

SENATE BILL REPORT

SHB 1081

As of May 3, 2011

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: Passed House: 3/02/11, 92-3.

Committee Activity: Environment, Water & Energy: 3/09/11.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: William Bridges (786-7416)

Background: The process for siting and constructing small wind 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 (EFSEC). EFSEC is the permitting and certifying authority for the siting of major energy facilities in Washington. An EFSEC site certification 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.

EFSEC Members. EFSEC is comprised of a chair appointed by the Governor, and representatives from five state agencies: the Departments of Commerce, Ecology, Fish and Wildlife, and Natural Resources, and the Washington Utilities and Transportation Commission. Four other departments may each choose to participate in EFSEC for a particular project: Agriculture, Health, Transportation, and Military. Finally, local governments must also appoint members to the council for the review of proposed facilities located in their jurisdictions.

EFSEC Jurisdiction. EFSEC's siting jurisdiction includes large energy facilities, such as thermal electric power plants with a generating capacity of 350 megawatts or greater. Energy facilities of any size that exclusively use alternative energy resources, such as wind power, can also opt-in to the EFSEC review and certification process.

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.

Net Metering. Net metering allows electricity customers to offset their consumption of purchased electricity with electricity generated by their own small scale renewable systems. Under current law, a net metering system must generate no more than 100 kilowatts using cogeneration, fuel cells, water, wind, solar energy, or biogas.

Western Electricity Coordinating Council (WECC). WECC is a regional electric reliability council that coordinates and ensures the reliability of the Western Interconnection Bulk Power System. Its membership includes transmission operators, utilities, utility customers, and state and provincial regulators. The WECC territory covers the provinces of Alberta and British Columbia, the northern portion of Baja California, Mexico, and all or portions of the 14 western states.

Summary of Bill: Authorizing EFSEC to Site Small Alternative Energy Resource Facilities. EFSEC is authorized to issue site permits, using generally established safety standards, for the construction, reconstruction, or enlargement of small alternative energy resource facilities (qualifying facilities). An EFSEC site permit for qualifying facilities (1) preempts any local ordinance relating to such facilities and (2) may not be revoked or superseded by a local government after the permit is issued. A qualifying facility means any facility that meets the definition of a net metering system and does not use biomass as a fuel.

Creating a Streamlined EFSEC Process. EFSEC must develop a site permitting process for qualifying facilities and may delegate to staff the issuance of such permits. Permits issued under this new process are exempt from (1) EFSEC's hearing and adjudicatory process and (2) review and approval by the Governor. However, a permitting decision regarding a qualifying facility is subject to judicial review under the Administrative Procedures Act. A petition for review must be filed within 30 days after the date of decision.

The site permitting process for qualifying facilities applies to one or more of the following conditions: (1) the facility is located in a county or municipality that has not adopted ordinances for permitting qualifying facilities; (2) the facility is located in a county or municipality that has not updated its ordinances for permitting qualifying facilities in over ten years; or (3) the county or municipal permitting process for a proposed qualifying facility exceeds six months from time of application, and the proposed facility meets generally established safety standards.

Authorizing Cost Estimates for Mitigation and Processing. Before submitting a permit application to EFSEC for a qualifying facility, a person may submit a letter to EFSEC asking whether the proposed facility would require mitigation. Within 30 days of receiving the letter, EFSEC must explain any required mitigation and provide a written estimate of the cost of processing the application.

Established Safety Standards for Small Alternative Energy Resource Facilities. EFSEC must survey for and determine generally established safety standards for each type of qualifying facility and adopt site permitting standards based on the review of these standards. When conducting the survey, EFSEC must use existing local ordinances adopted in Washington during the last ten years for qualifying facilities, giving preference to ordinances established in jurisdictions neighboring the one where the qualifying facility is proposed. If there are no

relevant ordinances, EFSEC must use, in the following order, similar ordinances in the WECC or United States adopted in the last ten years.

Authorizing a Fee to Review Site Permits. EFSEC may charge a fee to cover the following costs: (1) reviewing site permits for small alternative energy resource facilities; and (2) compliance inspections delegated to local governments. EFSEC must develop and charge a fee that provides the lowest possible cost to the applicant.

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

Delegating On-Site Compliance Inspections. EFSEC may delegate authority for ensuring compliance with the terms of any site certificate or permit issued by EFSEC to other state or local agencies.

Appropriation: None.

Fiscal Note: Available.

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

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2011.

Staff Summary of Public Testimony: PRO: This is a workable and bipartisan bill that is the result of the prime sponsor's work over the last four years. The current siting process is a barrier to the deployment of small renewable systems because it is too expensive for developers and because many local governments lack time and expertise to develop appropriate standards. This bill will allow EFSEC to apply its expertise and let locals enforce the siting permit. Farmers need the bill to cover 5 megawatt systems to help them with their irrigation costs. This bill is needed because local governments have no budgets, inadequate or no ordinances, or are controlled by special interests who oppose wind turbines.

CON: Counties and cities support renewable energy but oppose preemption. The bill proponents seek preemption because they failed to get the result they wanted after using a local process that was open, and which resulted in a decision that was made by locally elected officials. This bill will create a closed process with non-elected staff in Olympia making siting decisions. This is a fundamental departure from the land use process. The cities have already posted model ordinances on the Municipal Research and Services Center website. While the Legislature has been entertaining preemption bills for several years, there has been no effort to help local governments with expertise or money to assist their siting efforts. Local governments want help not preemption.

OTHER: Bill does not distinguish between wind projects with and without blades. The current local siting process works for certain wind technologies that do not use blades.

Persons Testifying: PRO: Representative Morris, prime sponsor; Catherine Clerf; Jill MacIntyre Witt, WA Local Energy Alliance; Terry Meyer, Cascade Community Wind; Jack Wheatley, self.

CON: Scott Merriman, WSAC; Dave Williams, Assn. of Washington Cities.

OTHER: Ted Thomas, NW Windpower, Washington Small Wind Association.