

SENATE BILL REPORT

SB 5228

As of May 2, 2011

Title: An act relating to small facility siting.

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

Sponsors: Senators Rockefeller, Honeyford, Delvin, Kline and Chase.

Brief History:

Committee Activity: Environment, Water & Energy: 2/02/11.

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. An EFSEC site permit for alternative energy resource facilities preempts any local ordinance relating to such facilities. An alternative energy resource facility has the same meaning as a net metering system.

Creating a Streamlined EFSEC Process. A person may apply to 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 permitting small alternative energy resource facilities; (2) the facility is located in a county or municipality that has not updated its ordinances for permitting small alternative energy resource facilities in over ten 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.

EFSEC may delegate authority to EFSEC staff to issue site permits for small alternative energy resource facilities. These permits are exempt from the following: (1) EFSEC's hearing and adjudicatory process; and (2) review and approval by the Governor.

Authorizing Cost Estimates for Mitigation and Processing. Before submitting a permit application to EFSEC for siting a small alternative energy resource 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 for each type of small alternative energy resource 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 that concern small alternative energy resource facilities. 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: The current EFSEC process is too expensive for small developers. There needs to be an affordable path to site small renewable systems when local governments have siting moratoria or high permit costs. The streamlined process in the bill should apply to 5 megawatt (MW) systems or less. Small renewable energy systems offer farmers cheaper power for irrigation, but the bill's 100 kilowatt (kW) limit is too low to provide enough power.

CON: The bill should remain at 100 kW and the preemption language should be removed. Any references to biomass or biogas should be removed. EFSEC is designed for industrial-sized generators, not smaller systems. This bill is an expansion of EFSEC's authority, which harms local control and is undemocratic. The bill will create an administrative permitting process without oversight or public input. We oppose increasing the jurisdictional limit to 5 MW. Local governments are the boots on the ground and their authority should not be relinquished to the state. Small projects are more likely to be sited in cities where relations with neighbors are important. Cities should be given the chance to do the right thing. Counties have been working on model ordinances. Growth Management Act should be the vehicle for encouraging local governments to act on small renewable systems. Definition of eligible systems should exclude anything with smoke stacks. Biomass and biogas are false solutions to climate change.

OTHER: Siting safe, reliable, and sustainable alternative energy resources is good but the bill should be limited to 100 kW systems. Preemption language in the bill should not be extended. Net-metering interconnection standards should be recognized in the bill. Local government is best to site small projects. The time limits in the jurisdiction section of the bill are unclear; for example, can the six-month limit on applications be extended?

Persons Testifying: PRO: Catherine Clerf; Terry Meyer, Local Energy Alliance of WA; Jack Wheatley.

CON: Duff Badgley, No Biomass Burn; Dick Curtis; Tom Davis, Mason County; Steven Fenwick; Danielle Hauser, Olympia Rising Tide; Paul Jewell, Kittitas County; Scott Merriman, WSAC; Dr. Jeffrey Morris, Sound Resource Management; Michelle Morris, Concerned Citizens of Thurston County; Pat Rasmussen; Dave Williams, AWC.

OTHER: Robert Johnson, Lewis County; Sandra Romero, Thurston County Brd. of Commissioners; Dave Warren, WPUA.