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HOUSE BILL 2516

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State of Washington                      61st Legislature                      2010 Regular Session

By Representatives Morris, Chase, Hudgins, and Morrell

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1            AN ACT Relating to small facility siting; amending RCW 80.50.020,  
2 80.50.060, 80.50.071, and 80.50.100; reenacting and amending RCW  
3 80.50.090; adding new sections to chapter 80.50 RCW; and providing an  
4 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 an  
37 alternative energy resource facility with a nameplate generating

1 capacity of three hundred kilowatts or less. In the case of wind, a  
2 small alternative energy resource facility has the same meaning as  
3 small wind energy system.

4 (23) "Small wind energy system" means a wind energy system that:

5 (a) Is used to generate electricity;

6 (b) Has a nameplate capacity of three hundred kilowatts or less;

7 and

8 (c) Has a total height of one hundred seventy feet or less.

9 (24) "Total height" means the vertical distance from ground level  
10 to the tip of a wind generator blade when the tip is at its highest  
11 point.

12 (25) "Wind energy system" means equipment that converts and then  
13 stores or transfers energy from the wind into useful forms of energy.  
14 This equipment includes any base, blade, foundation, generator,  
15 nacelle, rotor, tower, transformer, vane, wire, inverter, batteries, or  
16 other component used in the system.

17 **Sec. 2.** RCW 80.50.060 and 2007 c 325 s 2 are each amended to read  
18 as follows:

19 (1) The provisions of this chapter apply to the construction of  
20 energy facilities which includes the new construction of energy  
21 facilities and the reconstruction or enlargement of existing energy  
22 facilities where the net increase in physical capacity or dimensions  
23 resulting from such reconstruction or enlargement meets or exceeds  
24 those capacities or dimensions set forth in RCW 80.50.020 (7) and (15).  
25 No construction of such energy facilities may be undertaken, except as  
26 otherwise provided in this chapter, after July 15, 1977, without first  
27 obtaining certification in the manner provided in this chapter.

28 (2) The provisions of this chapter apply to the construction,  
29 reconstruction, or enlargement of a new or existing energy facility  
30 that exclusively uses alternative energy resources and chooses to  
31 receive certification under this chapter, regardless of the generating  
32 capacity of the project.

33 (3)(a) The provisions of this chapter apply to the construction,  
34 reconstruction, or modification of electrical transmission facilities  
35 when:

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

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

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

14 (b) For the purposes of this subsection, "modify" means a  
15 significant change to an electrical transmission facility and does not  
16 include the following: (i) Minor improvements such as the replacement  
17 of existing transmission line facilities or supporting structures with  
18 equivalent facilities or structures; (ii) the relocation of existing  
19 electrical transmission line facilities; (iii) the conversion of  
20 existing overhead lines to underground; or (iv) the placing of new or  
21 additional conductors, supporting structures, insulators, or their  
22 accessories on or replacement of supporting structures already built.

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

26 (5) Applications for certification of energy facilities made prior  
27 to July 15, 1977, shall continue to be governed by the applicable  
28 provisions of law in effect on the day immediately preceding July 15,  
29 1977, with the exceptions of RCW 80.50.190 and 80.50.071 which shall  
30 apply to such prior applications and to site certifications  
31 prospectively from July 15, 1977.

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

35 (7) The provisions of this chapter apply to the installation of a  
36 small alternative energy resource facility if a person chooses to apply  
37 to the council in order to receive site certification for a small  
38 alternative energy resource facility under this chapter.

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

3       (1) The council shall receive all applications for energy facility  
4 site certification. Except as provided under sections 6 and 7 of this  
5 act, the following fees or charges for application processing or  
6 certification monitoring shall be paid by the applicant or certificate  
7 holder:

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

21       (b) Each applicant shall, in addition to the costs of the  
22 independent consultant provided by subsection (1)(a) of this section,  
23 pay such reasonable costs as are actually and necessarily incurred by  
24 the council and its members as designated in RCW 80.50.030 in  
25 processing the application. Such costs shall include, but are not  
26 limited to, council member's wages, employee benefits, costs of a  
27 hearing examiner, a court reporter, additional staff salaries, wages  
28 and employee benefits, goods and services, travel expenses within the  
29 state and miscellaneous expenses, as arise directly from processing  
30 such application.

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

37       The council shall submit to each applicant a statement of such  
38 expenditures actually made during the preceding calendar quarter which

1 shall be in sufficient detail to explain such expenditures. The  
2 applicant shall pay the state treasurer the amount of such statement to  
3 restore the total amount on deposit to the originally established  
4 level: PROVIDED, That such applicant may, at the request of the  
5 council, increase the amount of funds on deposit to cover anticipated  
6 expenses during peak periods of application processing. Any funds  
7 remaining unexpended at the conclusion of application processing shall  
8 be refunded to the applicant, or at the applicant's option, credited  
9 against required deposits of certificate holders.

10 (c) Each certificate holder shall pay such reasonable costs as are  
11 actually and necessarily incurred by the council for inspection and  
12 determination of compliance by the certificate holder with the terms of  
13 the certification relative to monitoring the effects of construction  
14 and operation of the facility.

15 Each certificate holder, within thirty days of execution of the  
16 site certification agreement, shall deposit twenty thousand dollars, or  
17 such other amount as may be specified by council rule, to cover costs  
18 provided for by subsection (1)(c) of this section. Reasonable and  
19 necessary costs of the council directly attributable to inspection and  
20 determination of compliance by the certificate holder with the terms of  
21 the certification relative to monitoring the effects of construction  
22 and operation of the facility shall be charged against such deposit.

23 The council shall submit to each certificate holder a statement of  
24 such expenditures actually made during the preceding calendar quarter  
25 which shall be in sufficient detail to explain such expenditures. The  
26 certificate holder shall pay the state treasurer the amount of such  
27 statement to restore the total amount on deposit to the originally  
28 established level: PROVIDED, That if the actual, reasonable, and  
29 necessary expenditures for inspection and determination of compliance  
30 in the preceding calendar quarter have exceeded the amount of funds on  
31 deposit, such excess costs shall be paid by the certificate holder.

32 (2) If an applicant or certificate holder fails to provide the  
33 initial deposit, or if subsequently required payments are not received  
34 within thirty days following receipt of the statement from the council,  
35 the council may (a) in the case of the applicant, suspend processing of  
36 the application until payment is received; or (b) in the case of a  
37 certificate holder, suspend the certification.



1 (3) All payments required of the applicant or certificate holder  
2 under this section are to be made to the state treasurer who shall make  
3 payments as instructed by the council from the funds submitted. All  
4 such funds shall be subject to state auditing procedures. Any  
5 unexpended portions thereof shall be returned to the applicant or  
6 certificate holder.

7 **Sec. 4.** RCW 80.50.090 and 2006 c 205 s 3 and 2006 c 196 s 6 are  
8 each reenacted and amended to read as follows:

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

14 (2) Subsequent to the informational public hearing, the council  
15 shall conduct a public hearing to determine whether or not the proposed  
16 site is consistent and in compliance with city, county, or regional  
17 land use plans or zoning ordinances. If it is determined that the  
18 proposed site does conform with existing land use plans or zoning  
19 ordinances in effect as of the date of the application, the city,  
20 county, or regional planning authority shall not thereafter change such  
21 land use plans or zoning ordinances so as to affect the proposed site.

22 (3) Prior to the issuance of a council recommendation to the  
23 governor under RCW 80.50.100 a public hearing, conducted as an  
24 adjudicative proceeding under chapter 34.05 RCW, the administrative  
25 procedure act, shall be held. At such public hearing any person shall  
26 be entitled to be heard in support of or in opposition to the  
27 application for certification.

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

30 (5) This section does not apply to sections 6 and 7 of this act.

31 **Sec. 5.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to  
32 read as follows:

33 (1) The council shall report to the governor its recommendations as  
34 to the approval or rejection of an application for certification within  
35 twelve months of receipt by the council of such an application, or such  
36 later time as is mutually agreed by the council and the applicant. If

1 the council recommends approval of an application for certification, it  
2 shall also submit a draft certification agreement with the report. The  
3 council shall include conditions in the draft certification agreement  
4 to implement the provisions of this chapter, including, but not limited  
5 to, conditions to protect state or local governmental or community  
6 interests affected by the construction or operation of the energy  
7 facility, and conditions designed to recognize the purpose of laws or  
8 ordinances, or rules or regulations promulgated thereunder, that are  
9 preempted or superseded pursuant to RCW 80.50.110 as now or hereafter  
10 amended.

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

13 (~~(a)~~) (i) Approve the application and execute the draft  
14 certification agreement; or

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

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

18 (b) The council shall reconsider such aspects of the draft  
19 certification agreement by reviewing the existing record of the  
20 application or, as necessary, by reopening the adjudicative proceeding  
21 for the purposes of receiving additional evidence. Such  
22 reconsideration shall be conducted expeditiously. The council shall  
23 resubmit the draft certification to the governor incorporating any  
24 amendments deemed necessary upon reconsideration. Within sixty days of  
25 receipt of such draft certification agreement, the governor shall  
26 either approve the application and execute the certification agreement  
27 or reject the application. The certification agreement shall be  
28 binding upon execution by the governor and the applicant.

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

33 (4) This section does not apply to sections 6 and 7 of this act.

34 NEW SECTION. Sec. 6. A new section is added to chapter 80.50 RCW  
35 to read as follows:

36 (1) In addition to the powers enumerated in this chapter, the

1 council has the following powers relating to small alternative energy  
2 resource facilities:

3 (a) To receive site certification applications for small  
4 alternative energy resource facilities that connect at the electric  
5 distribution level;

6 (b) To survey for and determine the safest known standards for the  
7 siting of small alternative energy resource facilities and adopt site  
8 certification standards based on the safest known standards for small  
9 alternative energy resource facilities;

10 (c) To charge a reasonable application processing fee for the  
11 actual and necessary cost incurred by the council and its members;

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

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

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

21 (b) Any person, before submitting an application for a small  
22 alternative energy resource facility site certification, may submit a  
23 letter to the council to inquire as to whether a proposed small  
24 alternative energy resource facility would require mitigation and  
25 receive a written cost estimate from the council of the cost of  
26 processing the application. The council must determine and respond in  
27 a timely manner.

28 (3) A small alternative energy resource facility site certification  
29 issued by the council preempts any permit issued by a local government.

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

32 The council and any local government in the state may enter into an  
33 interlocal agreement as provided under chapter 39.34 RCW for the  
34 purpose of permitting small alternative energy resource facilities  
35 within the geographic jurisdiction of the local government. The  
36 council may serve as the permitting authority for a local government if

1 the local government determines that it would be more cost effective  
2 for the council to permit small alternative energy resource facilities  
3 within their jurisdiction.

4 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act take effect  
5 January 1, 2011.

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