

SENATE BILL REPORT

SHB 2516

As of February 18, 2010

Title: An act relating to small facility siting.

Brief Description: Regarding the siting of small alternative energy facilities.

Sponsors: House Committee on Technology, Energy & Communications (originally sponsored by Representatives Morris, Chase, Hudgins and Morrell).

Brief History: Passed House: 2/10/10, 94-2.

Committee Activity: Environment, Water & Energy: 2/17/10.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: William Bridges (786-7416)

Background: Siting Local Renewable Energy Systems. The process for siting and constructing small energy systems is generally governed by local ordinances. It may include building permits, conditional use permits, and related administrative hearings.

Siting Renewable Energy Systems Using the Energy Facility Site Evaluation Council (EFSEC). Energy facilities of any size that exclusively use alternative energy resources, such as wind power, can also opt-in to the EFSEC certification process. An EFSEC site certification agreement, approved by the Governor, authorizes an applicant to construct and operate an energy facility in lieu of any other permit or document required by any other state agency or subdivision.

The EFSEC certification process consists of initial public hearings followed by the issuance of a draft Environmental Impact Statement (EIS). The council also holds a hearing to determine whether the project is consistent with local land use plans or ordinances. Subsequent to issuance of the draft EIS, an adjudicative proceeding is held to consider the environmental and other issues and to determine if EFSEC will recommend preemption of any local land use regulations. This proceeding is a formal hearing process where the council hears from the official parties, the Attorney General's Council for the Environment, and any interveners.

After the adjudicatory process, EFSEC releases the final EIS and determines whether the project should be recommended to the Governor for approval. If the recommendation is for

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approval, EFSEC will submit a final order and a draft site certification agreement (SCA) for the Governor to sign. If rejected, EFSEC submits a final order explaining the rejection. The Governor has 60 days to consider EFSEC's recommendation and can take one of the following actions: (1) execute the draft SCA, (2) reject the application, or (3) direct the council to reconsider certain aspects of the project and draft SCA.

EFSEC may delegate to a state agency, through an interagency agreement, responsibilities relating to site certification compliance monitoring of the construction and operation of an energy facility.

Net Metering. Net metering allows electricity customers to offset their consumption of purchased electricity with electricity generated by their own small scale renewable system. Under current law, a net metering system must generate no more than 100 kilowatts (kW) using water, wind, solar energy, or biogas, among other criteria.

Summary of Bill: Authorizing EFSEC Site Certification for Alternative Energy Resource Facilities Under 100 kW. EFSEC may delegate to staff the authority to issue site certifications for small alternative energy resource facilities that meet the definition of a net metering system. Any person may apply to the EFSEC for such certifications, which will preempt any permit issued by a local government, if the local government has not adopted permitting codes for these facilities in the last ten years.

Authorizing Full-recovery Fees. EFSEC may charge a fee to recover the full cost of processing applications for small alternative energy resource facilities. Before submitting an application, an applicant may submit a letter to the EFSEC asking whether a proposed facility would require mitigation and within 30 days receive a written estimate of the cost of processing the application.

Adopting Site Certification Standards. As part of its duties in certifying small alternative energy resource facilities, EFSEC is directed, among other things, to adopt site certification standards based on a survey of the safest standards for these facilities in the following order of preference: (1) existing local municipal and county codes in Washington adopted in the last ten years; (2) existing state, local, or municipal codes in the Western Electric Coordinating Council geographic area adopted in the last ten years; and (3) existing state, local, or municipal codes adopted in the United States in the last ten years.

Exempting Small Alternative Energy Resource Facilities From EFSEC's Current Hearing and Adjudicatory Process. Site certification for small alternative energy resources is exempted from the following: (1) EFSEC's hearing and adjudicatory process and (2) review and approval by the Governor.

Delegation of Compliance Monitoring. EFSEC is authorized to delegate to a local agency, through an interagency agreement, responsibilities relating to site certification compliance monitoring of the construction and operation of an energy facility.

Authorizing EFSEC to Act as a Local Permitting Authority. EFSEC and any local government in the state are authorized and encouraged to enter into an inter-local agreement for the permitting small alternative energy resource facilities within the geographic

jurisdiction of the local government. EFSEC may serve as the local permitting authority if the local government determines that it would be more cost effective to do so.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2010.

Staff Summary of Public Testimony: PRO: The prime sponsor has been working over ten years on the difficulties some cities and counties have in siting small renewable projects. The bill will allow persons trying to site small renewable systems to use an EFSEC certification process, which will apply the safest standards. The bill will provide incentives for local governments to work with EFSEC to develop siting standards for small renewable systems.

CON: State agencies are not suited to site small renewable projects because these systems often concern complicated and unique local circumstances. Many local governments have developed the appropriate siting standards. There are opportunities to develop and educate local government planners about the siting of small renewable systems without relying on EFSEC. Local government planning offices have been decimated by the economy so this is the wrong time to force new mandates on these offices. The new preemptory authority granted to EFSEC does not take into account current Growth Management Act and shoreline protection mandates.

Persons Testifying: PRO: Representative Morris, prime sponsor.

CON: Victoria Lincoln, Association of Washington Counties; Mike Matlock, City of Tumwater; Scott Merriman, Washington State Association of Counties.