
SUBSTITUTE HOUSE BILL 1081

State of Washington

62nd Legislature

2011 Regular Session

By House Technology, Energy & Communications (originally sponsored by Representatives Morris, Frockt, and Moeller)

READ FIRST TIME 02/04/11.

1 AN ACT Relating to small facility siting; amending RCW 80.50.040,
2 80.50.060, 80.50.071, and 80.50.100; reenacting and amending RCW
3 80.50.090; adding new sections to chapter 80.50 RCW; creating a new
4 section; providing an effective date; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that small alternative
7 energy resource facilities provide various benefits to local
8 communities such as: Reducing emissions of air, soil, and water
9 pollutants; creating local jobs; securing a diversified energy supply;
10 and contributing to the development of a clean, sustainable energy
11 industry. The legislature finds that the implementation of state
12 policies that support the development of small alternative energy
13 resource facilities may be hindered by the lack of appropriate local
14 ordinances to permit the siting of these facilities.

15 The legislature finds that the energy facility site evaluation
16 council maintains the necessary expertise to evaluate proposed energy
17 projects, balancing the demand for new energy facilities with
18 protection of environmental quality and safety of energy facilities.

1 The legislature intends to ensure that small alternative energy
2 resource facilities are sited in a timely manner in local jurisdictions
3 where there are no existing ordinances to permit these facilities,
4 where applicable ordinances have not been updated in over ten years, or
5 where ordinances have been adopted that impede the timely permitting of
6 these facilities.

7 Additionally, it is the intent of the legislature to encourage
8 local governments to enter into interlocal agreements with the energy
9 facility site evaluation council for the purpose of authorizing the
10 council to issue permits for small alternative energy resource
11 facilities that are proposed within the geographic jurisdiction of a
12 local government, if the local government determines that it would be
13 more cost-effective for the council to permit these facilities.

14 The legislature finds that it may be more cost-effective in some
15 cases for the state to provide a centralized small renewable energy
16 resource facility permitting agency than for each county and
17 municipality to maintain individual permitting staff.

18 **Sec. 2.** RCW 80.50.040 and 2001 c 214 s 6 are each amended to read
19 as follows:

20 The council shall have the following powers:

21 (1) To adopt, (~~promulgate,~~) amend, or rescind suitable rules and
22 regulations, pursuant to chapter 34.05 RCW, to carry out the provisions
23 of this chapter, and the policies and practices of the council in
24 connection therewith;

25 (2) To develop and apply environmental and ecological guidelines in
26 relation to the type, design, location, construction, and operational
27 conditions of certification of energy facilities subject to this
28 chapter;

29 (3) To establish rules of practice for the conduct of public
30 hearings pursuant to the provisions of the administrative procedure
31 act, as found in chapter 34.05 RCW;

32 (4) To prescribe the form, content, and necessary supporting
33 documentation for site certification;

34 (5) To receive applications for energy facility locations and to
35 investigate the sufficiency thereof;

36 (6) To make and contract, when applicable, for independent studies
37 of sites proposed by the applicant;

- 1 (7) To conduct hearings on the proposed location of the energy
2 facilities;
- 3 (8) To prepare written reports to the governor which shall include:
4 (a) A statement indicating whether the application is in compliance
5 with the council's guidelines, (b) criteria specific to the site and
6 transmission line routing, (c) a council recommendation as to the
7 disposition of the application, and (d) a draft certification agreement
8 when the council recommends approval of the application;
- 9 (9) To prescribe the means for monitoring of the effects arising
10 from the construction and the operation of energy facilities to
11 (~~assure~~) ensure continued compliance with terms of certification
12 and/or permits issued by the council pursuant to chapter 90.48 RCW or
13 subsection (12) of this section: PROVIDED, That any on-site inspection
14 required by the council shall be performed by other state and local
15 agencies pursuant to interagency agreement: PROVIDED FURTHER, That the
16 council may retain authority for determining compliance relative to
17 monitoring or may delegate authority for ensuring compliance with the
18 terms of the certificate and/or permits to other state or local
19 agencies;
- 20 (10) To integrate its site evaluation activity with activities of
21 federal agencies having jurisdiction in such matters to avoid
22 unnecessary duplication;
- 23 (11) To present state concerns and interests to other states,
24 regional organizations, and the federal government on the location,
25 construction, and operation of any energy facility which may affect the
26 environment, health, or safety of the citizens of the state of
27 Washington;
- 28 (12) To issue permits in compliance with applicable provisions of
29 the federally approved state implementation plan adopted in accordance
30 with the federal clean air act, as now existing or hereafter amended,
31 for the new construction, reconstruction, or enlargement or operation
32 of energy facilities: PROVIDED, That such permits shall become
33 effective only if the governor approves an application for
34 certification and executes a certification agreement pursuant to this
35 chapter: AND PROVIDED FURTHER, That all such permits be conditioned
36 upon compliance with all provisions of the federally approved state
37 implementation plan which apply to energy facilities covered within the
38 provisions of this chapter; (~~and~~)

1 (13) To serve as an interagency coordinating body for energy-
2 related issues; and

3 (14) To issue site permits, using generally established safety
4 standards as provided under section 7(5) of this act, for the
5 construction, reconstruction, or enlargement of small alternative
6 energy resource facilities.

7 **Sec. 3.** RCW 80.50.060 and 2007 c 325 s 2 are each amended to read
8 as follows:

9 (1) The provisions of this chapter apply to the construction of
10 energy facilities which includes the new construction of energy
11 facilities and the reconstruction or enlargement of existing energy
12 facilities where the net increase in physical capacity or dimensions
13 resulting from such reconstruction or enlargement meets or exceeds
14 those capacities or dimensions set forth in RCW 80.50.020 (~~((7) and~~
15 ~~(15))~~) (12) and (21). No construction of such energy facilities may be
16 undertaken, except as otherwise provided in this chapter, after July
17 15, 1977, without first obtaining certification in the manner provided
18 in this chapter.

19 (2) The provisions of this chapter apply to the construction,
20 reconstruction, or enlargement of a new or existing energy facility
21 that exclusively uses alternative energy resources and chooses to
22 receive certification under this chapter, regardless of the generating
23 capacity of the project.

24 (3)(a) The provisions of this chapter apply to the construction,
25 reconstruction, or modification of electrical transmission facilities
26 when:

27 (i) The facilities are located in a national interest electric
28 transmission corridor as specified in RCW 80.50.045;

29 (ii) An applicant chooses to receive certification under this
30 chapter, and the facilities are: (A) Of a nominal voltage of at least
31 one hundred fifteen thousand volts and are located in a completely new
32 corridor, except for the terminus of the new facility or
33 interconnection of the new facility with the existing grid, and the
34 corridor is not otherwise used for electrical transmission facilities;
35 and (B) located in more than one jurisdiction that has promulgated land
36 use plans or zoning ordinances; or

1 (iii) An applicant chooses to receive certification under this
2 chapter, and the facilities are: (A) Of a nominal voltage in excess of
3 one hundred fifteen thousand volts; and (B) located outside an
4 electrical transmission corridor identified in (a)(i) and (ii) of this
5 subsection (3).

6 (b) For the purposes of this subsection, "modify" means a
7 significant change to an electrical transmission facility and does not
8 include the following: (i) Minor improvements such as the replacement
9 of existing transmission line facilities or supporting structures with
10 equivalent facilities or structures; (ii) the relocation of existing
11 electrical transmission line facilities; (iii) the conversion of
12 existing overhead lines to underground; or (iv) the placing of new or
13 additional conductors, supporting structures, insulators, or their
14 accessories on or replacement of supporting structures already built.

15 (4) The provisions of this chapter shall not apply to normal
16 maintenance and repairs which do not increase the capacity or
17 dimensions beyond those set forth in RCW 80.50.020 (~~((7) and (15))~~)
18 (12) and (21).

19 (5) Applications for certification of energy facilities made prior
20 to July 15, 1977, shall continue to be governed by the applicable
21 provisions of law in effect on the day immediately preceding July 15,
22 1977, with the exceptions of RCW 80.50.190 and 80.50.071 which shall
23 apply to such prior applications and to site certifications
24 prospectively from July 15, 1977.

25 (6) Applications for certification shall be upon forms prescribed
26 by the council and shall be supported by such information and technical
27 studies as the council may require.

28 (7) The provisions of this chapter apply to the installation of a
29 small alternative energy resource facility if a person chooses to apply
30 to the council in order to receive site certification for a small
31 alternative energy resource facility under this chapter.

32 **Sec. 4.** RCW 80.50.071 and 2010 c 152 s 3 are each amended to read
33 as follows:

34 (1) The council shall receive all applications for energy facility
35 site certification. Except as provided under sections 8 and 9 of this
36 act, each applicant shall pay such reasonable costs as are actually and
37 necessarily incurred by the council in processing an application.

1 (a) Each applicant shall, at the time of application submission,
2 deposit fifty thousand dollars, or such greater amount as may be
3 specified by the council after consultation with the applicant. Costs
4 that may be charged against the deposit include, but are not limited
5 to, independent consultants' costs, councilmember's wages, employee
6 benefits, costs of a hearing examiner, costs of a court reporter, staff
7 salaries, wages and employee benefits, goods and services, travel
8 expenses, and miscellaneous direct expenses as arise directly from
9 processing an application.

10 (b) The council may commission its own independent consultant study
11 to measure the consequences of the proposed energy facility on the
12 environment or any matter that it deems essential to an adequate
13 appraisal of the site. The council shall provide an estimate of the
14 cost of the study to the applicant and consider applicant comments.

15 (c) The council shall submit to each applicant a statement of such
16 expenditures made during the preceding calendar quarter which shall be
17 in sufficient detail to explain such expenditures. The applicant shall
18 pay the state treasurer the amount of such statement to restore the
19 total amount on deposit to the originally established level: PROVIDED,
20 That such applicant may, at the request of the council, increase the
21 amount of funds on deposit to cover anticipated expenses during peak
22 periods of application processing. Any funds remaining unexpended at
23 the conclusion of application processing shall be refunded to the
24 applicant, or at the applicant's option, credited against required
25 deposits of certificate holders.

26 (2) Each certificate holder shall pay such reasonable costs as are
27 actually and necessarily incurred by the council for inspection and
28 determination of compliance by the certificate holder with the terms of
29 the certification relative to monitoring the effects of construction,
30 operation, and site restoration of the facility.

31 (a) Each certificate holder, within thirty days of execution of the
32 site certification agreement, shall have on deposit fifty thousand
33 dollars, or such greater amount as may be specified by the council
34 after consultation with the certificate holder. Costs that may be
35 charged against the deposit include, but are not limited to, those
36 specified in subsection (1)(a) of this section as arise from inspection
37 and determination of compliance by the certificate holder with the
38 terms of the certification.

1 (b) The council shall submit to each certificate holder a statement
2 of such expenditures actually made during the preceding calendar
3 quarter which shall be in sufficient detail to explain such
4 expenditures. The certificate holder shall pay the state treasurer the
5 amount of such statement to restore the total amount on deposit to the
6 originally established level: PROVIDED, That if the actual
7 expenditures for inspection and determination of compliance in the
8 preceding calendar quarter have exceeded the amount of funds on
9 deposit, such excess costs shall be paid by the certificate holder.

10 (3) If an applicant or certificate holder fails to provide the
11 initial deposit, or if subsequently required payments are not received
12 within thirty days following receipt of the statement from the council,
13 the council may (a) in the case of the applicant, suspend processing of
14 the application until payment is received; or (b) in the case of a
15 certificate holder, suspend the certification.

16 (4) All payments required of the applicant or certificate holder
17 under this section are to be made to the state treasurer who shall make
18 payments as instructed by the council from the funds submitted. All
19 such funds shall be subject to state auditing procedures. Any
20 unexpended portions thereof shall be returned to the applicant or
21 certificate holder.

22 **Sec. 5.** RCW 80.50.090 and 2006 c 205 s 3 and 2006 c 196 s 6 are
23 each reenacted and amended to read as follows:

24 (1) The council shall conduct an informational public hearing in
25 the county of the proposed site as soon as practicable but not later
26 than sixty days after receipt of an application for site certification.
27 However, the place of such public hearing shall be as close as
28 practical to the proposed site.

29 (2) Subsequent to the informational public hearing, the council
30 shall conduct a public hearing to determine whether or not the proposed
31 site is consistent and in compliance with city, county, or regional
32 land use plans or zoning ordinances. If it is determined that the
33 proposed site does conform with existing land use plans or zoning
34 ordinances in effect as of the date of the application, the city,
35 county, or regional planning authority shall not thereafter change such
36 land use plans or zoning ordinances so as to affect the proposed site.

1 (3) Prior to the issuance of a council recommendation to the
2 governor under RCW 80.50.100 a public hearing, conducted as an
3 adjudicative proceeding under chapter 34.05 RCW, the administrative
4 procedure act, shall be held. At such public hearing any person shall
5 be entitled to be heard in support of or in opposition to the
6 application for certification.

7 (4) Additional public hearings shall be held as deemed appropriate
8 by the council in the exercise of its functions under this chapter.

9 (5) This section does not apply to sections 7 and 8 of this act.

10 **Sec. 6.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to
11 read as follows:

12 (1) The council shall report to the governor its recommendations as
13 to the approval or rejection of an application for certification within
14 twelve months of receipt by the council of such an application, or such
15 later time as is mutually agreed by the council and the applicant. If
16 the council recommends approval of an application for certification, it
17 shall also submit a draft certification agreement with the report. The
18 council shall include conditions in the draft certification agreement
19 to implement the provisions of this chapter, including, but not limited
20 to, conditions to protect state or local governmental or community
21 interests affected by the construction or operation of the energy
22 facility, and conditions designed to recognize the purpose of laws or
23 ordinances, or rules or regulations promulgated thereunder, that are
24 preempted or superseded pursuant to RCW 80.50.110 as now or hereafter
25 amended.

26 (2)(a) Within sixty days of receipt of the council's report the
27 governor shall take one of the following actions:

28 ((+a)) (i) Approve the application and execute the draft
29 certification agreement; or

30 ((+b)) (ii) Reject the application; or

31 ((+c)) (iii) Direct the council to reconsider certain aspects of
32 the draft certification agreement.

33 (b) The council shall reconsider such aspects of the draft
34 certification agreement by reviewing the existing record of the
35 application or, as necessary, by reopening the adjudicative proceeding
36 for the purposes of receiving additional evidence. Such
37 reconsideration shall be conducted expeditiously. The council shall

1 resubmit the draft certification to the governor incorporating any
2 amendments deemed necessary upon reconsideration. Within sixty days of
3 receipt of such draft certification agreement, the governor shall
4 either approve the application and execute the certification agreement
5 or reject the application. The certification agreement shall be
6 binding upon execution by the governor and the applicant.

7 (3) The rejection of an application for certification by the
8 governor shall be final as to that application but shall not preclude
9 submission of a subsequent application for the same site on the basis
10 of changed conditions or new information.

11 (4) This section does not apply to sections 7 and 8 of this act.

12 NEW SECTION. **Sec. 7.** A new section is added to chapter 80.50 RCW
13 to read as follows:

14 (1) A person may apply to the council for a site permit for a small
15 alternative energy resource facility if one or more of the following
16 conditions is met:

17 (a) The facility is located in a county or municipality that has
18 not adopted ordinances for the permitting of small alternative energy
19 resource facilities;

20 (b) The facility is located in a county or municipality that has
21 not updated its ordinances for the permitting of small alternative
22 energy resource facilities in over ten years; or

23 (c) The county or municipal permitting process for a proposed small
24 alternative energy resource facility exceeds six months from time of
25 application and the proposed facility meets generally established
26 safety standards.

27 (2) The application for small alternative energy resource facility
28 processing must be submitted to the council in the form and manner as
29 may be determined by motion and vote of the council.

30 (3)(a) Any person, before submitting an application for a small
31 alternative energy resource facility site permit, may submit a letter
32 to the council to inquire as to whether a proposed small alternative
33 energy resource facility would require mitigation and receive a written
34 estimate from the council of the cost of processing the application.

35 (b) Within thirty days of receiving such a letter of inquiry, the
36 council must provide a response to what mitigation, at a minimum, might

1 be required and a written estimate of the cost of processing the site
2 permit application.

3 (4) The council shall develop a site permitting process for small
4 alternative energy resource facilities.

5 (5)(a) The council must survey for and determine generally
6 established safety standards for each type of small alternative energy
7 resource facility and adopt site permitting standards based on the
8 council's review of these standards.

9 (b)(i) In surveying for and determining generally established
10 safety standards, the council must use existing local municipal and
11 county small alternative energy resource facility ordinances in
12 Washington adopted in the last ten years giving preference to
13 ordinances established in neighboring jurisdictions to the jurisdiction
14 where the small alternative energy resource facility is proposed.

15 (ii) If there are no existing local municipal and county ordinances
16 in Washington relating to small alternative energy resource facilities
17 adopted in the last ten years, then the council must use existing
18 state, local, or municipal ordinances in the western electric
19 coordinating council geographic area adopted in the last ten years.

20 (iii) If there are no existing state, local, or municipal
21 ordinances relating to small alternative energy resource facilities in
22 the western electric coordinating council geographic area adopted in
23 the last ten years, then the council must use existing state, local, or
24 municipal ordinances adopted in the United States in the last ten
25 years.

26 (6) The council may charge a fee that covers the costs incurred by
27 the council in reviewing a small alternative energy resource facility
28 site permit and of compliance inspection costs delegated to local
29 governments where compliance is not preempted by other state agencies
30 by statute. The council must develop and charge a fee that provides
31 the lowest possible cost to the applicant.

32 (7) The council may delegate authority to council staff, as deemed
33 necessary by the council, to issue small alternative energy resource
34 facility site permits.

35 (8) A small alternative energy resource facility site permit issued
36 by the council under this section may not be revoked or superseded by
37 any local ordinance adopted by the local jurisdiction after the permit

1 is issued, even if the small alternative energy resource facility
2 permitted under this section is inconsistent with the newly adopted
3 local ordinance.

4 (9) For the purposes of this chapter, "small alternative energy
5 resource facility" means any facility that meets the definition of a
6 "net metering system" under RCW 80.60.010 and does not use biomass as
7 a fuel.

8 NEW SECTION. **Sec. 8.** A new section is added to chapter 80.50 RCW
9 to read as follows:

10 The council and any local government in the state may enter into,
11 and are encouraged to enter into, an interlocal agreement as provided
12 under chapter 39.34 RCW for the purpose of authorizing the council to
13 issue permits for small alternative energy resource facilities within
14 the geographic jurisdiction of the local government. The council may
15 serve as the permitting authority for a local government if the local
16 government determines that it would be more cost-effective for the
17 council to permit small alternative energy resource facilities within
18 their jurisdiction. Such an agreement supersedes the provisions
19 provided under section 7 of this act.

20 NEW SECTION. **Sec. 9.** A new section is added to chapter 80.50 RCW
21 to read as follows:

22 A permitting decision regarding a small alternative energy resource
23 facility under section 7 of this act is subject to judicial review
24 under chapter 34.05 RCW. A petition for a review of a permitting
25 decision by the council must be filed within thirty days after the date
26 of the permitting decision by the council.

27 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
28 preservation of the public peace, health, or safety, or support of the
29 state government and its existing public institutions, and takes effect
30 July 1, 2011.

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