
HOUSE BILL 2527

State of Washington 61st Legislature 2010 Regular Session

By Representatives Morris, Chase, Hudgins, and Jacks

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1 AN ACT Relating to the energy facility site evaluation council; and
2 amending RCW 80.50.020, 80.50.030, 80.50.071, and 80.50.080.

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

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

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

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

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

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

18 (4) "Site" means any proposed or approved location of an energy

1 facility, alternative energy resource, or electrical transmission
2 facility.

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

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

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

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

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

36 (8) "Electrical transmission facilities" means electrical power
37 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, and any commercially
28 operated nuclear power facility, measured using maximum continuous
29 electric generating capacity, less minimum auxiliary load, at average
30 ambient temperature and pressure, and floating thermal power plants of
31 one hundred thousand kilowatts or more, including associated
32 facilities. For the purposes of this subsection, "floating thermal
33 power plants" means a thermal power plant that is suspended on the
34 surface of water by means of a barge, vessel, or other floating
35 platform;

36 (b) Facilities which will have the capacity to receive liquefied
37 natural gas in the equivalent of more than one hundred million standard

1 cubic feet of natural gas per day, which has been transported over
2 marine waters;

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

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

13 (e) Facilities capable of processing more than twenty-five thousand
14 barrels per day of petroleum or biofuel into refined products.

15 (16) "Land use plan" means a comprehensive plan or land use element
16 thereof adopted by a unit of local government pursuant to chapter
17 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by
18 chapter 325, Laws of 2007.

19 (17) "Zoning ordinance" means an ordinance of a unit of local
20 government regulating the use of land and adopted pursuant to chapter
21 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state
22 Constitution, or as otherwise designated by chapter 325, Laws of 2007.

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

30 (19) "Secretary" means the secretary of the United States
31 department of energy.

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

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

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

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

4 (1) There is created and established the energy facility site
5 evaluation council.

6 (2)(a) The chair of the council shall be appointed by the governor
7 with the advice and consent of the senate, shall have a vote on matters
8 before the council, shall serve for a term coextensive with the term of
9 the governor, and is removable for cause. The chair may designate a
10 member of the council to serve as acting chair in the event of the
11 chair's absence. The salary of the chair shall be determined under RCW
12 43.03.040. The chair is a "state employee" for the purposes of chapter
13 42.52 RCW. As applicable, when attending meetings of the council,
14 members may receive reimbursement for travel expenses in accordance
15 with RCW 43.03.050 and 43.03.060, and are eligible for compensation
16 under RCW 43.03.250.

17 (b) The chair or a designee shall execute all official documents,
18 contracts, and other materials on behalf of the council. (~~The
19 Washington state department of community, trade, and economic
20 development shall provide all administrative and staff support for the
21 council. The director of the department of community, trade, and
22 economic development has supervisory authority over the staff of the
23 council and shall employ such personnel as are necessary to implement
24 this chapter.~~) The Washington state utilities and transportation
25 commission shall provide all administrative and staff support for the
26 council. The Washington state utilities and transportation commission
27 has supervisory authority over the staff of the council and shall
28 employ such personnel as are necessary to implement this chapter. Not
29 more than three such employees may be exempt from chapter 41.06 RCW.

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

33 (i) Department of ecology;

34 (ii) Department of fish and wildlife;

35 (iii) Department of community, trade, and economic development;

36 (iv) Utilities and transportation commission; and

37 (v) Department of natural resources.

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

6 (i) Department of agriculture;

7 (ii) Department of health;

8 (iii) Military department; and

9 (iv) Department of transportation.

10 (c) Council membership is discretionary for agencies that choose to
11 participate under (b) of this subsection only for applications that are
12 filed with the council on or after May 8, 2001. For applications filed
13 before May 8, 2001, council membership is mandatory for those agencies
14 listed in (b) of this subsection.

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

22 (5) The city legislative authority of every city within whose
23 corporate limits an energy (~~(plant)~~) facility is proposed to be located
24 shall appoint a member or designee as a voting member to the council.
25 The member or designee so appointed shall sit with the council only at
26 such times as the council considers the proposed site for the city
27 which he or she represents, and such member or designee shall serve
28 until there has been a final acceptance or rejection of the proposed
29 site.

30 (6) For any port district wherein an application for a proposed
31 port facility is filed subject to this chapter, the port district shall
32 appoint a member or designee as a nonvoting member to the council. The
33 member or designee so appointed shall sit with the council only at such
34 times as the council considers the proposed site for the port district
35 which he or she represents, and such member or designee shall serve
36 until there has been a final acceptance or rejection of the proposed
37 site. The provisions of this subsection shall not apply if the port

1 district is the applicant, either singly or in partnership or
2 association with any other person.

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

5 (1) The council shall receive all applications for energy facility
6 site certification. ~~((The following fees or charges for application
7 processing or certification monitoring shall be paid by the applicant
8 or certificate holder:))~~ Each applicant shall pay costs as are
9 necessarily incurred by the council in processing an application.

10 (a) ~~((A fee of twenty five thousand dollars for each proposed site,
11 to be applied toward the cost of the independent consultant study
12 authorized in this subsection, shall accompany the application and
13 shall be a condition precedent to any further consideration or action
14 on the application by the council))~~ Each applicant shall, at the time
15 of application submission, deposit fifty thousand dollars, or such
16 greater amount as may be specified by the council after consultation
17 with the applicant. Costs that may be charged against the deposit
18 include, but are not limited to, independent consultants costs,
19 councilmember's wages, employee benefits, costs of a hearing examiner,
20 costs of a court reporter, staff salaries, wages and employee benefits,
21 goods and services, travel expenses, and miscellaneous direct and
22 indirect expenses as arise directly or indirectly from processing an
23 application.

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

33 (b) ~~((Each applicant shall, in addition to the costs of the
34 independent consultant provided by subsection (1)(a) of this section,
35 pay such reasonable costs as are actually and necessarily incurred by
36 the council and its members as designated in RCW 80.50.030 in
37 processing the application. Such costs shall include, but are not~~

1 ~~limited to, council member's wages, employee benefits, costs of a~~
2 ~~hearing examiner, a court reporter, additional staff salaries, wages~~
3 ~~and employee benefits, goods and services, travel expenses within the~~
4 ~~state and miscellaneous expenses, as arise directly from processing~~
5 ~~such application)) The council may commission its own independent
6 consultant study to measure the consequences of the proposed energy
7 facility on the environment or any matter that it deems essential to an
8 adequate appraisal of the site. The council shall provide an estimate
9 of the cost of the study to the applicant and is payable subject to the
10 applicant giving prior approval.~~

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 (c) 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 ~~((~~(e)~~))~~ (2) Each certificate holder shall pay such reasonable costs
29 as are ~~((actually and))~~ necessarily incurred by the council for
30 inspection and determination of compliance by the certificate holder
31 with the terms of the certification relative to monitoring the effects
32 of construction ~~((and)),~~ operation, and site restoration of the
33 facility.

34 (a) Each certificate holder, within thirty days of execution of the
35 site certification agreement, shall have on deposit ~~((twenty))~~ fifty
36 thousand dollars, or such ~~((other))~~ greater amount as may be specified
37 by the council ~~((rule, to cover costs provided for by subsection (1)(c)~~
38 ~~of this section))~~ after consultation with the certificate holder.

1 ~~((Reasonable and necessary costs of the council directly attributable~~
2 ~~to)) Costs that may be charged against the deposit include, but are not
3 limited to, councilmember's wages, employee benefits, costs of a
4 hearing examiner, costs of a court reporter, staff salaries, wages and
5 employee benefits, contracts, goods and services, travel expenses, and
6 miscellaneous direct and indirect expenses as arise directly or
7 indirectly from inspection and determination of compliance by the
8 certificate holder with the terms of the certification ~~((relative to~~
9 ~~monitoring the effects of construction and operation of the facility~~
10 ~~shall be charged against such deposit))~~.~~

11 (b) The council shall submit to each certificate holder a statement
12 of such expenditures actually made during the preceding calendar
13 quarter which shall be in sufficient detail to explain such
14 expenditures. The certificate holder shall pay the state treasurer the
15 amount of such statement to restore the total amount on deposit to the
16 originally established level: PROVIDED, That if the actual~~((~~
17 ~~reasonable, and necessary))~~ expenditures for inspection and
18 determination of compliance in the preceding calendar quarter have
19 exceeded the amount of funds on deposit, such excess costs shall be
20 paid by the certificate holder.

21 ~~((+2))~~ (3) If an applicant or certificate holder fails to provide
22 the initial deposit, or if subsequently required payments are not
23 received within thirty days following receipt of the statement from the
24 council, the council may (a) in the case of the applicant, suspend
25 processing of the application until payment is received; or (b) in the
26 case of a certificate holder, suspend the certification.

27 ~~((+3))~~ (4) All payments required of the applicant or certificate
28 holder under this section are to be made to the state treasurer who
29 shall make payments as instructed by the council from the funds
30 submitted. All such funds shall be subject to state auditing
31 procedures. Any unexpended portions thereof shall be returned to the
32 applicant or certificate holder.

33 (5) Reasonable and necessary costs under RCW 80.50.040(1) incurred
34 by the council in implementing and administering this chapter may be
35 assessed against applicants and certificate holders that are subject to
36 the requirements of this chapter.

1 **Sec. 4.** RCW 80.50.080 and 1977 ex.s. c 371 s 6 are each amended to
2 read as follows:

3 (1) After the council has received a site application, the attorney
4 general shall appoint an assistant attorney general as a counsel for
5 the environment. ((The counsel for the environment shall represent the
6 public and its interest in protecting the quality of the environment.
7 Costs incurred by the counsel for the environment in the performance of
8 these duties shall be charged to the office of the attorney general,
9 and shall not be a charge against the appropriation to the energy
10 facility site evaluation council. He))

11 (2) After a political subdivision has received an application for
12 an energy facility with a generating capacity of ten thousand kilowatts
13 or more, or an electric transmission facility in excess of one hundred
14 fifteen thousand volts and otherwise not within the jurisdiction of the
15 council, the attorney general shall appoint an assistant attorney
16 general as a counsel for the environment.

17 (3) The counsel for the environment represents the public and its
18 interest in protecting the quality of the environment. The public
19 interest must be determined in each case by the counsel for the
20 environment and may include, but is not limited to, appropriate
21 consideration of the project's aesthetics, cultural resources,
22 lighting, fish and wildlife protection, setback distances from property
23 owners, maximum audible noise levels, means of measuring noise, and
24 interference with radio, telephone, or television signals,
25 decommissioning, and site restoration.

26 (4) Counsel for the environment shall be accorded all the rights,
27 privileges, and responsibilities of an attorney representing a party in
28 a formal action. This section shall not be construed to prevent any
29 person from being heard or represented by counsel in accordance with
30 the other provisions of this chapter.

31 (5) Reasonable costs of the counsel for the environment must be
32 paid by the applicant.

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