

# SENATE BILL REPORT

## SB 6471

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As Reported by Senate Committee On:  
Environment, Water & Energy, February 2, 2010

**Title:** An act relating to the energy facility site evaluation council.

**Brief Description:** Regarding the energy facility site evaluation council.

**Sponsors:** Senators Fraser, Rockefeller, Pridemore, Marr and Kline.

**Brief History:**

**Committee Activity:** Environment, Water & Energy: 1/19/10, 2/02/10 [DPS].

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### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Majority Report:** That Substitute Senate Bill No. 6471 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Honeyford, Ranking Minority Member; Delvin, Fraser, Marr, Morton, Ranker and Sheldon.

**Staff:** William Bridges (786-7416)

**Background:** The Energy Facility Site Evaluation Council (EFSEC) is the permitting and certificating authority for the siting of major energy facilities in Washington. It is comprised of a chair appointed by the Governor, and representatives from five state agencies: the Department of Commerce (Commerce), the Department of Ecology, the Department of Fish and Wildlife, the Department of Natural Resources, and the Washington Utilities and Transportation Commission (WUTC). Four other departments may each choose to participate in EFSEC for a particular project: Agriculture, Health, Transportation, and Military. Finally, local governments must also appoint members to the council for the review of proposed facilities located in their jurisdictions.

EFSEC Jurisdiction. EFSEC's siting jurisdiction includes the following: (1) large natural gas and oil pipelines; (2) thermal electric power plants 350 megawatts (MWs) or greater and their dedicated transmission lines; (3) new oil refineries or large expansions of existing facilities; and (4) underground natural gas storage fields. In addition, energy facilities of any size that exclusively use alternative energy resources (wind, solar, geothermal, landfill gas, wave or tidal action, or biomass energy) can opt-in to the EFSEC process as well as certain electrical

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transmission lines. EFSEC's jurisdiction does not extend to hydro based power plants or thermal electric plants that are less than 350 MWs.

EFSEC Application Fee. A site certification application to EFSEC must be accompanied by a \$45,000 fee that is applied toward the direct costs of processing the application, such as the retention of an independent consultant and a hearing examiner, as well as inspection and compliance costs.

EFSEC Fee for Inspection and Compliance Determinations. Within 30 days of executing a site certification agreement, the certificate holder must deposit \$20,000 or other specified amount, with EFSEC. The deposit covers EFSEC's reasonable and necessary costs directly attributable to inspecting and determining compliance with the terms of the site certification.

**Summary of Bill (Recommended Substitute):** Expanding EFSEC Jurisdiction. Nuclear power facilities that primarily produce and sell electricity and biofuel refineries capable of processing more than 25,000 barrels per day are added to EFSEC's siting jurisdiction.

Increasing the Deposit for Processing an EFSEC Application. An applicant must deposit at least \$50,000 or a greater specified amount, with EFSEC at the time an application is submitted. The deposit covers all of EFSEC's direct expenses that arise directly from processing the application.

Increasing the Deposit for Inspections and Compliance Determinations. Within 30 days of executing a site certification agreement, the certificate holder must deposit at least \$50,000 or a greater specified amount, with EFSEC. The deposit covers all of EFSEC's direct expenses that arise from inspecting and determining compliance with the terms of the site certification.

Requiring the Payment of Site Restoration Costs. In addition to paying the reasonable costs associated with monitoring the effects of construction and the operation of an energy facility, the certificate holder is required to pay reasonable costs associated with site restoration of the facility.

Allocating Rulemaking Costs. Rulemaking costs incurred by EFSEC in implementing and administering this act must be proportionately divided among the certificate holders and applicants directly affected by this act.

**EFFECT OF CHANGES MADE BY ENVIRONMENT, WATER & ENERGY COMMITTEE (Recommended Substitute):** Clarifies that EFSEC has siting jurisdiction over any nuclear power facility if its primary purpose is to produce or sell electricity. Restores the original statutory phrase that requires applicants to pay the reasonable costs as are actually and necessarily incurred by EFSEC when processing an application. Removes the provision transferring EFSEC from Commerce to the WUTC. Removes all provisions increasing the duties of the Counsel for the Environment and shifting the Counsel's costs to applicants. Provides that the rulemaking costs associated with this act must be proportionately divided among the certificated holders and applicants directly affected by this act.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: According to the prime sponsor, the main purpose of this bill is to consolidate EFSEC with the WUTC. The Governor's bill reorganizing Commerce is the preferred vehicle for transferring EFSEC to the WUTC. EFSEC's jurisdiction should be expanded to include commercial nuclear reactors of any size because technologies have advanced. Biofuel refineries should be included because that would be consistent with EFSEC's current jurisdiction over petroleum refineries. The site certification is a property right that grants enormous benefits and is worth millions of dollars so applicants should be required to pay for the Counsel for the Environment (CE), which currently is a .5 FTE position. The CE's role should be expanded to local siting proceedings because the statewide public does have an interest in the local siting of facilities. The Attorney General's Office has done a good job limiting the costs of the CE.

CON: Since the 1980s, the CE has taken a critical view of all projects and it would be unfair to require applicants to pay for an adversary's costs, particularly if there are no limits to what that adversary could charge. Requiring an applicant to pay an adversary's costs is unprecedented. The CE's role should not be extended to local siting proceedings because that would raise siting costs. If EFSEC is transferred to the WUTC, there should be measures in the bill to insure the impartiality of EFSEC staff. It is incorrect to call a site certification a valuable property right; it is a permit that can expire and its value can be worthless if it incorporates burdensome conditions. Many of the factors the CE must consider seem too local, not statewide.

OTHER: Support the bill but the fee structure for the CE should be reworked and many of the factors the CE must consider seem too local. Support the idea of a one-stop shop for nuclear energy and biofuel refineries and the transfer of EFSEC to WUTC; but, the unprecedented cost transfer of the CE to applicants is unfair and sends the wrong message to developers. In addition, recent local siting proceedings demonstrate the public is well represented without CE involvement.

**Persons Testifying:** PRO: Senator Fraser, prime sponsor; Carrie Dolwick, NW Energy Coalition; Allen Fiksdal, Jim Luce, EFSEC; Jim Rowland, Energy NW.

CON: Ken Johnson, PSE; Darrel Peeples, NW Intermountain Power Producers; Collins Sprague, Avista.

OTHER: Carrie Dolwick, NW Energy Coalition; Chris McCabe, AWB.