

SHB 2527 - S COMM AMD

By Committee on Environment, Water & Energy

ADOPTED AND ENGROSSED 03/03/2010

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 80.50.020 and 2007 c 325 s 1 are each amended to read
4 as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

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

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

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

17 (4) "Site" means any proposed or approved location of an energy
18 facility, alternative energy resource, or electrical transmission
19 facility.

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

26 (6) "Associated facilities" means storage, transmission, handling,
27 or other related and supporting facilities connecting an energy plant
28 with the existing energy supply, processing, or distribution system,
29 including, but not limited to, communications, controls, mobilizing or
30 maintenance equipment, instrumentation, and other types of ancillary

1 transmission equipment, off-line storage or venting required for
2 efficient operation or safety of the transmission system and overhead,
3 and surface or subsurface lines of physical access for the inspection,
4 maintenance, and safe operations of the transmission facility and new
5 transmission lines constructed to operate at nominal voltages of at
6 least 115,000 volts to connect a thermal power plant or alternative
7 energy facilities to the northwest power grid. However, common carrier
8 railroads or motor vehicles shall not be included.

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

11 (a) Crude or refined petroleum or liquid petroleum product
12 transmission pipeline of the following dimensions: A pipeline larger
13 than six inches minimum inside diameter between valves for the
14 transmission of these products with a total length of at least fifteen
15 miles;

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

23 (8) "Electrical transmission facilities" means electrical power
24 lines and related equipment.

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

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

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

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

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

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

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

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

11 (15) "Energy plant" means the following facilities together with
12 their associated facilities:

13 (a) Any nuclear power facility where the primary purpose is to
14 produce and sell electricity;

15 (b) Any nonnuclear stationary thermal power plant with generating
16 capacity of three hundred fifty thousand kilowatts or more, measured
17 using maximum continuous electric generating capacity, less minimum
18 auxiliary load, at average ambient temperature and pressure, and
19 floating thermal power plants of one hundred thousand kilowatts or
20 more(~~(, including associated facilities. For the purposes of this~~
21 ~~subsection, "floating thermal power plants" means a thermal power plant~~
22 ~~that is)) suspended on the surface of water by means of a barge,
23 vessel, or other floating platform;~~

24 ~~((b))~~ (c) Facilities which will have the capacity to receive
25 liquefied natural gas in the equivalent of more than one hundred
26 million standard cubic feet of natural gas per day, which has been
27 transported over marine waters;

28 ~~((c))~~ (d) Facilities which will have the capacity to receive more
29 than an average of fifty thousand barrels per day of crude or refined
30 petroleum or liquefied petroleum gas which has been or will be
31 transported over marine waters, except that the provisions of this
32 chapter shall not apply to storage facilities unless occasioned by such
33 new facility construction;

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

1 ~~((e))~~ (f) Facilities capable of processing more than twenty-five
2 thousand barrels per day of petroleum or biofuel into refined products
3 except where such biofuel production is undertaken at existing
4 industrial facilities.

5 (16) "Land use plan" means a comprehensive plan or land use element
6 thereof adopted by a unit of local government pursuant to chapter
7 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by
8 chapter 325, Laws of 2007.

9 (17) "Zoning ordinance" means an ordinance of a unit of local
10 government regulating the use of land and adopted pursuant to chapter
11 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state
12 Constitution, or as otherwise designated by chapter 325, Laws of 2007.

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

20 (19) "Secretary" means the secretary of the United States
21 department of energy.

22 (20) "Preapplication process" means the process which is initiated
23 by written correspondence from the preapplicant to the council, and
24 includes the process adopted by the council for consulting with the
25 preapplicant and with cities, towns, and counties prior to accepting
26 applications for all transmission facilities.

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

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

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

32 (1) There is created and established the energy facility site
33 evaluation council.

34 (2)(a) The chair of the council shall be appointed by the governor
35 with the advice and consent of the senate, shall have a vote on matters
36 before the council, shall serve for a term coextensive with the term of
37 the governor, and is removable for cause. The chair may designate a

1 member of the council to serve as acting chair in the event of the
2 chair's absence. The salary of the chair shall be determined under RCW
3 43.03.040. The chair is a "state employee" for the purposes of chapter
4 42.52 RCW. As applicable, when attending meetings of the council,
5 members may receive reimbursement for travel expenses in accordance
6 with RCW 43.03.050 and 43.03.060, and are eligible for compensation
7 under RCW 43.03.250.

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

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

- 20 (i) Department of ecology;
- 21 (ii) Department of fish and wildlife;
- 22 (iii) Department of community, trade, and economic development;
- 23 (iv) Utilities and transportation commission; and
- 24 (v) Department of natural resources.

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

- 30 (i) Department of agriculture;
- 31 (ii) Department of health;
- 32 (iii) Military department; and
- 33 (iv) Department of transportation.

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

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

8 (5) The city legislative authority of every city within whose
9 corporate limits an energy (~~(plant)~~) facility is proposed to be located
10 shall appoint a member or designee as a voting member to the council.
11 The member or designee so appointed shall sit with the council only at
12 such times as the council considers the proposed site for the city
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.

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

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

28 (1) The council shall receive all applications for energy facility
29 site certification. (~~(The following fees or charges for application
30 processing or certification monitoring shall be paid by the applicant
31 or certificate holder:)~~) Each applicant shall pay such reasonable costs
32 as are actually and necessarily incurred by the council in processing
33 an application.

34 (a) (~~(A fee of twenty five thousand dollars for each proposed site,
35 to be applied toward the cost of the independent consultant study
36 authorized in this subsection, shall accompany the application and
37 shall be a condition precedent to any further consideration or action~~

1 ~~on the application by the council))~~ Each applicant shall, at the time
2 of application submission, deposit fifty thousand dollars, or such
3 greater amount as may be specified by the council after consultation
4 with the applicant. Costs that may be charged against the deposit
5 include, but are not limited to, independent consultants' costs,
6 councilmember's wages, employee benefits, costs of a hearing examiner,
7 costs of a court reporter, staff salaries, wages and employee benefits,
8 goods and services, travel expenses, and miscellaneous direct expenses
9 as arise directly from processing an application.

10 ~~((The council shall commission its own independent consultant study~~
11 ~~to measure the consequences of the proposed energy facility on the~~
12 ~~environment for each site application. The council shall direct the~~
13 ~~consultant to study any matter which it deems essential to an adequate~~
14 ~~appraisal of the site. The full cost of the study shall be paid by the~~
15 ~~applicant: PROVIDED, That said costs exceeding a total of the twenty-~~
16 ~~five thousand dollars paid pursuant to subsection (1)(a) of this~~
17 ~~section shall be payable subject to the applicant giving prior approval~~
18 ~~to such excess amount.))~~

19 (b) ~~((Each applicant shall, in addition to the costs of the~~
20 ~~independent consultant provided by subsection (1)(a) of this section,~~
21 ~~pay such reasonable costs as are actually and necessarily incurred by~~
22 ~~the council and its members as designated in RCW 80.50.030 in~~
23 ~~processing the application. Such costs shall include, but are not~~
24 ~~limited to, council member's wages, employee benefits, costs of a~~
25 ~~hearing examiner, a court reporter, additional staff salaries, wages~~
26 ~~and employee benefits, goods and services, travel expenses within the~~
27 ~~state and miscellaneous expenses, as arise directly from processing~~
28 ~~such application))~~ The council may commission its own independent
29 consultant study to measure the consequences of the proposed energy
30 facility on the environment or any matter that it deems essential to an
31 adequate appraisal of the site. The council shall provide an estimate
32 of the cost of the study to the applicant and consider applicant
33 comments.

34 ~~((Each applicant shall, at the time of application submission,~~
35 ~~deposit twenty thousand dollars, or such lesser amount as may be~~
36 ~~specified by council rule, to cover costs provided for by subsection~~
37 ~~(1)(b) of this section. Reasonable and necessary costs of the council~~

1 ~~directly attributable to application processing shall be charged~~
2 ~~against such deposit.))~~

3 (c) The council shall submit to each applicant a statement of such
4 expenditures ((~~actually~~)) made during the preceding calendar quarter
5 which shall be in sufficient detail to explain such expenditures. The
6 applicant shall pay the state treasurer the amount of such statement to
7 restore the total amount on deposit to the originally established
8 level: PROVIDED, That such applicant may, at the request of the
9 council, increase the amount of funds on deposit to cover anticipated
10 expenses during peak periods of application processing. Any funds
11 remaining unexpended at the conclusion of application processing shall
12 be refunded to the applicant, or at the applicant's option, credited
13 against required deposits of certificate holders.

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

19 (a) Each certificate holder, within thirty days of execution of the
20 site certification agreement, shall have on deposit ((~~twenty~~)) fifty
21 thousand dollars, or such ((~~other~~)) greater amount as may be specified
22 by the council ((~~rule, to cover costs provided for by subsection (1)(c)~~
23 ~~of this section~~)) after consultation with the certificate holder.
24 ((~~Reasonable and necessary costs of the council directly attributable~~
25 ~~to~~)) Costs that may be charged against the deposit include, but are not
26 limited to, those specified in subsection (1)(a) of this section as
27 arise from inspection and determination of compliance by the
28 certificate holder with the terms of the certification ((~~relative to~~
29 ~~monitoring the effects of construction and operation of the facility~~
30 ~~shall be charged against such deposit~~)).

31 (b) The council shall submit to each certificate holder a statement
32 of such expenditures actually made during the preceding calendar
33 quarter which shall be in sufficient detail to explain such
34 expenditures. The certificate holder shall pay the state treasurer the
35 amount of such statement to restore the total amount on deposit to the
36 originally established level: PROVIDED, That if the actual((~~r~~
37 ~~reasonable, and necessary~~)) expenditures for inspection and

1 determination of compliance in the preceding calendar quarter have
2 exceeded the amount of funds on deposit, such excess costs shall be
3 paid by the certificate holder.

4 ~~((+2))~~ (3) If an applicant or certificate holder fails to provide
5 the initial deposit, or if subsequently required payments are not
6 received within thirty days following receipt of the statement from the
7 council, the council may (a) in the case of the applicant, suspend
8 processing of the application until payment is received; or (b) in the
9 case of a certificate holder, suspend the certification.

10 ~~((+3))~~ (4) All payments required of the applicant or certificate
11 holder under this section are to be made to the state treasurer who
12 shall make payments as instructed by the council from the funds
13 submitted. All such funds shall be subject to state auditing
14 procedures. Any unexpended portions thereof shall be returned to the
15 applicant or certificate holder.

16 NEW SECTION. **Sec. 4.** Rule-making costs incurred by the energy
17 facility site evaluation council in implementing and administering this
18 act shall be proportionately divided among the certificate holders and
19 applicants directly affected by this act."

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20 On page 1, line 1 of the title, after "council;" strike the
21 remainder of the title and insert "amending RCW 80.50.020, 80.50.030,
22 and 80.50.071; and creating a new section."

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