

# SENATE BILL REPORT

## SHB 1081

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As Reported by Senate Committee On:  
Environment, Water & Energy, March 23, 2011  
Energy, Natural Resources & Marine Waters, February 23, 2012

**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; 1/16/12, 80-10.

**Committee Activity:** Environment, Water & Energy: 3/09/11, 3/23/11 [DPA, DNP, w/oRec].

Energy, Natural Resources & Marine Waters: 2/22/12, 2/23/12 [DPA, DNP, w/oRec].

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### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Majority Report:** Do pass as amended.

Signed by Senators Rockefeller, Chair; Nelson, Vice Chair; Honeyford, Ranking Minority Member; Chase and Ranker.

**Minority Report:** Do not pass.

Signed by Senators Delvin and Holmquist Newbry.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Morton.

**Staff:** William Bridges (786-7416)

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### SENATE COMMITTEE ON ENERGY, NATURAL RESOURCES & MARINE WATERS

**Majority Report:** Do pass as amended.

Signed by Senators Ranker, Chair; Delvin, Ranking Minority Member; Morton, Ranking Minority Member; Hargrove and Swecker.

**Minority Report:** Do not pass.

Signed by Senators Regala, Vice Chair; Fraser.

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*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.*

**Minority Report:** That it be referred without recommendation.

Signed by Senator Stevens.

**Staff:** William Bridges (786-7416)

**Background:** The process for siting and constructing small wind energy systems is generally governed by local ordinances. It may require 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 composed of representatives from five state agencies – the Departments of Commerce, Ecology, Fish and Wildlife, and Natural Resources; and the Washington Utilities and Transportation Commission – and a chair appointed by the Governor. 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.

Alternative Energy Resource. Under the EFSEC process, an alternative energy resource includes energy facilities of the following types: wind, solar, geothermal, landfill gas, wave, untreated wood, and field residues.

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. 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:** The bill as referred to committee not considered.

**Summary of Bill (Recommended Amendments):** Authorizing EFSEC to Site Small Alternative Energy Resource Facilities. EFSEC is authorized to issue site permits, using generally established safety standards, mitigation requirements, environmental regulations, and building code standards for the construction, reconstruction, or enlargement of small alternative energy resource facilities (qualifying facilities). A qualifying facility includes facilities of the following types that have an electrical generating capacity of not more than 100 kilowatts: wind, solar, geothermal, landfill gas, wave, untreated wood, and field residues. 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 site permit for qualifying utilities may not preempt the following: (1) any provision of chapter 80.60 RCW; (2) any law, rule or standard governing the reliability or safety of an electric utility's distribution or transmission system; or (3) any condition of interconnection required by an electric utility.

Creating a Streamlined EFSEC Process. EFSEC must develop a site permitting process for qualifying facilities and may delegate the issuance of such permits to staff. 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 from the effective date of the bill; or (3) the county or municipal permitting process for a proposed qualifying facility exceeds one year from time of application, and the proposed facility meets generally established standards, requirements, and regulations.

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.

Establishing Safety Standards for Small Alternative Energy Resource Facilities. EFSEC must survey for and determine generally established safety standards, mitigation requirements, environmental regulations, and building code standards for each type of qualifying facility and adopt site permitting standards, based on its survey. 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 similar ordinances adopted in the last ten years in WECC or United States; using WECC ordinances first, followed by United States ordinances.

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.

Requires Annual Reports. EFSEC must deliver annual reports to the Legislature on the number of small alternative energy resource facilities it has sited and describe each facility by type, generating capacity, location, and total cost of the permit fee.

**EFFECT OF CHANGES MADE BY ENERGY, NATURAL RESOURCES & MARINE WATERS (Recommended Amendments):** Intent section is removed. EFSEC is required to survey and use generally established mitigation requirements, environmental regulations, and building code standards, in addition to safety standards. The condition allowing an applicant to use EFSEC if the facility is located in an area that has not updated its ordinances in over ten years is changed so that the 10-year period is measured from the effective date of the bill. EFSEC must deliver annual reports to the Legislature on the number of small alternative energy resource facilities it has sited and describing each facility by type, generating capacity, location, and total cost of the permit fee. Various technical changes are made.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony as Heard in Committee (Energy, Natural Resources & Marine Waters):** PRO: The prime sponsor has been working on this issue for ten years and this bill is the best balance of carrots and sticks that has been developed. The bill has garnered significant support because it preserves local control while advancing renewable energy. The bill is needed as a back stop for those local governments that either have antiquated siting standards for small renewable energy projects or none at all. Siting issues are the biggest obstacle to the advancement of renewable energy. The new EFSEC process created in this bill will be cheaper and less time consuming than the regular EFSEC process. The 100 kilowatt cap should be raised to either 2 megawatt or 5 megawatt. Farmers are experiencing higher energy costs and they could greatly benefit from the siting of small renewable energy facilities on their property.

CON: Local governments are the appropriate venue for siting energy facilities, especially those as large as a football field or as tall as 100 feet, because they understand local conditions and are accustomed to balancing competing interests.

OTHER: Electric utilities are very concerned that their safety, interconnection, and reliability standards are not preempted by EFSEC. Renewable developers may find EFSEC more expensive that they thought. The bill's intent section should be deleted, some accountability measure should be included, and EFSEC should also survey land use

standards and mitigation requirements. EFSEC does not have experience siting small energy facilities. EFSEC would consider local regulations but not necessarily adhere to them.

**Persons Testifying (Energy, Natural Resources & Marine Waters):** PRO: Representative Morris, prime sponsor; Catherine Clerf; Lynne Dial, NW Energy Coalition; Kent Lopez, WA Rural Electric Cooperative Assn.; Terry Meyer, WA Local Energy Alliance; John Wheatley.

CON: Doug Levy, City of Everett; Carl Schroeder, Assn. of WA Cities.

OTHER: Kathleen Collins, PacificCorp; Scott Merriman, WA State Assn. of Counties; Dave Warren, WA Public Utility Districts Assn; Al Wright, EFSEC.