such plants, consistent with applicable receiving~~
38 ~~water quality standards established by the department, and to qualify~~

1 for full participation in any national waste discharge or pollution
2 discharge elimination permit system. The council and the department
3 shall each adopt, by rules, procedures which will provide maximum
4 coordination and avoid duplication between the two agencies with
5 respect to permits in carrying out the requirements of this act
6 including, but not limited to, monitoring and enforcement of
7 certification agreements, and in qualifying for full participation in
8 any such national system.))

9 **Sec. 27.** RCW 90.48.160 and 1989 c 293 s 2 are each amended to read
10 as follows:

11 Any person who conducts a commercial or industrial operation of any
12 type which results in the disposal of solid or liquid waste material
13 into the waters of the state, including commercial or industrial
14 operators discharging solid or liquid waste material into sewerage
15 systems operated by municipalities or public entities which discharge
16 into public waters of the state, shall procure a permit from ((either))
17 the department ((or the thermal power plant site evaluation council as
18 provided in RCW 90.48.262(2))) before disposing of such waste material:
19 PROVIDED, That this section shall not apply to any person discharging
20 domestic sewage only into a sewerage system.

21 The department may, through the adoption of rules, eliminate the
22 permit requirements for disposing of wastes into publicly operated
23 sewerage systems for:

24 (1) Categories of or individual municipalities or public
25 corporations operating sewerage systems; or

26 (2) Any category of waste disposer;
27 if the department determines such permit requirements are no longer
28 necessary for the effective implementation of this chapter. The
29 department may by rule eliminate the permit requirements for disposing
30 of wastes by upland finfish rearing facilities unless a permit is
31 required under the federal clean water act's national pollutant
32 discharge elimination system.

33 **Sec. 28.** RCW 90.48.260 and 1988 c 220 s 1 are each amended to read
34 as follows:

35 The department of ecology is hereby designated as the State Water
36 Pollution Control Agency for all purposes of the federal clean water
37 act as it exists on February 4, 1987, and is hereby authorized to

1 participate fully in the programs of the act as well as to take all
2 action necessary to secure to the state the benefits and to meet the
3 requirements of that act. With regard to the national estuary program
4 established by section 320 of that act, the department shall exercise
5 its responsibility jointly with the Puget Sound (~~water quality~~
6 ~~authority~~) action team. The powers granted herein include, among
7 others, and notwithstanding any other provisions of chapter 90.48 RCW
8 or otherwise, the following:

9 (1) Complete authority to establish and administer a comprehensive
10 state point source waste discharge or pollution discharge elimination
11 permit program which will enable the department to qualify for full
12 participation in any national waste discharge or pollution discharge
13 elimination permit system and will allow the department to be the sole
14 agency issuing permits required by such national system operating in
15 the state of Washington (~~subject to the provisions of RCW~~
16 ~~90.48.262(2)~~). Program elements authorized herein may include, but
17 are not limited to: (a) Effluent treatment and limitation requirements
18 together with timing requirements related thereto; (b) applicable
19 receiving water quality standards requirements; (c) requirements of
20 standards of performance for new sources; (d) pretreatment
21 requirements; (e) termination and modification of permits for cause;
22 (f) requirements for public notices and opportunities for public
23 hearings; (g) appropriate relationships with the secretary of the army
24 in the administration of his responsibilities which relate to anchorage
25 and navigation, with the administrator of the environmental protection
26 agency in the performance of his duties, and with other governmental
27 officials under the federal clean water act; (h) requirements for
28 inspection, monitoring, entry, and reporting; (i) enforcement of the
29 program through penalties, emergency powers, and criminal sanctions;
30 (j) a continuing planning process; and (k) user charges.

31 (2) The power to establish and administer state programs in a
32 manner which will insure the procurement of moneys, whether in the form
33 of grants, loans, or otherwise; to assist in the construction,
34 operation, and maintenance of various water pollution control
35 facilities and works; and the administering of various state water
36 pollution control management, regulatory, and enforcement programs.

37 (3) The power to develop and implement appropriate programs
38 pertaining to continuing planning processes, areawide waste treatment
39 management plans, and basin planning.

1 The governor shall have authority to perform those actions required
2 of him or her by the federal clean water act.

3 NEW SECTION. **Sec. 29.** A new section is added to chapter 82.16 RCW
4 to read as follows:

5 (1) The department will determine the amount of revenue collected
6 under RCW 82.16.020(1) (b) and (c) every year beginning July 1, 2001.

7 (2) Every year beginning July 1, 2002, ten percent of the moneys
8 collected under RCW 82.16.020(1) (b) and (c), that exceed one hundred
9 five percent of the prior calendar year's collections, will be
10 deposited on or before October 1st of that year into the energy permit
11 assistance account created under section 31 of this act.

12 **Sec. 30.** RCW 82.12.022 and 1994 c 124 s 9 are each amended to read
13 as follows:

14 (1) There is hereby levied and there shall be collected from every
15 person in this state a use tax for the privilege of using natural gas
16 or manufactured gas within this state as a consumer.

17 (2) The tax shall be levied and collected in an amount equal to the
18 value of the article used by the taxpayer multiplied by the rate in
19 effect for the public utility tax on gas distribution businesses under
20 RCW 82.16.020. The "value of the article used" does not include any
21 amounts that are paid for the hire or use of a gas distribution
22 business as defined in RCW 82.16.010(7) in transporting the gas subject
23 to tax under this subsection if those amounts are subject to tax under
24 that chapter.

25 (3) The tax levied in this section shall not apply to the use of
26 natural or manufactured gas delivered to the consumer by other means
27 than through a pipeline.

28 (4) The tax levied in this section shall not apply to the use of
29 natural or manufactured gas if the person who sold the gas to the
30 consumer has paid a tax under RCW 82.16.020 with respect to the gas for
31 which exemption is sought under this subsection.

32 (5) There shall be a credit against the tax levied under this
33 section in an amount equal to any tax paid by:

34 (a) The person who sold the gas to the consumer when that tax is a
35 gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by
36 another state with respect to the gas for which a credit is sought
37 under this subsection; or

1 (b) The person consuming the gas upon which a use tax similar to
2 the tax imposed by this section was paid to another state with respect
3 to the gas for which a credit is sought under this subsection.

4 (6) The use tax hereby imposed shall be paid by the consumer to the
5 department.

6 (7) There is imposed a reporting requirement on the person who
7 delivered the gas to the consumer to make a quarterly report to the
8 department. Such report shall contain the volume of gas delivered,
9 name of the consumer to whom delivered, and such other information as
10 the department shall require by rule.

11 (8)(a) The department will determine the amount of revenue
12 collected under this section every year beginning July 1, 2001.

13 (b) Every year beginning July 1, 2002, ten percent of the moneys
14 collected under this section, that exceed one hundred five percent of
15 the prior calendar year's collections, will be deposited on or before
16 October 1st of that year into the energy permit assistance account
17 created under section 31 of this act.

18 (9) The department may adopt rules under chapter 34.05 RCW for the
19 administration and enforcement of sections 1 through 6, chapter 384,
20 Laws of 1989.

21 NEW SECTION. Sec. 31. (1) The energy permit assistance account is
22 created in the custody of the state treasurer. The moneys calculated
23 under section 29(2) of this act and RCW 82.12.022(8)(b) must be
24 deposited into the account. Only the director may authorize
25 expenditures from the account. The account is subject to allotment
26 procedures under chapter 43.88 RCW, but an appropriation is not
27 required for expenditures.

28 (2)(a) The director will allocate the money to cover up to fifty
29 percent of the permit cost for a qualified applicant.

30 (b) For the purposes of this section, a "qualified applicant" means
31 a person who files an application for site certification, under this
32 chapter, who seeks to site an energy generation facility that: (i)
33 Exclusively uses a renewable resource; (ii) utilizes a combustion
34 turbine power plant or a cogeneration facility that meets or exceeds a
35 carbon dioxide standard as established by the department of ecology.

36 (c) The council and the department of ecology may adopt rules
37 necessary to administer this section, including reasonable guidelines
38 for determining which applicants qualify for assistance.

1 NEW SECTION. **Sec. 32.** A new section is added to chapter 80.50 RCW
2 to read as follows:

3 (1) Before August 1, 2001, the council may accept applications for
4 filing other than those described under section 20 of this act, where
5 the council determines that:

6 (a) The application is for the construction of a stationary thermal
7 power plant, or a generating facility described under subsection (2) of
8 this section;

9 (b) The application is likely to qualify for expedited processing
10 under RCW 80.50.075;

11 (c) That the city or county in which the facility is proposed for
12 construction has informed the council that the facility is likely to be
13 determined to be consistent with all applicable local land use zoning
14 and siting standards; and

15 (d) The application may be processed and a recommendation made to
16 the governor on or before September 1, 2001.

17 (2) A person proposing to construct any of the following facilities
18 may request the council to accept an application under subsection (1)
19 of this section:

20 (a) Stationary thermal power plants with a generating capacity from
21 twenty-five thousand to two hundred forty-nine thousand kilowatts; and

22 (b) Energy facilities that exclusively use renewable resources with
23 a generating capacity greater than one thousand kilowatts. Renewable
24 resources include water, wind, solar energy, geothermal energy,
25 landfill gas, or biomass energy from forest, field residue, or
26 dedicated crops. When accepted for filing under subsection (1) of this
27 section, the application shall be processed as applications for other
28 energy facilities under this chapter, and shall be in lieu of any other
29 siting procedures or requirements under state or local law.

30 (3) The council shall place a priority upon accepting applications
31 under this section for facilities that, if approved for certification,
32 are likely to be constructed and placed into operation by December 1,
33 2002.

34 (4) When an application is accepted for filing by the council under
35 this section, the council shall have thirty days to determine whether
36 the application qualifies for expedited processing under the provisions
37 of RCW 80.50.075. If determined to so qualify, the council shall
38 process the application and make its recommendations to the governor on
39 or before September 1, 2001. If determined not to qualify for

1 expedited processing, the council shall process the application under
2 section 20(2) of this act.

3 (5) An application filed under this section may be withdrawn by the
4 applicant at any time.

5 (6) From funds appropriated to the council for this purpose, the
6 council may make grants to local governments and state agencies.

7 (7) This section expires October 1, 2003.

8 NEW SECTION. **Sec. 33.** (1) The sum of dollars, or as
9 much thereof as may be necessary, is appropriated for the fiscal year
10 ending June 30, 2001, from the general fund to the department of
11 community, trade, and economic development for the purposes of
12 implementing section 32 of this act.

13 (2) The sum of dollars, or as much thereof as may be
14 necessary, is appropriated for the fiscal year ending June 30, 2002,
15 from the general fund to the department of community, trade, and
16 economic development for the purposes of implementing section 32 of
17 this act.

18 NEW SECTION. **Sec. 34.** RCW 80.50.160, 80.50.300, and 80.50.310 are
19 each recodified as sections in chapter 80.52 RCW.

20 NEW SECTION. **Sec. 35.** The following acts or parts of acts are
21 each repealed:

22 (1) RCW 80.50.010 (Legislative finding--Policy--Intent) and 1996 c
23 4 s 1, 1975-'76 2nd ex.s. c 108 s 29, & 1970 ex.s. c 45 s 1;

24 (2) RCW 80.50.020 (Definitions) and 1995 c 69 s 1, 1977 ex.s. c 371
25 s 2, 1975-'76 2nd ex.s. c 108 s 30, & 1970 ex.s. c 45 s 2;

26 (3) RCW 80.50.030 (Energy facility site evaluation council--
27 Created--Membership--Support) and 1996 c 186 s 108;

28 (4) RCW 80.50.040 (Energy facility site evaluation council--Powers
29 enumerated) and 1990 c 12 s 4, 1985 c 67 s 2, 1979 ex.s. c 254 s 1,
30 1977 ex.s. c 371 s 4, 1975-'76 2nd ex.s. c 108 s 32, & 1970 ex.s. c 45
31 s 4;

32 (5) RCW 80.50.060 (Energy facilities to which chapter applies--
33 Applications for certification--Forms--Information) and 1977 ex.s. c
34 371 s 5, 1975-'76 2nd ex.s. c 108 s 34, & 1970 ex.s. c 45 s 6;

1 (6) RCW 80.50.071 (Council to receive applications--Fees or charges
2 for application processing or certification monitoring) and 1977 ex.s.
3 c 371 s 16;

4 (7) RCW 80.50.075 (Expedited processing of applications) and 1989
5 c 175 s 172 & 1977 ex.s. c 371 s 17;

6 (8) RCW 80.50.080 (Counsel for the environment) and 1977 ex.s. c
7 371 s 6 & 1970 ex.s. c 45 s 8;

8 (9) RCW 80.50.090 (Public hearings) and 1989 c 175 s 173 & 1970
9 ex.s. c 45 s 9;

10 (10) RCW 80.50.100 (Recommendations to governor--Approval or
11 rejection of certification--Reconsideration) and 1989 c 175 s 174, 1977
12 ex.s. c 371 s 8, 1975-'76 2nd ex.s. c 108 s 36, & 1970 ex.s. c 45 s 10;

13 (11) RCW 80.50.105 (Transmission facilities for petroleum
14 products--Recommendations to governor) and 1991 c 200 s 1112;

15 (12) RCW 80.50.110 (Chapter governs and supersedes other law or
16 regulations--Preemption of regulation and certification by state) and
17 1975-'76 2nd ex.s. c 108 s 37 & 1970 ex.s. c 45 s 11;

18 (13) RCW 80.50.120 (Effect of certification) and 1977 ex.s. c 371
19 s 10, 1975-'76 2nd ex.s. c 108 s 38, & 1970 ex.s. c 45 s 12;

20 (14) RCW 80.50.130 (Revocation or suspension of certification--
21 Grounds) and 1970 ex.s. c 45 s 13;

22 (15) RCW 80.50.140 (Review) and 1988 c 202 s 62, 1981 c 64 s 3,
23 1977 ex.s. c 371 s 11, & 1970 ex.s. c 45 s 14;

24 (16) RCW 80.50.150 (Enforcement of compliance--Penalties) and 1979
25 ex.s. c 254 s 2, 1979 c 41 s 1, 1977 ex.s. c 371 s 12, & 1970 ex.s. c
26 45 s 15;

27 (17) RCW 80.50.175 (Study of potential sites--Fee--Disposition of
28 payments) and 1983 c 3 s 205, 1977 ex.s. c 371 s 13, 1975-'76 2nd ex.s.
29 c 108 s 40, & 1974 ex.s. c 110 s 2;

30 (18) RCW 80.50.180 (Proposals and actions by other state agencies
31 and local political subdivisions pertaining to energy facilities exempt
32 from "detailed statement" required by RCW 43.21C.030) and 1977 ex.s. c
33 371 s 14;

34 (19) RCW 80.50.190 (Disposition of receipts from applicants) and
35 1977 ex.s. c 371 s 15;

36 (20) RCW 80.50.900 (Severability--1970 ex.s. c 45) and 1970 ex.s.
37 c 45 s 17;

38 (21) RCW 80.50.901 (Severability--1974 ex.s. c 110) and 1974 ex.s.
39 c 110 s 3;

1 (22) RCW 80.50.902 (Severability--1977 ex.s. c 371) and 1977 ex.s.
2 c 371 s 20;

3 (23) RCW 80.50.903 (Severability--1996 c 4) and 1996 c 4 s 5; and

4 (24) RCW 80.50.904 (Effective date--1996 c 4) and 1996 c 4 s 6.

5 NEW SECTION. **Sec. 36.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 37.** Sections 1 through 18, 20 through 22, 24,
10 and 31 of this act constitute a new chapter in Title 80 RCW.

11 NEW SECTION. **Sec. 38.** Sections 1 through 18, 20 through 24, and
12 26 through 28 of this act take effect October 1, 2001.

13 NEW SECTION. **Sec. 39.** Sections 19, 25, 32, and 33 of this act are
14 necessary for the immediate preservation of the public peace, health,
15 or safety, or support of the state government and its existing public
16 institutions, and take effect immediately.

17 NEW SECTION. **Sec. 40.** Sections 29 through 31 of this act are
18 necessary for the immediate preservation of the public peace, health,
19 or safety, or support of the state government and its existing public
20 institutions, and take effect July 1, 2001.

21 NEW SECTION. **Sec. 41.** Section 35 of this act takes effect October
22 1, 2003.

23 NEW SECTION. **Sec. 42.** Sections 29 through 31 of this act expire
24 June 30, 2005.

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