

SENATE BILL REPORT

SB 5228

As Reported by Senate Committee On:
Environment, Water & Energy, February 16, 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, 2/16/11 [DPS, DNP].

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: That Substitute Senate Bill No. 5228 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senator Holmquist Newbry.

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

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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.

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 (Recommended Substitute): Authorizing EFSEC to Site Small Alternative Energy Resource Facilities. EFSEC is authorized to issue site permits – for the construction, reconstruction, or enlargement of small alternative energy resource facilities. An EFSEC site permit for small alternative energy resource facilities preempts any local ordinance or state law relating to such facilities. Small alternative energy resource facility means a wind facility with a generating capacity up to five megawatts, and any facility that meets the definition of a net metering system, except those that use biomass as a fuel.

Creating a Streamlined EFSEC Process. A person may apply to EFSEC for a site permit for a small alternative energy resource facility if the facility is located in a county or municipality that has not adopted ordinances for permitting such facilities. By December 31, 2012, EFSEC must adopt a streamlined process for issuing site permits for small alternative energy facilities after consulting with the Municipal Research Council, the Washington State Association of Counties, and the Association of Washington Cities. The process and siting standards must be substantially similar to existing ordinances or model ordinances, and must incorporate net metering interconnection requirements.

EFSEC may delegate authority to EFSEC staff to issue site permits under the streamlined process. Site permits issued under the streamlined process are exempt from the following: (1) EFSEC's hearing and adjudicatory process; and (2) review and approval by the Governor. However, site permits may be judicially appealed using the current EFSEC process.

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.

EFFECT OF CHANGES MADE BY ENVIRONMENT, WATER & ENERGY COMMITTEE (Recommended Substitute): Modifies the definition of small alternative energy resource facility. Limits EFSEC's new streamlined siting authority to local governments that have not adopted an ordinance for the small alternative energy resource facilities. Requires EFSEC to adopt a new streamlined process for issuing site permits for small alternative energy facilities after consulting with the Municipal Research Council, the Association of Washington Cities, and the Washington State Association of Counties.

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 on Original Bill: 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.