

SENATE BILL REPORT

SB 6018

As of January 25, 2012

Title: An act relating to small facility siting.

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

Sponsors: Senators Ranker, Kline and Frockt.

Brief History:

Committee Activity: Energy, Natural Resources & Marine Waters: 1/11/12.

SENATE COMMITTEE ON ENERGY, NATURAL RESOURCES & MARINE WATERS

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 certificating 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. FSEC's siting jurisdiction includes large energy facilities, such as thermal electric power plants with a generating capacity of 350 megawatts (MW) 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. 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 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; 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 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.

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: PRO: Because some local governments are reluctant to site wind turbines, Cascade Community Wind has installed two turbines instead of 20, spent thousands of dollars instead of millions, created ten jobs instead of 100, and paid thousands of dollars in taxes instead of millions. Many local governments do not have the experience in siting wind turbines; for example, in Cowlitz County it took 14 months to site a 45-foot wind turbine on an eight-acre parcel. The definition of small alternative energy resource facility should be changed from 100 kilowatts to five MW, and anaerobic digesters should be added.

CON: Siting of small alternative energy resource facilities is not an issue of statewide significance. The Growth Management Act recognizes that these facilities should be sited by local governments. The state government should not interfere with local government siting decisions; local governments have the ability, sensitivity, and experience in siting these small facilities. The local permitting system is not broken. The Office of Regulatory Assistance is the best venue to deal with isolated siting problems. Cities should be exempted from the bill because the problems appear to be happening in county-controlled areas. Small renewable energy facilities can be too large for city neighborhoods: for example, 80- to 140-foot wind turbines or solar systems that are two-football fields long. Because the definition of small alternative energy resource facility is linked to a definition in the net metering law, any change to the net metering law could increase the size of these so-called small facilities to two MW or five MW.

OTHER: Cooperatives serve unincorporated communities that have hamlet or village agreements similar to home owner associations, and some of these agreements prohibit wind facilities. The bill should be amended to address this issue; for example, in 2009 the Legislature limited the ability of home owner associations to prohibit solar panels.

Persons Testifying: PRO: Lynne Dial, WA Local Energy Alliance; Stanley Florek, Tangerine Power; Terry Meyer, Cascade Community Wind, WA Local Energy Alliance.

CON: Paul Jewell, Kittitas County Board of Commissioners; Scott Merriman, WA State Assn. of Counties; Dave Williams, Assn. of WA Cities.

OTHER: Kent Lopez, WA Rural Electric Cooperative Assn.