

HOUSE BILL REPORT

E2SHB 1374

As Passed House:
March 9, 2013

Title: An act relating to the energy facility site evaluation council.

Brief Description: Concerning the energy facility site evaluation council.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Morris and Fey).

Brief History:

Committee Activity:

Environment: 1/31/13, 2/20/13 [DPS];
Appropriations: 2/28/13 [DP2S(w/o sub ENVI)].

Floor Activity:

Passed House: 3/9/13, 53-44.

Brief Summary of Engrossed Second Substitute Bill

- Revises the Energy Facility Site Evaluation Council's (Council) energy facility site certification process.
- Expands the powers and duties of the Council to include having final approval over site certification applications.
- Makes the Council's site certification process optional for energy facility applicants, except for nuclear power plants and certain transmission pipeline facilities.
- Modifies the membership of the Council.
- Establishes statewide standards for the siting, construction, operation, and decommissioning of energy facilities.
- Establishes a process to pre-approve energy technologies in order to expedite the site certification process.
- Authorizes the Council to enter into interlocal agreements with cities and counties for the purpose of issuing site certifications for energy facilities.

HOUSE COMMITTEE ON ENVIRONMENT

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Upthegrove, Chair; McCoy, Vice Chair; Farrell, Fey, Kagi, Lias, Morris and Tharinger.

Minority Report: Do not pass. Signed by 5 members: Representatives Short, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Crouse, Nealey and Overstreet.

Staff: Scott Richards (786-7156).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment. Signed by 18 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Carlyle, Cody, Dunshee, Green, Haigh, Hudgins, Hunt, Jinkins, Kagi, Maxwell, Morrell, Pedersen, Pettigrew, Seaquist, Springer and Sullivan.

Minority Report: Do not pass. Signed by 13 members: Representatives Alexander, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dahlquist, Fagan, Haler, Harris, Parker, Pike, Ross, Schmick and Taylor.

Staff: Danielle Cruver (786-7157).

Background:

Energy Facility Site Evaluation Council.

The Energy Facility Site Evaluation Council (Council) was created in 1970 to provide a "one-stop" siting process for major energy facilities in Washington. The Council coordinates all evaluation and licensing steps for siting certain energy facilities in Washington. The Council specifies the conditions of construction and operation. If approved, a site certification agreement is issued in lieu of any other individual state or local agency permits.

The Council is comprised of a chair appointed by the Governor, and representatives from five state agencies. Agencies represented on the Council include: (1) the Department of Commerce; (2) the Department of Ecology; (3) the Department of Fish and Wildlife; (4) the Department of Natural Resources; and (5) the Utilities and Transportation Commission. When an application to site a facility is submitted to the Council, representatives from particular cities, counties, or port districts potentially affected by the project are added to the Council for proceedings related to the project.

Energy Facilities Subject to the Council's Site Certification Authority.

The Council's siting authority includes the following energy facilities: (1) large natural gas and petroleum pipelines; (2) thermal electric power plants 350 megawatts (MWs) or greater and their dedicated transmission lines; (3) new oil and biofuel refineries or large expansions of existing facilities; (4) all nuclear power facilities with the primary purpose to produce and sell electricity; and (5) underground natural gas storage fields. In addition, energy facilities

of any size that exclusively use alternative energy resources (wind, solar, geothermal, landfill gas, wave or tidal action, or biomass energy) may opt-in to the Council process. The Council's jurisdiction does not extend to hydro-based power plants or thermal electric plants that are less than 350 MWs.

Site Certification Process.

The Council certification process provides applicants an opportunity to present their proposals, allows interested parties to express their concerns about the proposed project to the Council, and permits the Council to address issues related to the application.

There are six major steps in the site certification process: (1) application submittal; (2) application review; (3) initial public hearings; (4) environmental impact statement; (5) adjudicative proceedings and permits review; and (6) recommendation to the Governor. Each step has specific requirements the applicant and the Council must follow to ensure a comprehensive review of the project. The Council must report to the Governor its recommendations as to the approval or rejection of an application for certification within 12 months of receipt of an application.

Within 60 days of receipt of the Council's report the Governor must take one of the following actions: (1) approve the application and execute the draft certification agreement; (2) reject the application; or (3) direct the Council to reconsider certain aspects of the draft certification agreement.

The Council must reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the adjudicative proceeding for the purposes of receiving additional evidence. Such reconsideration must be conducted expeditiously. The Council must resubmit the draft certification to the Governor incorporating any amendments deemed necessary upon reconsideration. Within 60 days of receipt of such draft certification agreement, the Governor must either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the Governor and the applicant.

A final decision on an application for certification is subject to judicial review and petitions for review of such a decision must be filed in Thurston County Superior Court.

Expedited Processing of an Application.

Any person filing an application for certification of an energy facility or an alternative energy resource facility may apply to the Council for an expedited processing of an application. The Council may grant an applicant expedited processing if it finds that the environmental impact of the proposed energy facility is not significant or will be mitigated to a nonsignificant level under the State Environmental Policy Act (SEPA) and the project is found to be consistent and in compliance with city, county, or regional land use plans or zoning ordinances. Upon granting an applicant expedited processing of an application, the Council is not required to: (1) commission an independent study to further measure the consequences of the proposed energy facility or alternative energy resource facility on the environment; nor (2) hold an adjudicative proceeding on the application consistent with the Administrative Procedure Act.

Counsel for the Environment.

After the Council has received a site application, the Attorney General must appoint an assistant attorney general to serve as a Counsel for the Environment. The counsel represents the public and its interest in protecting the quality of the environment.

Summary of Engrossed Second Substitute Bill:

Powers and Duties.

The powers and duties of the Energy Facility Site Evaluation Council (Council) are expanded. The Council is responsible for approving or denying an application for site certification of a proposed energy facility, rather than the Governor as required under current law. The Council is responsible for developing standards for an expedited siting process for the state of Washington, local governments, and other political subdivisions of the state in relation to the type, design, location, construction, operational conditions, and decommissioning of energy facilities. Also, the Council is authorized to enter into interlocal agreements with cities and counties for the purpose of issuing site certifications for energy facilities within the geographic jurisdiction of the city or county.

Council Membership.

The membership of the Council is modified to consist of the following voting members:

- the Chair of the Council (Chair);
- two members of the Growth Management Hearings Board;
- a representative of the Department of Fish and Wildlife;
- a representative of the Department of Ecology; and
- a representative from a city, county, or port district potentially affected by the project.

If the Chair determines that a proposed energy facility may impact shorelines or forest resources in the state, a representative from the Shoreline Hearings Board or the Department of Natural Resources may be asked to serve on the Council, serving in place of one of the two Growth Management Hearings Board members. The Department of Health may appoint a designee to serve as a voting member of the Council if the proposed energy facility is a nuclear power plant.

Eligible Energy Facilities.

Energy plants that may apply for site certification through the Council include: (1) any stationary thermal power plant; (2) floating thermal power plants suspended on the surface of water by means of a barge, vessel, or other floating platform; (3) facilities which will have the capacity to import or export liquefied natural gas that has been or will be transported over land or marine waters; (4) facilities which will have the capacity to receive more than an average of 50,000 barrels per day of crude or refined petroleum or liquefied petroleum gas which has been or will be transported over marine waters; (5) any underground reservoir for receipt and storage of natural gas; (6) facilities capable of processing more than 25,000 barrels per day of petroleum or biofuel into refined products except where such biofuel production is undertaken at existing industrial facilities; and (7) any alternative energy resource.

The following energy facilities must apply to the Council for site certification: any nuclear power facility where the primary purpose is to produce and sell electricity; and any transmission pipeline facility.

A "transmission pipeline facility" is defined as any of the following together with their associated facilities:

- crude or refined petroleum or liquid petroleum product transmission pipeline of the following dimensions: a pipeline larger than 6 inches minimum inside diameter between valves for the transmission of these products; with total length of at least 15 miles;
- natural gas, synthetic fuel gas, or liquefied petroleum gas transmission pipeline with a total length of at least 15 miles that operates in excess of 20 percent of the specified minimum yield strength and is used for the purpose of delivering gas to a distribution facility, except an interstate natural gas pipeline regulated by the United States federal power commission; and
- a pipeline carrying federally listed hazardous waste to the energy facility.

The current definition of "thermal power plant" is modified to mean any electrical generating facility combusting any gaseous, liquid, or solid fuel or using heat to create steam for the generation of electricity. The current definition of alternative energy resources is modified to include energy storage as an alternative energy resource.

Energy Facility Siting Standards.

Beginning December 1, 2014, the Council, other political subdivisions of the state, and local governments must use existing energy facility siting standards as provided under Title 463 WAC for the siting, construction, operation, and decommissioning of energy facilities. For issues not addressed in the Council's standards, Oregon Administrative Rules (OAR), chapter 345, in effect as of January 1, 2013, must be used.

The following Oregon energy facility siting rules relating to the following issues may not be used: (1) demonstration of need for an energy facility; (2) least cost planning of energy resources; (3) demonstration of need for an electric transmission line; (4) demonstration of need for a natural gas pipeline; (5) standards for facilities that emit carbon dioxide; (6) impacts to scenic resources; and (7) statewide planning goals adopted by the Oregon Land Conservation and Commission.

The Council must identify the most equivalent Washington state agency or governmental entity when the OARs reference an Oregon state agency or other Oregon governmental entity and substitute the Washington agency or entity in place of the Oregon state agency or Oregon governmental entity.

Standards for Threatened and Endangered Species.

To issue a site certificate, the Council must find that for plant species that the Washington State Natural Heritage Program has listed as threatened or endangered, the design, construction, and operation of the proposed energy facility: (1) is consistent with the protection and conservation program, if any, that the Natural Heritage Program has adopted; or (2) if the Natural Heritage Program has not adopted a protection and conservation program, the design, construction, and operation of the proposed energy facility is not likely to cause a significant reduction in the likelihood of survival or recovery of the species. For wildlife species that the Washington Department of Fish and Wildlife has listed as threatened or endangered, the design, construction, and operation of the proposed facility, taking into

account mitigation, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

Minimum Siting Standards for Local Governments and Political Subdivisions.

Any local government or political subdivision that is not the Council, with minimum energy facility siting standards adopted prior to the effective date of the act, is not required to use the standards established in the act for as long as the local government or political subdivision existing minimum standards remain in effect. Minimum standards adopted by the local government or a political subdivision before this act takes effect may be amended in a manner consistent with standards established in the act when permitting energy facilities applied for under this act.

Any local government or political subdivision, when determining the timeline for the environmental review of the proposed energy facility, may adjust the timeline depending on the proposed energy facility's compliance with the standards. If a proposed energy facility meets the energy facility siting standards, the environmental review of the proposed energy facility must be completed within six months.

Within one week of submitting an application to either a local government or political subdivision, an applicant must provide notice of the application to adjacent landowners who own property located within one mile of the proposed site of the energy facility. The notice must be provided by mailing the notice to the latest recorded real property owners, as shown by the records of the county assessor.

A county, city, or town is authorized to approve an energy facility only if its land use ordinances are in compliance with the Growth Management Act and any order issued by the Growth Management Hearings Board.

Preapproved Energy Technologies.

An energy technology company may seek preapproval of its energy technology by submitting an energy technology preapproval application to the Council. The Council must impose a charge to cover necessary costs to process the preapproval application. For each preapproval application submitted by an applicant, the Council must develop through rule making the standards an energy technology must meet to be a preapproved energy technology. The applicant is responsible for the cost associated with the rule making and the Council must collect a fee from the applicant to recover the cost of the rule making. The Council must maintain a list of energy technologies to be granted expedited environmental review or processing and the specific standards adopted.

Petitioning the Council for Rule Making.

Any person may petition the Council to request the adoption, amendment, or repeal of any Council rule as allowed under the Administrative Procedure Act. However, any person petitioning the Council requesting the adoption, amendment, or repeal of any Council rule is responsible for reimbursing the Council for costs associated with adopting, amending, or repealing a rule.

Application Eligibility.

An applicant for the site certification of an energy facility in Washington may choose to apply to the Council for site certification or to apply to a city or county for a permit for the energy facility. Applicants proposing either a nuclear power plant or a transmission pipeline facility in Washington must apply to the Council for site certification. If an energy facility has been previously approved or denied by a local government, it is not eligible to apply to the Council for site certification.

Application Process.

Preliminary Application Process.

Each applicant for site certification must submit to the Council a preliminary application. The preliminary application must provide information about the proposed site and the characteristics of the energy facility sufficient for the preparation of the Council's notice of application requirements. The Chair of the Council must provide notice to the public within three working days of receiving a preliminary application. Within one week of submitting a preliminary application to the Council, an applicant must provide notice of the application to adjacent landowners who own property located within one mile of the proposed site of the energy facility. This may be accomplished by mailing the notice to the latest recorded real property owners, as shown by the records of the county assessor. The public notice must provide a description of the proposed site and facility in sufficient detail to inform the public of the location and proposed use of the site. The preliminary application must specify whether the proposed energy facility will comply with local land use ordinances in the jurisdiction or jurisdictions in which it is proposed. After the Chair provides public notice, a city, county, or regional planning authority may not change land use plans or zoning ordinances so as to affect the proposed site. Within three working days after the Chair provides public notice, an applicant for a site certification must distribute the preliminary application to any agency that has regulatory or advisory responsibility with respect to the facility and any city or county affected by the application.

Notice of Application Requirements.

No more than 35 days after receiving a preliminary application, the Chair must issue a notice of application requirements establishing the statutes, administrative rules, Council standards, local ordinances, and study requirements for the site certification application. The Chair may consider whether the proposed facility is in compliance with city, county, or regional land use plans or zoning ordinances and may specify additional requirements in the notice of application based on a review of plans and ordinances where the proposed facility is to be located. Following issuance of the notice of application requirements, an applicant must submit an application for site certification consistent with the notice of application requirements within 15 days. The Chair must determine within 15 days of submission of an application whether the application meets the Council's requirements.

Scoping Process.

After the Chair determines whether an application meets Council requirements, the Chair must, within three working days, initiate a scoping process to determine the range of proposed actions, alternatives, and impacts to be examined in the environmental impact statement. The Chair must notify any agency that has regulatory or advisory responsibility with respect to the facility and any city or county affected by the application of the scoping process. Within 30 days of initiating the scoping process, the Chair must conduct a public

hearing and submit scoping recommendations to the Council in order for the Council to establish a timeline for the environmental review of the proposed energy facility.

Environmental Review Timeline.

Within 14 days of receiving the timeline recommendations from the Chair, the Council must determine whether the environmental review process for the proposed energy facility must be completed within six months, 12 months, or longer. In determining the timeline, the Council may adjust the timeline depending on the proposed energy facility's compliance with energy facility standards. If the Council establishes an environmental review process for more than six months, the Attorney General must appoint an Assistant Attorney General as a Counsel for the Environment. The Counsel for the Environment must represent the public and its interest in protecting the quality of the environment.

Environmental Review.

Following requirements under the SEPA, the Chair oversees an environmental review of the proposed energy facility. Within the timeline established by the Council, the Chair must publish a draft environmental impact statement (EIS). The Chair must solicit comments on the draft EIS and hold a public hearing 15 days after the draft EIS is made public. Within 15 days after the public hearing on the draft EIS, the Chair must submit to the Council a recommended final EIS. In submitting the recommended final EIS to the Council, the Chair must specify whether there are any disputed items based on public input provided during the development of the recommended final EIS.

If there are disputed items in the recommended final EIS, the Council must hold a public hearing within 15 days on the draft EIS. At the hearing, the Chair must provide a report to the Council regarding the disputed items in the recommended final EIS. The issues that may be considered at the public hearing are limited to issues raised during the preliminary application process and during the environmental review process that lead to the development of the recommended final EIS. The Chair must specify to the Council the basis for decisions made relating to the disputed items contained in the recommended final EIS. Based on the input of the Chair, the applicant, and the public at the public hearing, the Council may elect to address the disputed items from the recommended final EIS in the final EIS. The Council must issue the final EIS within 15 days of the public hearing.

If there are no disputed items in the recommended final EIS, the Chair must submit to the Council the recommended final EIS within 15 days of the public hearing and the Council must adopt the recommended final EIS as the final EIS.

Site Certification.

Within 15 days of issuing the final EIS, the Chair must prepare and issue an initial order and draft site certification based on the final EIS. Within 15 days of receiving an initial order and draft site certification, the Council must make a final decision on the application. The Council must either approve the application and execute the draft certification agreement or reject the application for site certification. If the Council fails to make a final decision, the initial order becomes the final order 15 days following receipt of the initial order.

State Environmental Policy Act.

A new section is added to the SEPA to allow the Council to establish timelines related to the siting of energy facilities that are shorter than those required under the SEPA.

Expedited Processing of Applications.

Under established procedures for expedited processing of an application, the Council must consider compliance with city, county, or regional land use plans or zoning ordinances rather than provide a finding that the project is consistent with such land use plans and zoning ordinances.

Interconnections to the Distribution Systems of Electric Utilities.

For an energy facility interconnecting to an electric utility's distribution system, the application of standards and terms of a site certification by the Council only applies to the part of the facility within the geographic boundaries of the proposed facility and not to the electrical interconnection of a facility to the electric utility's distribution system.

Federal Energy Regulatory Commission.

The Council is directed to monitor the activities of the Federal Energy Regulatory Commission (FERC) and may receive notifications for energy projects located in Washington that are under the regulatory oversight of the FERC. These notifications include, but are not limited to, project filings, delegated orders, notices, and decisions issued by the FERC.

Local Government Permitting of Energy Facilities.

A city and county that has approved an energy facility through a local permitting process must submit to the Council, within 30 days of the issuance of a permit, a copy of the permit and any conditions of approval.

Contract Oversight.

The Utilities and Transportation Commission's administrative responsibilities are expanded to include serving as the fiscal agent for the Council, ensuring compliance with state law, and consulting on the execution of contracts with the Council. The Council retains its independence in exercising its powers, functions, and duties relating to site certification applications.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Environment):

(In support) The bill attempts to take many stakeholder perspectives into account. It must not be forgotten that Washington is in a worldwide competition for investment dollars, especially as it relates to the development of energy facilities. The state has lost investment dollars because the siting process in Washington can be lengthy, expensive and uncertain.

(With concerns) Removal of the energy facility size limitations has electric cooperatives troubled, especially relating to renewable energy projects. Local governing standards have been the bedrock for electric cooperatives. There are concerns about the structure of the bill and the definition about transmission pipeline facilities. If the membership of the Energy Facility Site Evaluation Council (Council) changes in the manner proposed in the bill, a great deal of expertise will be lost. Having clear siting standards will be an improvement to the current situation. However, tying Washington's siting standards to Oregon's standard is of concern. It is preferable that we make our own choices as a state. There is a concern over the potential costs to develop siting standards from current site certificate holders. The timelines in the bill may be unworkable. There is a concern that the addition of three Growth Management Hearings Board (Board) members to the Council may compromise the ability of the Board to meet current and expected work loads relating to other mandates in statute. The removal of the Department of Natural Resources from the Council lowers the state's ability to protect state lands.

(Other) The bill tees up the issue of what role, if any, should the state have in siting energy facilities. The Council seeks to balance the need for power with the interest of the public. The Council process does take time and an energy facility developer is likely to bypass the Council and seek siting through a county. There have been energy facility siting decisions made by developers that seek to keep a project from falling under the Council's jurisdiction. If the Council was made an attractive option for developers it would level the playing field.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) The current structure is broken. The process is too long and expensive with many redundant steps. The Energy Facility Site Evaluation Council was passed before the State Environmental Policy Act, and both run adjudicative processes that are parallel to each other. Under the best circumstances the process can take at least 12 months and cost millions of dollars. This is a laborious process and not one person during a months-long review of the application process did not think the process was broken. The state is losing out on business because the permit process is so long. There have been inconsistencies with local jurisdictions. The state will still have preemptive authority on the process.

(Other) The new standards for counties would increase costs at the local level and need to be reviewed.

(Opposed) Fiscal concerns are about projects that go through local permitting and now must go to state permitting; this might mean more costs for cities.

Persons Testifying (Environment): (In support) Representative Morris, prime sponsor.

(With concerns) John Rothlin, Avista; Kent Lopez, Washington Rural Electric Cooperative Association; Dave Warren, Washington Public Utility District Association; Nancy Atwood, Puget Sound Energy; Nina Carter, Growth Management Hearings Board; and Craig Partridge, Department of Natural Resources.

(Other) Jim Luce, Energy Facility Site Evaluation Council.

Persons Testifying (Appropriations): (In support) Representative Morris, prime sponsor.

(Other) Laura Merrill, Washington State Association of Counties.

(Opposed) Carl Schroeder, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying (Environment): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.