
SUBSTITUTE HOUSE BILL 2516

State of Washington 61st Legislature 2010 Regular Session

By House Technology, Energy & Communications (originally sponsored by Representatives Morris, Chase, Hudgins, and Morrell)

READ FIRST TIME 02/02/10.

1 AN ACT Relating to small facility siting; amending RCW 80.50.020,
2 80.50.040, 80.50.060, 80.50.071, and 80.50.100; reenacting and amending
3 RCW 80.50.090; adding new sections to chapter 80.50 RCW; and providing
4 an effective date.

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

6 **Sec. 1.** RCW 80.50.020 and 2007 c 325 s 1 are each amended to read
7 as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

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

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

1 (4) "Site" means any proposed or approved location of an energy
2 facility, alternative energy resource, or electrical transmission
3 facility.

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

10 (6) "Associated facilities" means storage, transmission, handling,
11 or other related and supporting facilities connecting an energy plant
12 with the existing energy supply, processing, or distribution system,
13 including, but not limited to, communications, controls, mobilizing or
14 maintenance equipment, instrumentation, and other types of ancillary
15 transmission equipment, off-line storage or venting required for
16 efficient operation or safety of the transmission system and overhead,
17 and surface or subsurface lines of physical access for the inspection,
18 maintenance, and safe operations of the transmission facility and new
19 transmission lines constructed to operate at nominal voltages of at
20 least 115,000 volts to connect a thermal power plant or alternative
21 energy facilities to the northwest power grid. However, common carrier
22 railroads or motor vehicles shall not be included.

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

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

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

37 (8) "Electrical transmission facilities" means electrical power
38 lines and related equipment.

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

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

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

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

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

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

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

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

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

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

35 (b) Facilities which will have the capacity to receive liquefied
36 natural gas in the equivalent of more than one hundred million standard
37 cubic feet of natural gas per day, which has been transported over
38 marine waters;

1 (c) Facilities which will have the capacity to receive more than an
2 average of fifty thousand barrels per day of crude or refined petroleum
3 or liquefied petroleum gas which has been or will be transported over
4 marine waters, except that the provisions of this chapter shall not
5 apply to storage facilities unless occasioned by such new facility
6 construction;

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

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

13 (16) "Land use plan" means a comprehensive plan or land use element
14 thereof adopted by a unit of local government pursuant to chapter
15 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by
16 chapter 325, Laws of 2007.

17 (17) "Zoning ordinance" means an ordinance of a unit of local
18 government regulating the use of land and adopted pursuant to chapter
19 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state
20 Constitution, or as otherwise designated by chapter 325, Laws of 2007.

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

27 (19) "Secretary" means the secretary of the United States
28 department of energy.

29 (20) "Preapplication process" means the process which is initiated
30 by written correspondence from the preapplicant to the council, and
31 includes the process adopted by the council for consulting with the
32 preapplicant and with cities, towns, and counties prior to accepting
33 applications for all transmission facilities.

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

36 (22) "Small alternative energy resource facility" means any
37 facility that has the same definition as a "net metering system" under
38 RCW 80.60.010.

1 (23) "Safest standards" means the surveying of permitting and
2 siting standards for small alternative energy resource facilities in
3 the following order of preference of application: (a) Existing local
4 municipal and county codes in Washington adopted in the last ten years;
5 (b) existing state, local, or municipal codes in the western electric
6 coordinating council geographic area adopted in the last ten years; and
7 (c) existing state, local, or municipal codes adopted in the United
8 States in the last ten years.

9 **Sec. 2.** RCW 80.50.040 and 2001 c 214 s 6 are each amended to read
10 as follows:

11 The council shall have the following powers:

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

16 (2) To develop and apply environmental and ecological guidelines in
17 relation to the type, design, location, construction, and operational
18 conditions of certification of energy facilities subject to this
19 chapter;

20 (3) To establish rules of practice for the conduct of public
21 hearings pursuant to the provisions of the administrative procedure
22 act, as found in chapter 34.05 RCW;

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

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

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

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

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

1 (9) To prescribe the means for monitoring of the effects arising
2 from the construction and the operation of energy facilities to
3 (~~assure~~) ensure continued compliance with terms of certification
4 and/or permits issued by the council pursuant to chapter 90.48 RCW or
5 subsection (12) of this section: PROVIDED, That any on-site inspection
6 required by the council shall be performed by other state and local
7 agencies pursuant to interagency agreement: PROVIDED FURTHER, That the
8 council may retain authority for determining compliance relative to
9 monitoring or may delegate authority for ensuring compliance with the
10 terms of the certificate and/or permits to other state or local
11 agencies;

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

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

20 (12) To issue permits in compliance with applicable provisions of
21 the federally approved state implementation plan adopted in accordance
22 with the federal clean air act, as now existing or hereafter amended,
23 for the new construction, reconstruction, or enlargement or operation
24 of energy facilities: PROVIDED, That such permits shall become
25 effective only if the governor approves an application for
26 certification and executes a certification agreement pursuant to this
27 chapter: AND PROVIDED FURTHER, That all such permits be conditioned
28 upon compliance with all provisions of the federally approved state
29 implementation plan which apply to energy facilities covered within the
30 provisions of this chapter; and

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

33 **Sec. 3.** RCW 80.50.060 and 2007 c 325 s 2 are each amended to read
34 as follows:

35 (1) The provisions of this chapter apply to the construction of
36 energy facilities which includes the new construction of energy
37 facilities and the reconstruction or enlargement of existing energy

1 facilities where the net increase in physical capacity or dimensions
2 resulting from such reconstruction or enlargement meets or exceeds
3 those capacities or dimensions set forth in RCW 80.50.020 (7) and (15).
4 No construction of such energy facilities may be undertaken, except as
5 otherwise provided in this chapter, after July 15, 1977, without first
6 obtaining certification in the manner provided in this chapter.

7 (2) The provisions of this chapter apply to the construction,
8 reconstruction, or enlargement of a new or existing energy facility
9 that exclusively uses alternative energy resources and chooses to
10 receive certification under this chapter, regardless of the generating
11 capacity of the project.

12 (3)(a) The provisions of this chapter apply to the construction,
13 reconstruction, or modification of electrical transmission facilities
14 when:

15 (i) The facilities are located in a national interest electric
16 transmission corridor as specified in RCW 80.50.045;

17 (ii) An applicant chooses to receive certification under this
18 chapter, and the facilities are: (A) Of a nominal voltage of at least
19 one hundred fifteen thousand volts and are located in a completely new
20 corridor, except for the terminus of the new facility or
21 interconnection of the new facility with the existing grid, and the
22 corridor is not otherwise used for electrical transmission facilities;
23 and (B) located in more than one jurisdiction that has promulgated land
24 use plans or zoning ordinances; or

25 (iii) An applicant chooses to receive certification under this
26 chapter, and the facilities are: (A) Of a nominal voltage in excess of
27 one hundred fifteen thousand volts; and (B) located outside an
28 electrical transmission corridor identified in (a)(i) and (ii) of this
29 subsection (3).

30 (b) For the purposes of this subsection, "modify" means a
31 significant change to an electrical transmission facility and does not
32 include the following: (i) Minor improvements such as the replacement
33 of existing transmission line facilities or supporting structures with
34 equivalent facilities or structures; (ii) the relocation of existing
35 electrical transmission line facilities; (iii) the conversion of
36 existing overhead lines to underground; or (iv) the placing of new or
37 additional conductors, supporting structures, insulators, or their
38 accessories on or replacement of supporting structures already built.

1 (4) The provisions of this chapter shall not apply to normal
2 maintenance and repairs which do not increase the capacity or
3 dimensions beyond those set forth in RCW 80.50.020 (7) and (15).

4 (5) Applications for certification of energy facilities made prior
5 to July 15, 1977, shall continue to be governed by the applicable
6 provisions of law in effect on the day immediately preceding July 15,
7 1977, with the exceptions of RCW 80.50.190 and 80.50.071 which shall
8 apply to such prior applications and to site certifications
9 prospectively from July 15, 1977.

10 (6) Applications for certification shall be upon forms prescribed
11 by the council and shall be supported by such information and technical
12 studies as the council may require.

13 (7) The provisions of this chapter apply to the installation of a
14 small alternative energy resource facility if a person chooses to apply
15 to the council in order to receive site certification for a small
16 alternative energy resource facility under this chapter.

17 **Sec. 4.** RCW 80.50.071 and 2006 c 196 s 5 are each amended to read
18 as follows:

19 (1) The council shall receive all applications for energy facility
20 site certification. Except as provided under sections 7 and 8 of this
21 act, the following fees or charges for application processing or
22 certification monitoring shall be paid by the applicant or certificate
23 holder:

24 (a) A fee of twenty-five thousand dollars for each proposed site,
25 to be applied toward the cost of the independent consultant study
26 authorized in this subsection, shall accompany the application and
27 shall be a condition precedent to any further consideration or action
28 on the application by the council. The council shall commission its
29 own independent consultant study to measure the consequences of the
30 proposed energy facility on the environment for each site application.
31 The council shall direct the consultant to study any matter which it
32 deems essential to an adequate appraisal of the site. The full cost of
33 the study shall be paid by the applicant: PROVIDED, That said costs
34 exceeding a total of the twenty-five thousand dollars paid pursuant to
35 subsection (1)(a) of this section shall be payable subject to the
36 applicant giving prior approval to such excess amount.

1 (b) Each applicant shall, in addition to the costs of the
2 independent consultant provided by subsection (1)(a) of this section,
3 pay such reasonable costs as are actually and necessarily incurred by
4 the council and its members as designated in RCW 80.50.030 in
5 processing the application. Such costs shall include, but are not
6 limited to, council member's wages, employee benefits, costs of a
7 hearing examiner, a court reporter, additional staff salaries, wages
8 and employee benefits, goods and services, travel expenses within the
9 state and miscellaneous expenses, as arise directly from processing
10 such application.

11 Each applicant shall, at the time of application submission,
12 deposit twenty thousand dollars, or such lesser amount as may be
13 specified by council rule, to cover costs provided for by subsection
14 (1)(b) of this section. Reasonable and necessary costs of the council
15 directly attributable to application processing shall be charged
16 against such deposit.

17 The council shall submit to each applicant a statement of such
18 expenditures actually made during the preceding calendar quarter which
19 shall be in sufficient detail to explain such expenditures. The
20 applicant shall pay the state treasurer the amount of such statement to
21 restore the total amount on deposit to the originally established
22 level: PROVIDED, That such applicant may, at the request of the
23 council, increase the amount of funds on deposit to cover anticipated
24 expenses during peak periods of application processing. Any funds
25 remaining unexpended at the conclusion of application processing shall
26 be refunded to the applicant, or at the applicant's option, credited
27 against required deposits of certificate holders.

28 (c) Each certificate holder shall pay such reasonable costs as are
29 actually and necessarily incurred by the council for inspection and
30 determination of compliance by the certificate holder with the terms of
31 the certification relative to monitoring the effects of construction
32 and operation of the facility.

33 Each certificate holder, within thirty days of execution of the
34 site certification agreement, shall deposit twenty thousand dollars, or
35 such other amount as may be specified by council rule, to cover costs
36 provided for by subsection (1)(c) of this section. Reasonable and
37 necessary costs of the council directly attributable to inspection and

1 determination of compliance by the certificate holder with the terms of
2 the certification relative to monitoring the effects of construction
3 and operation of the facility shall be charged against such deposit.

4 The council shall submit to each certificate holder a statement of
5 such expenditures actually made during the preceding calendar quarter
6 which shall be in sufficient detail to explain such expenditures. The
7 certificate holder shall pay the state treasurer the amount of such
8 statement to restore the total amount on deposit to the originally
9 established level: PROVIDED, That if the actual, reasonable, and
10 necessary expenditures for inspection and determination of compliance
11 in the preceding calendar quarter have exceeded the amount of funds on
12 deposit, such excess costs shall be paid by the certificate holder.

13 (2) If an applicant or certificate holder fails to provide the
14 initial deposit, or if subsequently required payments are not received
15 within thirty days following receipt of the statement from the council,
16 the council may (a) in the case of the applicant, suspend processing of
17 the application until payment is received; or (b) in the case of a
18 certificate holder, suspend the certification.

19 (3) All payments required of the applicant or certificate holder
20 under this section are to be made to the state treasurer who shall make
21 payments as instructed by the council from the funds submitted. All
22 such funds shall be subject to state auditing procedures. Any
23 unexpended portions thereof shall be returned to the applicant or
24 certificate holder.

25 **Sec. 5.** RCW 80.50.090 and 2006 c 205 s 3 and 2006 c 196 s 6 are
26 each reenacted and amended to read as follows:

27 (1) The council shall conduct an informational public hearing in
28 the county of the proposed site as soon as practicable but not later
29 than sixty days after receipt of an application for site certification.
30 However, the place of such public hearing shall be as close as
31 practical to the proposed site.

32 (2) Subsequent to the informational public hearing, the council
33 shall conduct a public hearing to determine whether or not the proposed
34 site is consistent and in compliance with city, county, or regional
35 land use plans or zoning ordinances. If it is determined that the
36 proposed site does conform with existing land use plans or zoning

1 ordinances in effect as of the date of the application, the city,
2 county, or regional planning authority shall not thereafter change such
3 land use plans or zoning ordinances so as to affect the proposed site.

4 (3) Prior to the issuance of a council recommendation to the
5 governor under RCW 80.50.100 a public hearing, conducted as an
6 adjudicative proceeding under chapter 34.05 RCW, the administrative
7 procedure act, shall be held. At such public hearing any person shall
8 be entitled to be heard in support of or in opposition to the
9 application for certification.

10 (4) Additional public hearings shall be held as deemed appropriate
11 by the council in the exercise of its functions under this chapter.

12 (5) This section does not apply to sections 7 and 8 of this act.

13 **Sec. 6.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to
14 read as follows:

15 (1) The council shall report to the governor its recommendations as
16 to the approval or rejection of an application for certification within
17 twelve months of receipt by the council of such an application, or such
18 later time as is mutually agreed by the council and the applicant. If
19 the council recommends approval of an application for certification, it
20 shall also submit a draft certification agreement with the report. The
21 council shall include conditions in the draft certification agreement
22 to implement the provisions of this chapter, including, but not limited
23 to, conditions to protect state or local governmental or community
24 interests affected by the construction or operation of the energy
25 facility, and conditions designed to recognize the purpose of laws or
26 ordinances, or rules or regulations promulgated thereunder, that are
27 preempted or superseded pursuant to RCW 80.50.110 as now or hereafter
28 amended.

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

31 ~~((a))~~ (i) Approve the application and execute the draft
32 certification agreement; or

33 ~~((b))~~ (ii) Reject the application; or

34 ~~((c))~~ (iii) Direct the council to reconsider certain aspects of
35 the draft certification agreement.

36 (b) The council shall reconsider such aspects of the draft
37 certification agreement by reviewing the existing record of the

1 application or, as necessary, by reopening the adjudicative proceeding
2 for the purposes of receiving additional evidence. Such
3 reconsideration shall be conducted expeditiously. The council shall
4 resubmit the draft certification to the governor incorporating any
5 amendments deemed necessary upon reconsideration. Within sixty days of
6 receipt of such draft certification agreement, the governor shall
7 either approve the application and execute the certification agreement
8 or reject the application. The certification agreement shall be
9 binding upon execution by the governor and the applicant.

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

14 (4) This section does not apply to sections 7 and 8 of this act.

15 NEW SECTION. **Sec. 7.** A new section is added to chapter 80.50 RCW
16 to read as follows:

17 (1) In addition to the powers enumerated in this chapter, the
18 council has the following powers relating to small alternative energy
19 resource facilities:

20 (a) To receive site certification applications for small
21 alternative energy resource facilities in counties and municipalities
22 that have not adopted permitting codes for small alternative energy
23 resource facilities in the last ten years;

24 (b) To survey for and determine the safest standards for the siting
25 of small alternative energy resource facilities and adopt site
26 certification standards based on the safest standards for small
27 alternative energy resource facilities;

28 (c) To charge an application processing fee that represents full
29 cost recovery of expected applications costs incurred by the council
30 and its members and for compliance inspections costs delegated to local
31 governments where compliance is not preempted by other state agencies
32 in statute;

33 (d) To certify a small alternative energy resource facility site in
34 an expedited manner; and

35 (e) To delegate authority to council staff to issue small
36 alternative energy resource facility site certificates.

1 (2)(a) Any person may apply to the council for site certification
2 of a small alternative energy resource facility. The application for
3 small alternative energy resource facility processing must be submitted
4 to the council in the form and manner as may be determined by motion
5 and vote of the council.

6 (b) Any person, before submitting an application for a small
7 alternative energy resource facility site certification, may submit a
8 letter to the council to inquire as to whether a proposed small
9 alternative energy resource facility would require mitigation and
10 receive a written cost estimate from the council of the cost of
11 processing the application. The council must determine and respond
12 within thirty days.

13 (3) A small alternative energy resource facility site certification
14 issued by the council preempts any local regulation adopted after the
15 issuance of the small alternative energy resource facility site
16 certification.

17 NEW SECTION. **Sec. 8.** A new section is added to chapter 80.50 RCW
18 to read as follows:

19 The council and any local government in the state may enter into,
20 and are encouraged to enter into, an interlocal agreement as provided
21 under chapter 39.34 RCW for the purpose of permitting small alternative
22 energy resource facilities within the geographic jurisdiction of the
23 local government. The council may serve as the permitting authority
24 for a local government if the local government determines that it would
25 be more cost-effective for the council to permit small alternative
26 energy resource facilities within their jurisdiction. Such an
27 agreement supersedes provisions provided under section 7 of this act.

28 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act take effect
29 July 1, 2010.

--- END ---