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SENATE BILL 6744

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State of Washington 57th Legislature

2002 Regular Session

By Senators Poulsen, Fairley, Brown, Regala, Fraser, Kohl-Welles and Kline

Read first time 01/31/2002. Referred to Committee on Environment, Energy & Water.

1 AN ACT Relating to greenhouse gas mitigation; amending RCW  
2 80.50.010, 80.50.020, and 80.50.040; adding a new section to chapter  
3 80.50 RCW; and declaring an emergency.

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

5 **Sec. 1.** RCW 80.50.010 and 2001 c 214 s 1 are each amended to read  
6 as follows:

7 The legislature finds that the present and predicted growth in  
8 energy demands in the state of Washington requires the development of  
9 a procedure for the selection and utilization of sites for energy  
10 facilities and the identification of a state position with respect to  
11 each proposed site. The legislature recognizes that the selection of  
12 sites will have a significant impact upon the welfare of the  
13 population, the location and growth of industry and the use of the  
14 natural resources of the state.

15 It is the policy of the state of Washington to recognize the  
16 pressing need for increased energy facilities, and to ensure through  
17 available and reasonable methods, that the location and operation of  
18 such facilities will produce minimal adverse effects on the

1 environment, ecology of the land and its wildlife, and the ecology of  
2 state waters and their aquatic life.

3 It is the intent to seek courses of action that will balance the  
4 increasing demands for energy facility location and operation in  
5 conjunction with the broad interests of the public. Such action will  
6 be based on these premises:

7 (1) To assure Washington state citizens that, where applicable,  
8 operational safeguards are at least as stringent as the criteria  
9 established by the federal government and are technically sufficient  
10 for their welfare and protection.

11 (2) To preserve and protect the quality of the environment both  
12 today and into the near and distant future; to enhance the public's  
13 opportunity to enjoy the esthetic and recreational benefits of the air,  
14 water and land resources; to promote air cleanliness; and to pursue  
15 beneficial changes in the environment.

16 (3) To provide abundant energy at reasonable cost.

17 (4) To avoid costs of complete site restoration and demolition of  
18 improvements and infrastructure at unfinished nuclear energy sites, and  
19 to use unfinished nuclear energy facilities for public uses, including  
20 economic development, under the regulatory and management control of  
21 local governments and port districts.

22 (5) To avoid costly duplication in the siting process and ensure  
23 that decisions are made timely and without unnecessary delay.

24 **Sec. 2.** RCW 80.50.020 and 2001 c 214 s 3 are each amended to read  
25 as follows:

26 The definitions in this section apply throughout this chapter  
27 unless the context clearly requires otherwise.

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

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

33 (3) "Person" means an individual, partnership, joint venture,  
34 private or public corporation, association, firm, public service  
35 company, political subdivision, municipal corporation, government  
36 agency, public utility district, or any other entity, public or  
37 private, however organized.

1 (4) "Site" means any proposed or approved location of an energy  
2 facility.

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

9 (6) "Associated facilities" means storage, transmission, handling,  
10 or other related and supporting facilities connecting an energy plant  
11 with the existing energy supply, processing, or distribution system,  
12 including, but not limited to, communications, controls, mobilizing or  
13 maintenance equipment, instrumentation, and other types of ancillary  
14 transmission equipment, off-line storage or venting required for  
15 efficient operation or safety of the transmission system and overhead,  
16 and surface or subsurface lines of physical access for the inspection,  
17 maintenance, and safe operations of the transmission facility and new  
18 transmission lines constructed to operate at nominal voltages in excess  
19 of 200,000 volts to connect a thermal power plant to the northwest  
20 power grid(~~(:—PROVIDED, That)~~). However, common carrier railroads or  
21 motor vehicles shall not be included.

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

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

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

36 (8) "Independent consultants" means those persons who have no  
37 financial interest in the applicant's proposals and who are retained by  
38 the council to evaluate the applicant's proposals, supporting studies,  
39 or to conduct additional studies.

1 (9) "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 (10) "Energy facility" means an energy plant or transmission  
5 facilities(~~(:—PROVIDED, That)~~). However, the following are excluded  
6 from the provisions of this chapter:

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

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

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

14 (12) "Counsel for the environment" means an assistant attorney  
15 general or a special assistant attorney general who shall represent the  
16 public in accordance with RCW 80.50.080.

17 (13) "Construction" means on-site improvements, excluding  
18 exploratory work, which cost in excess of two hundred fifty thousand  
19 dollars.

20 (14) "Energy plant" means the following facilities together with  
21 their associated facilities:

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

31 (b) Facilities which will have the capacity to receive liquified  
32 natural gas in the equivalent of more than one hundred million standard  
33 cubic feet of natural gas per day, which has been transported over  
34 marine waters;

35 (c) Facilities which will have the capacity to receive more than an  
36 average of fifty thousand barrels per day of crude or refined petroleum  
37 or liquified petroleum gas which has been or will be transported over  
38 marine waters, except that the provisions of this chapter shall not

1 apply to storage facilities unless occasioned by such new facility  
2 construction;

3 (d) Any underground reservoir for receipt and storage of natural  
4 gas as defined in RCW 80.40.010 capable of delivering an average of  
5 more than one hundred million standard cubic feet of natural gas per  
6 day; and

7 (e) Facilities capable of processing more than twenty-five thousand  
8 barrels per day of petroleum into refined products.

9 (15) "Greenhouse gas" or "greenhouse gases" includes, but is not  
10 limited to, carbon dioxide (CO2), methane and natural gas (CH4), and  
11 nitrous oxide (N2O).

12 (16) "Land use plan" means a comprehensive plan or land use element  
13 thereof adopted by a unit of local government pursuant to chapters  
14 35.63, 35A.63, or 36.70 RCW.

15 (~~(16)~~) (17) "Zoning ordinance" means an ordinance of a unit of  
16 local government regulating the use of land and adopted pursuant to  
17 chapters 35.63, 35A.63, or 36.70 RCW or Article XI of the state  
18 Constitution.

19 (~~(17)~~) (18) "Alternative energy resource" means: (a) Wind; (b)  
20 solar energy; (c) geothermal energy; (d) landfill gas; (e) wave or  
21 tidal action; or (f) biomass energy based on solid organic fuels from  
22 wood, forest, or field residues, or dedicated energy crops that do not  
23 include wood pieces that have been treated with chemical preservatives  
24 such as creosote, pentachlorophenol, or copper-chrome-arsenic.

25 **Sec. 3.** RCW 80.50.040 and 2001 c 214 s 6 are each amended to read  
26 as follows:

27 The council shall have the following powers:

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

32 (2) 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 (3) To establish rules of practice for the conduct of public  
37 hearings pursuant to the provisions of the Administrative Procedure  
38 Act, as found in chapter 34.05 RCW;

1 (4) To prescribe the form, content, and necessary supporting  
2 documentation for site certification;

3 (5) To receive applications for energy facility locations and to  
4 investigate the sufficiency thereof;

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

7 (7) To conduct hearings on the proposed location of the energy  
8 facilities;

9 (8) To prepare written reports to the governor which shall include:  
10 (a) A statement indicating whether the application is in compliance  
11 with the council's guidelines, (b) criteria specific to the site and  
12 transmission line routing, (c) a council recommendation as to the  
13 disposition of the application, and (d) a draft certification agreement  
14 when the council recommends approval of the application;

15 (9) To prescribe the means for monitoring of the effects arising  
16 from the construction and the operation of energy facilities to assure  
17 continued compliance with terms of certification and/or permits issued  
18 by the council pursuant to chapter 90.48 RCW or subsection (12) of this  
19 section: PROVIDED, That any on-site inspection required by the council  
20 shall be performed by other state agencies pursuant to interagency  
21 agreement: PROVIDED FURTHER, That the council may retain authority for  
22 determining compliance relative to monitoring;

23 (10) To integrate its site evaluation activity with activities of  
24 federal agencies having jurisdiction in such matters to avoid  
25 unnecessary duplication;

26 (11) To present state concerns and interests to other states,  
27 regional organizations, and the federal government on the location,  
28 construction, and operation of any energy facility which may affect the  
29 environment, health, or safety of the citizens of the state of  
30 Washington;

31 (12) To issue permits in compliance with applicable provisions of  
32 the federally approved state implementation plan adopted in accordance  
33 with the Federal Clean Air Act, as now existing or hereafter amended,  
34 for the new construction, reconstruction, or enlargement or operation  
35 of energy facilities: PROVIDED, That such permits shall become  
36 effective only if the governor approves an application for  
37 certification and executes a certification agreement pursuant to this  
38 chapter: AND PROVIDED FURTHER, That all such permits be conditioned  
39 upon compliance with all provisions of the federally approved state

1 implementation plan which apply to energy facilities covered within the  
2 provisions of this chapter; ((and))

3 (13) To serve as an interagency coordinating body for energy-  
4 related issues; and

5 (14) To calculate and designate the amount of the fee to be paid by  
6 a new energy facility that emits greenhouse gases under section 4 of  
7 this act.

8 NEW SECTION. Sec. 4. A new section is added to chapter 80.50 RCW  
9 to read as follows:

10 (1) Every energy facility that submits an application for an energy  
11 facility site certification under this chapter after the effective date  
12 of this act is responsible for permanently mitigating in Washington all  
13 of their greenhouse gas emissions at actual market cost.

14 (2) The mitigation fee will be calculated every ten years and the  
15 operator of the energy facility has the option to pay the mitigation  
16 fee for the subsequent ten years in one lump sum or over ten annual  
17 payments.

18 (3) The council will determine the mitigation fee for every new  
19 energy facility at the time of the initial certification and again once  
20 every ten years by the anniversary date of the energy facility's  
21 certification. In calculating this fee, the council must account for  
22 the actual market cost of the greenhouse gases that the energy facility  
23 is projected to release over the upcoming ten years, taking into  
24 consideration production capability, projected production, fossil fuels  
25 used, pollution control equipment, and other measures taken by the  
26 facility to minimize the releases of greenhouse gases. The initial  
27 mitigation will be calculated taking into account the design of the  
28 facility. Subsequent calculations will account for the historic  
29 greenhouse gas emissions from the facility.

30 (4) The council is not required to exclusively issue financial  
31 mitigation. The council may require, or make available as an option to  
32 reduce the mitigation fee, mitigation projects that permanently  
33 mitigate in Washington greenhouse gas releases.

34 (5) In designating mitigation under this section, the council may  
35 consult with any public or private entity or individual, or commission  
36 an independent consultant. A portion of any fees collected under this  
37 section may be used to reimburse the council for any reasonable

1 expenses incurred in the calculation of mitigation, including fees for  
2 an independent consultant.

3 (6) The council is encouraged to develop a standard formula for the  
4 calculation of mitigation that can be applied to all new energy  
5 facility applications. This formula should include a monetary value  
6 that is equivalent to a ton of emitted greenhouse gas. In developing  
7 the formula, the council is encouraged, but not required, to study the  
8 mitigation models of other states in the country.

9 (7) Mitigation designated under this section becomes part of the  
10 certification document developed under this chapter.

11 (8) All mitigation calculated and designated by the council under  
12 this section must be verified and approved by the Washington State  
13 University energy program before becoming official. The Washington  
14 State University energy program may delegate this responsibility to any  
15 group under its auspices.

16 (9) Five percent of any fees collected under this section must be  
17 transferred to the Washington State University energy program to be  
18 used for the study of the climate and rural energy development.

19 (10) All payments required under this section are to be made to the  
20 state treasurer who will make payments as instructed by the council  
21 from the funds submitted. All such funds are subject to the state  
22 auditing procedures. Any unexpended portions revert to the department  
23 of revenue under chapter 63.29 RCW.

24 (11) A new energy facility that generates all of its energy without  
25 using fossil fuels is exempt from this section.

26 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
27 preservation of the public peace, health, or safety, or support of the  
28 state government and its existing public institutions, and takes effect  
29 immediately.

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