

HOUSE BILL REPORT

SHB 1081

As Amended by the Senate

Title: An act relating to small facility siting.

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

Sponsors: House Committee on Technology, Energy & Communications (originally sponsored by Representatives Morris, Frockt and Moeller).

Brief History:

Committee Activity:

Technology, Energy & Communications: 1/18/11, 2/1/11 [DPS].

Floor Activity:

Passed House: 3/2/11, 92-3.

Senate Amended.

Passed Senate: 4/1/11, 48-0.

Brief Summary of Substitute Bill

- Authorizes the Energy Facility Site Evaluation Council (EFSEC) to permit small alternative energy resource facilities.
- Permits the EFSEC and local governments to enter into inter-local agreements to permit small alternative energy resource facilities within the geographic jurisdiction of the local government.
- Authorizes the EFSEC to delegate authority for ensuring compliance with the terms of any certificate or permit issued by the EFSEC to other state or local agencies.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives McCoy, Chair; Crouse, Ranking Minority Member; Short, Assistant Ranking Minority Member; Anderson, Billig, Carlyle, Dahlquist, Eddy, Harris, Hasegawa, Jacks, Kelley, Kristiansen, Lias, McCune, Morris and Nealey.

Minority Report: Without recommendation. Signed by 1 member: Representative Haler.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Scott Richards (786-7156).

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.

Energy Facility Site Evaluation Council.

The Energy Facility Site Evaluation Council (EFSEC) provides a "one-stop" siting process for major energy facilities in Washington. The EFSEC coordinates all evaluation and licensing steps for siting certain energy facilities in Washington. The EFSEC specifies the conditions of construction and operation. If approved, a site certification agreement is issued in lieu of any other individual state or local agency permits.

Siting Alternative Energy Resources Using the EFSEC.

Energy facilities of any size that exclusively use alternative energy resources can also opt-in to the EFSEC site 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.

Eligible alternative energy resources include energy facilities of the following types: (1) wind; (2) solar energy; (3) geothermal energy; (4) landfill gas; (5) wave or tidal action; or (6) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

The EFSEC Site Certification Process.

The EFSEC certification process consists of initial public hearings followed by the issuance of a draft Environmental Impact Statement (EIS). The EFSEC 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 the EFSEC will recommend preemption of any local land use regulations. This proceeding is a formal hearing process where the EFSEC hears from the official parties, the Attorney General's Council for the Environment, and any interveners.

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

After a site certification is approved, the 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 net metering system. Under current law, a net metering system must generate no more than 100 kilowatts using water, wind, solar energy, biogas from animal waste, fuel cells, and a facility that produces electricity and thermal energy from a common fuel source.

Summary of Substitute Bill:

Site Permits for Small Alternative Energy Resource Facilities.

The Energy Facility Site Evaluation Council (EFSEC) is authorized to issue site permits, using generally established safety standards for the construction, reconstruction, or enlargement of small alternative energy resource facilities. Site permits for small alternative energy resources are exempted from the following: (1) the EFSEC's hearing and adjudicatory process; and (2) review and approval by the Governor. The EFSEC may delegate authority to EFSEC staff to issue small alternative energy resource facility site permits.

A person may apply to the EFSEC for a site permit for a small alternative energy resource facility, if one or more of the following conditions applies: (1) the facility is located in a county or municipality that has not adopted ordinances for the permitting of small alternative energy resource facilities; (2) the facility is located in a county or municipality that has not updated its ordinances for the permitting of small alternative energy resource facilities in over 10 years; or (3) the county or municipal permitting process for a proposed small alternative energy resource facility exceeds six months from time of application and the proposed facility meets generally established safety standards.

Once a site permit for a small alternative energy resource facility is issued by the EFSEC, the site permit may not be revoked or superseded by any local ordinance adopted by the local jurisdiction after the permit is issued, even if the small alternative energy resource facility permitted is inconsistent with the newly adopted local ordinance.

Small Alternative Energy Resource Facility.

"Small alternative energy resource facility" is defined to mean any facility that meets the definition of a "net metering system" and does not use biomass as a fuel.

Mitigation and Cost Inquiry Letter.

Any person, before submitting an application for a small alternative energy resource facility site permit, may submit a letter to the EFSEC to inquire as to whether a proposed small alternative energy resource facility would require mitigation and receive a written estimate from the EFSEC of the cost of processing the application. The EFSEC must provide a response within 30 days of receiving such a letter of inquiry.

Established Safety Standards for Small Alternative Energy Resource Facilities.

The EFSEC must survey for and determine generally established safety standards for each type of small alternative energy resource facility and adopt site permitting standards based on the review of these standards.

In surveying for and determining generally established safety standards, the EFSEC must use existing local municipal and county small alternative energy resource facility ordinances in Washington adopted in the last 10 years, giving preference to ordinances established in neighboring jurisdictions to the jurisdiction where the small alternative energy resource facility is proposed. If there are no existing local municipal and county ordinances in Washington relating to small alternative energy resource facilities adopted in the last 10 years, then the EFSEC must use existing state, local, or municipal ordinances in the Western Electric Coordinating Council (WECC) geographic area adopted in the last 10 years. If there are no existing state, local, or municipal ordinances relating to small alternative energy resource facilities in the WECC geographic area adopted in the last 10 years, then the EFSEC must use existing state, local, or municipal ordinances adopted in the United States in the last 10 years.

Site Permit Review Fee.

The EFSEC may charge a fee that covers the costs incurred by the EFSEC in reviewing a small alternative energy resource facility site permit and of compliance inspection costs delegated to local governments. The EFSEC must develop and charge a fee that provides the lowest possible cost to the applicant.

Judicial Review.

A site permitting decision by the EFSEC regarding a small alternative energy resource facility is subject to judicial review, and a petition for review must be filed within 30 days after the date of the permitting decision by the EFSEC.

Interlocal Agreements.

The EFSEC and any local government in the state may enter into an interlocal agreement for the purpose of authorizing the EFSEC to issue permits for small alternative energy resource facilities within the geographic jurisdiction of the local government. The EFSEC may serve as the permitting authority for a local government if the local government determines that it would be more cost-effective for the EFSEC to permit small alternative energy resource facilities within their jurisdiction.

Delegation of On-Site Compliance Inspections.

The EFSEC may delegate authority for ensuring compliance with the terms of any site certificate or permit issued by the EFSEC to other state or local agencies.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment: (1) strikes everything in the underlying bill; (2) requires the Department of Commerce (Commerce), in consultation with the Washington State University Energy Extension and state and county organizations, to recommend a range of model ordinances for siting and permitting small-scale renewable energy systems by December 31, 2012; (3) requires Commerce to report its recommendations to the Legislature and to make its recommendations available for counties, cities, and statewide city and county

organizations; (4) requires counties or cities, without ordinances to site small-scale renewable energy systems, to adopt ordinances considering Commerce's recommendations following specified generating capacities; (5) provides that any recommended ordinance may be tailored to meet local circumstances as long as the generating capacity threshold is met; (6) defines small scale renewable energy systems as a wind facility with a generating capacity of not more than five megawatts and any facility that meets the definition of a net metering system except facilities that use biomass as a fuel; (7) prohibits petitions alleging noncompliance with provisions of this act relating to adoption of small scale renewable energy system ordinances from being heard by the Growth Management Hearing Board; and (8) provides that the act is null and void if funding is not provided in the omnibus appropriations act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) The process in the bill gives a number of options to local governments and developers of small alternative energy resource facilities. City and county ordinances are often out-of-date. It is too much to ask local governments to keep expertise on staff to site these systems that are not frequently sited. The Energy Facility Site Evaluation Council (EFSEC) does have the expertise to site these systems. There should be an expedited process if these facilities meet established safety standards. This bill will insure more consistency across the state in the siting of these facilities. The bill also recognizes that the cost of siting these facilities through the EFSEC process should be less than larger alternative energy resources. The definition for small alternative energy resources should be expanded to include "distributed generation" as defined under the Energy Independence Act (Initiative 937). As a developer of small alternative energy resource facilities, we have lost customers because of inadequate local ordinances in several counties in Washington. In Kittitas County, the development of a county permitting ordinance broke down recently. Developers of large wind energy systems in the county have the option to go to the EFSEC to have a wind farm sited; however, the small developer or land owner does not have access to a siting process that provides a low cost way of siting these facilities. This bill would give a small developer or land owner a process for siting these facilities when the county does not have appropriate ordinances. There is an industry in the state ready to get to work and the lack of appropriate local ordinances is standing in the way.

(With concerns) There needs to be a local process for considering the issues especially concerning biomass energy facilities. The bill uses the term 'safety.' In the net metering statute, there is a provision that allows an utility to restrict interconnections on any distribution line due to safety and reliability concerns. The bill should be clarified to make sure utilities are still allowed to restrict interconnections if there are safety concerns.

(Opposed) This bill preempts local land use planning and permitting. The Legislature should provide targeted resources and technical assistance to those jurisdictions that need assistance in developing local ordinances versus a statewide mandate. The proposed process is located in Olympia instead of current local and accessible processes. There is a question of whether the EFSEC will assume the liability associated with these permits. Starting last year, sample ordinances are being made available online by the Municipal Research and Services Center and local governments should access these best practices and incorporate them into their ordinances. This bill only deals with safety issues and does not address the other issues surrounding the placement of these facilities in high density areas of the state.

Persons Testifying: (In support) Representative Morris, prime sponsor; Danielle Dixon, Northwest Energy Coalition; Teresa Campbell, Highland Communications and Highland Energy; Mel Dyk; Chuck Collins, Cascade Power Group; and Terry Meyer, Local Energy Alliance.

(With concerns) Sandra Romero, Thurston County; and Dave Warren, Washington Public Utilities District Association.

(Opposed) Scott Merriman, Washington State Association of Counties; and Dave Williams, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.