
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1374

State of Washington

63rd Legislature

2013 Regular Session

By House Appropriations (originally sponsored by Representatives Morris and Fey)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to the energy facility site evaluation council;
2 amending RCW 80.50.010, 80.50.040, 80.50.045, 80.50.060, 80.50.071,
3 80.50.075, 80.50.085, 80.50.100, 80.50.105, 80.50.110, and 80.50.120;
4 reenacting and amending RCW 80.50.020 and 80.50.030; adding new
5 sections to chapter 80.50 RCW; adding a new section to chapter 43.21C
6 RCW; and repealing RCW 80.50.080, 80.50.090, and 80.50.320.

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

8 **Sec. 1.** RCW 80.50.010 and 2001 c 214 s 1 are each amended to read
9 as follows:

10 The legislature finds that the present and predicted growth in
11 energy demands in the state of Washington requires the development of
12 a procedure for the selection and utilization of sites for energy
13 facilities and the identification of a state position with respect to
14 ~~((each))~~ the proposed site. The legislature also finds that there is
15 a critical need for infrastructure to ensure the safe and reliable
16 operations of electrical generation and energy transmission systems in
17 Washington and the region. The legislature recognizes that the
18 selection of sites will have a significant impact upon the welfare of

1 the population, the location and growth of industry and the use of the
2 natural resources of the state.

3 It is the policy of the state of Washington to recognize the
4 (~~pressing~~) need for increased energy facilities, and to ensure
5 through available and reasonable methods, that the location and
6 operation of (~~such~~) facilities will produce minimal adverse effects
7 on the environment, ecology of the land and its wildlife, and the
8 ecology of state waters and their aquatic life.

9 It is the intent to seek courses of action that will balance the
10 increasing demands for energy facility location and operation in
11 conjunction with the broad interests of the public. Such action will
12 be based on these premises:

13 (1) To assure Washington state citizens that, where applicable,
14 operational safeguards are at least as stringent as the criteria
15 established by the federal government and are technically sufficient
16 for their welfare and protection.

17 (2) To preserve and protect the quality of the environment; to
18 enhance the public's opportunity to enjoy the esthetic and recreational
19 benefits of the air, water and land resources; to promote air
20 cleanliness; and to pursue beneficial changes in the environment.

21 (~~(3) (To provide abundant energy at reasonable cost.~~

22 ~~(4))~~) To avoid costs of complete site restoration and demolition of
23 improvements and infrastructure at unfinished nuclear energy sites, and
24 to use unfinished nuclear energy facilities for public uses, including
25 economic development, under the regulatory and management control of
26 local governments and port districts.

27 (~~(5))~~ (4) To avoid costly duplication in the siting process and
28 ensure that decisions are made timely and without unnecessary delay.

29 **Sec. 2.** RCW 80.50.020 and 2010 c 152 s 1 are each reenacted and
30 amended to read as follows:

31 The definitions in this section apply throughout this chapter
32 unless the context clearly requires otherwise.

33 (1) "Alternative energy resource" includes energy facilities of the
34 following types: (a) Wind; (b) solar energy; (c) geothermal energy;
35 (d) landfill gas; (e) wave or tidal action; (~~(f)~~) (f) energy storage;
36 or (g) biomass energy based on solid organic fuels from wood, forest,

1 or field residues, or dedicated energy crops that do not include wood
2 pieces that have been treated with chemical preservatives such as
3 creosote, pentachlorophenol, or copper-chrome-arsenic.

4 (2) "Applicant" means any person who makes application for a site
5 certification pursuant to the provisions of this chapter.

6 (3) "Application" means any request for approval of a particular
7 site or sites filed in accordance with the procedures established
8 pursuant to this chapter, unless the context otherwise requires.

9 (4) "Associated facilities" means storage, transmission, handling,
10 or other related and supporting facilities connecting an energy plant
11 with the existing energy supply, processing, or distribution system,
12 including, but not limited to, communications, controls, mobilizing or
13 maintenance equipment, instrumentation, and other types of ancillary
14 transmission equipment, off-line storage or venting required for
15 efficient operation or safety of the transmission system and overhead,
16 and surface or subsurface lines of physical access for the inspection,
17 maintenance, and safe operations of the transmission facility and new
18 transmission lines constructed to operate at nominal voltages of at
19 least 115,000 volts to connect a thermal power plant or alternative
20 energy facilities to the northwest power grid. However, common carrier
21 railroads or motor vehicles shall not be included.

22 (5) "Biofuel" has the same meaning as defined in RCW 43.325.010.

23 (6) "Certification" means a binding agreement between an applicant
24 and the state which shall embody compliance to the siting standards and
25 guidelines, in effect as of the date of certification, which have been
26 adopted pursuant to RCW 80.50.040 as now or hereafter amended as
27 conditions to be met prior to or concurrent with the construction or
28 operation of any energy facility.

29 (7) "Construction" means on-site improvements, excluding
30 exploratory work, which cost in excess of two hundred fifty thousand
31 dollars.

32 (8) "Council" means the energy facility site evaluation council
33 created by RCW 80.50.030.

34 (9) "Counsel for the environment" means an assistant attorney
35 general or a special assistant attorney general who shall represent the
36 public (~~in accordance with RCW 80.50.080~~).

37 (10) "Electrical transmission facilities" means electrical power
38 lines and related equipment.

1 (11) "Energy facility" means an energy plant or transmission
2 facilities: PROVIDED, That the following are excluded from the
3 provisions of this chapter:

4 (a) Facilities for the extraction, conversion, transmission or
5 storage of water, other than water specifically consumed or discharged
6 by energy production or conversion for energy purposes; and

7 (b) Facilities operated by and for the armed services for military
8 purposes or by other federal authority for the national defense.

9 (12) "Energy plant" means the following facilities together with
10 their associated facilities:

11 (a) Any nuclear power facility where the primary purpose is to
12 produce and sell electricity;

13 (b) Any nonnuclear stationary thermal power plant (~~((with generating
14 capacity of three hundred fifty thousand kilowatts or more, measured
15 using maximum continuous electric generating capacity, less minimum
16 auxiliary load, at average ambient temperature and pressure,))~~ and
17 floating thermal power plants (~~((of one hundred thousand kilowatts or
18 more))~~ suspended on the surface of water by means of a barge, vessel,
19 or other floating platform;

20 (c) Facilities which will have the capacity to (~~((receive))~~) import
21 or export liquefied natural gas (~~((in the equivalent of more than one
22 hundred million standard cubic feet of natural gas per day, which))~~)
23 that has been or will be transported over land or marine waters;

24 (d) Facilities which will have the capacity to receive more than an
25 average of fifty thousand barrels per day of crude or refined petroleum
26 or liquefied petroleum gas which has been or will be transported over
27 marine waters, except that the provisions of this chapter shall not
28 apply to storage facilities unless occasioned by such new facility
29 construction;

30 (e) Any underground reservoir for receipt and storage of natural
31 gas as defined in RCW 80.40.010 (~~((capable of delivering an average of
32 more than one hundred million standard cubic feet of natural gas per
33 day))~~); (~~((and))~~)

34 (f) Facilities capable of processing more than twenty-five thousand
35 barrels per day of petroleum or biofuel into refined products except
36 where such biofuel production is undertaken at existing industrial
37 facilities; and

38 (g) Any alternative energy resource.

1 (13) "Independent consultants" means those persons who have no
2 financial interest in the applicant's proposals and who are retained by
3 the council to evaluate the applicant's proposals, supporting studies,
4 or to conduct additional studies.

5 (14) "Land use plan" means a comprehensive plan or land use element
6 thereof adopted by a unit of local government pursuant to chapter
7 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by
8 chapter 325, Laws of 2007.

9 (15) "Person" means an individual, partnership, joint venture,
10 private or public corporation, association, firm, public service
11 company, political subdivision, municipal corporation, government
12 agency, public utility district, or any other entity, public or
13 private, however organized.

14 (16) "Preapplicant" means a person considering applying for a site
15 certificate agreement for any transmission facility.

16 (17) "Preapplication process" means the process which is initiated
17 by written correspondence from the preapplicant to the council, and
18 includes the process adopted by the council for consulting with the
19 preapplicant and with cities, towns, and counties prior to accepting
20 applications for all transmission facilities.

21 (18) "Secretary" means the secretary of the United States
22 department of energy.

23 (19) "Site" means any proposed or approved location of an energy
24 facility, alternative energy resource, or electrical transmission
25 facility.

26 (20) "Thermal power plant" means, for the purpose of certification,
27 any electrical generating facility (~~(using)~~) combusting any gaseous,
28 liquid, or solid fuel (~~((for distribution of electricity by electric~~
29 ~~utilities))~~) or using heat to create steam for the generation of
30 electricity.

31 (21) "Transmission pipeline facility" means any of the following
32 together with their associated facilities:

33 (a) Crude or refined petroleum or liquid petroleum product
34 transmission pipeline of the following dimensions: A pipeline larger
35 than six inches minimum inside diameter between valves for the
36 transmission of these products with a total length of at least fifteen
37 miles;

1 (b) Natural gas, synthetic fuel gas, or liquefied petroleum gas
2 transmission pipeline (~~(of the following dimensions: A pipeline larger~~
3 ~~than fourteen inches minimum inside diameter between valves, for the~~
4 ~~transmission of these products,~~) with a total length of at least
5 fifteen miles that operates in excess of twenty percent of the
6 specified minimum yield strength and the pipeline is used for the
7 purpose of delivering gas to a distribution facility, except an
8 interstate natural gas pipeline regulated by the United States federal
9 power commission; and

10 (c) A transmission pipeline facility may include a pipeline
11 carrying federally listed hazardous waste to the energy facility.

12 (22) "Zoning ordinance" means an ordinance of a unit of local
13 government regulating the use of land and adopted pursuant to chapter
14 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state
15 Constitution, or as otherwise designated by chapter 325, Laws of 2007.

16 (23) "Electric utility" means an electric utility, as the term
17 "electric utility" is defined in RCW 19.29A.010.

18 (24) "Proven energy technology" means any energy technology used in
19 an energy facility offered for sale in the United States and
20 preapproved by the council.

21 **Sec. 3.** RCW 80.50.030 and 2010 c 271 s 601 and 2010 c 152 s 2 are
22 each reenacted and amended to read as follows:

23 (1) There is created and established the energy facility site
24 evaluation council.

25 (2)(a) The chair of the council shall be appointed by the governor
26 with the advice and consent of the senate, shall have a vote on matters
27 before the council, shall serve for a term coextensive with the term of
28 the governor, and is removable for cause. The chair may designate a
29 member of the council to serve as acting chair in the event of the
30 chair's absence. The salary of the chair shall be determined under RCW
31 43.03.040. The chair is a "state employee" for the purposes of chapter
32 42.52 RCW. As applicable, when attending meetings of the council,
33 members may receive reimbursement for travel expenses in accordance
34 with RCW 43.03.050 and 43.03.060, and are eligible for compensation
35 under RCW 43.03.250.

36 (b) The chair or a designee shall execute all official site
37 application documents(~~(, contracts,)~~) and other materials on behalf of

1 the council. The chair shall manage the scheduling of all public
2 meetings necessary for site certification of an energy facility and
3 preside over meetings of the council. The Washington utilities and
4 transportation commission shall provide all administrative and staff
5 support for the council. The commission has supervisory authority over
6 the staff of the council and shall employ such personnel as are
7 necessary to implement this chapter. Not more than three such
8 employees may be exempt from chapter 41.06 RCW. The utilities and
9 transportation commission shall serve as the fiscal agent for the
10 council, ensuring compliance with state law, and shall execute
11 contracts in consultation with the council. The council shall
12 otherwise retain its independence in exercising its powers, functions,
13 and duties (~~and its supervisory control over nonadministrative staff~~
14 ~~support~~) relating to site applications. Membership, powers,
15 functions, and duties of the Washington state utilities and
16 transportation commission and the council shall otherwise remain as
17 provided by law.

18 (3)(a) The council shall consist of (~~the — directors,~~
19 ~~administrators, — or — their — designees, — of — the — following — departments,~~
20 ~~agencies, commissions, and committees or their statutory successors:~~

- 21 ~~(i) Department of ecology;~~
- 22 ~~(ii) Department of fish and wildlife;~~
- 23 ~~(iii) Department of commerce;~~
- 24 ~~(iv) Utilities and transportation commission; and~~
- 25 ~~(v) Department of natural resources.~~

26 ~~(b) — The — directors, — administrators, — or — their — designees, — of — the~~
27 ~~following departments, agencies, and commissions, or their statutory~~
28 ~~successors, may participate as councilmembers at their own discretion~~
29 ~~provided they elect to participate no later than sixty days after an~~
30 ~~application is filed:~~

- 31 ~~(i) Department of agriculture;~~
- 32 ~~(ii) Department of health;~~
- 33 ~~(iii) Military department; and~~
- 34 ~~(iv) Department of transportation.~~

35 ~~(c) Council membership is discretionary for agencies that choose to~~
36 ~~participate under (b) of this subsection only for applications that are~~
37 ~~filed with the council on or after May 8, 2001. For applications filed~~

1 ~~before May 8, 2001, council membership is mandatory for those agencies~~
2 ~~listed in (b) of this subsection):~~

3 (i) Two members of the growth management hearings board, preferably
4 with experience or training in energy facilities or environmental
5 impact analyses under the state environmental policy act;

6 (ii) The director, administrator, or their designee, of the
7 department of fish and wildlife; and

8 (iii) The director, administrator, or their designee, of the
9 department of ecology.

10 (b) If the proposed energy facility is proposed to be sited on or
11 across shorelines of the state, as defined in RCW 90.58.030, or forest
12 land, as defined in RCW 76.09.020, the chair shall invite, depending on
13 the impacts, a member from the shorelines hearings board for proposals
14 that involve shorelines of the state and a designee from the department
15 of natural resources for proposals that involve forest land to
16 participate as a council member. If a member of the shorelines
17 hearings board or a designee from the department of natural resources
18 is invited and participates in the site certification of a proposed
19 energy facility, that council member or designee shall serve on the
20 council in place of one of the two growth management hearings board
21 members.

22 (4) The appropriate county legislative authority of every county
23 wherein an application for a proposed site is filed shall appoint a
24 member or designee as a voting member to the council. The member or
25 designee so appointed shall sit with the council only at such times as
26 the council considers the proposed site for the county which he or she
27 represents, and such member or designee shall serve until there has
28 been a final acceptance or rejection of the proposed site.

29 (5) The city legislative authority of every city within whose
30 corporate limits an energy facility is proposed to be located shall
31 appoint a member or designee as a voting member to the council. The
32 member or designee so appointed shall sit with the council only at such
33 times as the council considers the proposed site for the city which he
34 or she represents, and such member or designee shall serve until there
35 has been a final acceptance or rejection of the proposed site.

36 (6) For any port district wherein an application for a proposed
37 port facility is filed subject to this chapter, the port district shall
38 appoint a member or designee as a nonvoting member to the council. The

1 member or designee so appointed shall sit with the council only at such
2 times as the council considers the proposed site for the port district
3 which he or she represents, and such member or designee shall serve
4 until there has been a final acceptance or rejection of the proposed
5 site. The provisions of this subsection shall not apply if the port
6 district is the applicant, either singly or in partnership or
7 association with any other person.

8 (7) If the proposed energy facility is a nuclear power plant, the
9 department of health shall appoint a designee from the department as a
10 voting member of the council. The appointed designee shall sit with
11 the council only at such times as the council considers the proposed
12 site for a nuclear power plant, and the designee shall serve until
13 there has been a final acceptance or rejection of the proposed site.

14 **Sec. 4.** RCW 80.50.040 and 2001 c 214 s 6 are each amended to read
15 as follows:

16 The council shall have the following powers:

17 (1) To adopt, promulgate, amend, or rescind suitable rules and
18 regulations, pursuant to chapter 34.05 RCW, to carry out the provisions
19 of this chapter, and the policies and practices of the council in
20 connection therewith;

21 (2) To develop and apply environmental and ecological guidelines
22 and standards in relation to the type, design, location, construction,
23 and operational conditions of certification of energy facilities
24 subject to this chapter;

25 (3) To establish rules of practice for the conduct of public
26 hearings (~~pursuant to the provisions of the Administrative Procedure~~
27 ~~Act, as found in chapter 34.05 RCW));~~

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

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

32 (6) To ~~((make-and))~~ enter into contracts, when applicable, for
33 independent studies of sites proposed by the applicant, subject to the
34 provisions of RCW 39.26.120;

35 (7) To conduct hearings on the proposed location of the energy
36 facilities;

1 (8) ~~((To prepare written reports to the governor which shall~~
2 ~~include: (a) A statement indicating whether the application is in~~
3 ~~compliance with the council's guidelines, (b) criteria specific to the~~
4 ~~site and transmission line routing, (c) a council recommendation as to~~
5 ~~the disposition of the application, and (d) a draft certification~~
6 ~~agreement when the council recommends approval of the application;)) To
7 approve or deny an application for site certification of a proposed
8 energy facility;~~

9 (9) To prescribe the means for monitoring of the effects arising
10 from the construction and the operation of energy facilities to assure
11 continued compliance with terms of certification and/or permits issued
12 by the council pursuant to chapter 90.48 RCW or subsection (12) of this
13 section: PROVIDED, That any on-site inspection required by the council
14 shall be performed by other state agencies pursuant to interagency
15 agreement: PROVIDED FURTHER, That the council may retain authority for
16 determining compliance relative to monitoring;

17 (10) To integrate its site evaluation activity with activities of
18 federal agencies having jurisdiction in such matters to avoid
19 unnecessary duplication;

20 (11) To present state concerns and interests to other states,
21 regional organizations, and the federal government on the location,
22 construction, and operation of any energy facility which may affect the
23 environment, health, or safety of the citizens of the state of
24 Washington;

25 (12) To issue permits in compliance with applicable provisions of
26 the federally approved state implementation plan adopted in accordance
27 with the Federal Clean Air Act, as now existing or hereafter amended,
28 for the new construction, reconstruction, or enlargement or operation
29 of energy facilities: PROVIDED, That such permits shall become
30 effective only if the ~~((governor))~~ council approves an application for
31 certification and executes a certification agreement pursuant to this
32 chapter: AND PROVIDED FURTHER, That all such permits be conditioned
33 upon compliance with all provisions of the federally approved state
34 implementation plan which apply to energy facilities covered within the
35 provisions of this chapter; ~~((and))~~

36 (13) To serve as an interagency coordinating body for energy-
37 related issues;

1 (14) To develop standards for an expedited siting process for the
2 state of Washington, local governments, and other political
3 subdivisions of the state in relation to the type, design, location,
4 construction, operational conditions, and decommissioning of energy
5 facilities subject to this chapter; and

6 (15) To enter into interlocal agreements with towns, cities, and
7 counties for the purpose of issuing site certifications for energy
8 facilities within the geographic jurisdiction of the local government.

9 **NEW SECTION. Sec. 5.** A new section is added to chapter 80.50 RCW
10 to read as follows:

11 (1) Beginning December 1, 2014, the council must use:

12 (a) Council standards as provided under Title 463 WAC for the
13 siting, construction, operation, and decommissioning of energy
14 facilities; or

15 (b) For issues not addressed in the standards in (a) and (d) of
16 this subsection, Oregon Administrative Rules, chapter 345, in effect as
17 of January 1, 2013, except for the following:

18 (i) Oregon Administrative Rule 345-023-0005;

19 (ii) Oregon Administrative Rule 345-023-0020;

20 (iii) Oregon Administrative Rule 345-023-0030;

21 (iv) Oregon Administrative Rule 345-023-0040;

22 (v) Oregon Administrative Rule 345-024-0500;

23 (vi) Oregon Administrative Rule 345-022-0080; and

24 (vii) Oregon Administrative Rule 345-022-0030.

25 (c) When Oregon Administrative Rules reference an Oregon state
26 agency or other Oregon governmental entity, the council must identify
27 the most equivalent Washington state agency or governmental entity and
28 substitute the Washington agency or entity in place of the Oregon state
29 agency or Oregon governmental entity.

30 (d) To issue a site certificate, the council, after consultation
31 with appropriate state agencies, must find that:

32 (i) For plant species that the Washington state natural heritage
33 program has listed as threatened or endangered under chapter 79.70 RCW,
34 the design, construction, and operation of the proposed facility,
35 taking into account mitigation:

36 (A) Are consistent with the protection and conservation program, if

1 any, that the natural heritage program has adopted under chapter 79.70
2 RCW; or

3 (B) If the natural heritage program has not adopted a protection
4 and conservation program, are not likely to cause a significant
5 reduction in the likelihood of survival or recovery of the species; and

6 (ii) For wildlife species that the Washington department of fish
7 and wildlife has listed as threatened or endangered under RCW
8 77.12.020, the design, construction, and operation of the proposed
9 facility, taking into account mitigation, are not likely to cause a
10 significant reduction in the likelihood of survival or recovery of the
11 species.

12 (2)(a) By December 1, 2014, cities and counties must use the
13 minimum standards in subsection (1) of this section when permitting
14 energy facilities.

15 (i) Any local government or political subdivision that is not the
16 council, with minimum energy facility siting standards adopted prior to
17 the effective date of this section, is exempt from the provisions of
18 this section for as long as the existing minimum standards remain in
19 effect. The minimum standards adopted by the local government or a
20 political subdivision that is not the council before this section takes
21 effect may be amended in a manner consistent with this section when
22 permitting energy facilities applied for under this chapter.

23 (ii) Any local government or political subdivision that is not the
24 council, when determining the timeline for the environmental review of
25 the proposed energy facility, may adjust the timeline depending on the
26 proposed energy facility's compliance with the standards in this
27 section. If a proposed energy facility meets the energy facility
28 siting standards, the environmental review of the proposed energy
29 facility must be completed within six months.

30 (iii) Within one week of submitting an application to either a
31 local government or political subdivision that is not the council, an
32 applicant must provide notice of the application to adjacent landowners
33 who own property located within one mile of the proposed site of the
34 energy facility. The notice must be provided by mailing the notice to
35 the latest recorded real property owners, as shown by the records of
36 the county assessor.

37 (iv) A county, city, or town is authorized to approve an energy

1 facility only if its land use ordinances are in compliance with the
2 growth management act and any order issued by the growth management
3 hearings board.

4 (b) The council and any local government in the state may enter
5 into, and are encouraged to enter into, an interlocal agreement as
6 provided under chapter 39.34 RCW for the purpose of authorizing the
7 council to issue site certifications for energy facilities within the
8 geographic jurisdiction of the local government. Any such interlocal
9 agreements may include recognition of jurisdiction or site-specific
10 characteristics necessary to ensure compatibility for energy facilities
11 permitted under this chapter.

12 (3)(a) An energy technology company may seek preapproval of its
13 energy technology by submitting to the council an energy technology
14 preapproval application to the council. The council shall impose a
15 charge to cover necessary costs to process the preapproval application.

16 (b) For each preapproval application submitted by an applicant
17 under (a) of this subsection, the council shall develop through rule
18 making the standards an energy technology must meet to be a preapproved
19 energy technology. The applicant is responsible for the cost
20 associated with the rule making and the council must collect a fee from
21 the applicant to recover the cost of the rule making.

22 (c) The council shall maintain a list of energy technologies to be
23 granted expedited environmental review or processing under this chapter
24 and the specific standards adopted under this subsection.

25 (4) Any person may petition the council to request the adoption,
26 amendment, or repeal of any council rule as allowed in RCW 34.05.330.
27 Any person petitioning the council requesting the adoption, amendment,
28 or repeal of any council rule is responsible for reimbursing the
29 council for cost associated with adopting, amending, or repealing a
30 rule.

31 **Sec. 6.** RCW 80.50.045 and 2006 c 196 s 3 are each amended to read
32 as follows:

33 (1)(a) The council shall consult with other state agencies,
34 utilities, local municipal governments, public interest groups, tribes,
35 and other interested persons to convey their views to the secretary and
36 the federal energy regulatory commission regarding appropriate limits

1 on federal regulatory authority in the siting of electrical
2 transmission corridors in the state of Washington.

3 ((+2)) (b) The council is designated as the state authority for
4 purposes of siting electrical transmission facilities under the
5 national energy policy act of 2005 and for purposes of other such rules
6 or regulations adopted by the secretary. The council's authority
7 regarding electrical transmission facilities is limited to those
8 electrical transmission facilities that are the subject of section 1221
9 of the national energy policy act and this chapter.

10 ((+3)) (c) For the construction and modification of electrical
11 transmission facilities that are the subject of section 1221 of the
12 national energy policy act, the council may: ((+a)) (i) Approve the
13 siting of the facilities; and ((+b)) (ii) consider the interstate
14 benefits expected to be achieved by the proposed construction or
15 modification of the facilities in the state.

16 ((+4)) (d) When developing recommendations as to the disposition
17 of an application for the construction or modification of electrical
18 transmission facilities under this chapter, the fuel source of the
19 electricity carried by the transmission facilities shall not be
20 considered.

21 (2) The council shall monitor the activities of the federal energy
22 regulatory commission and may receive notifications for energy projects
23 located in Washington that are under the regulatory oversight of the
24 federal energy regulatory commission. These notifications must
25 include, but are not limited to, project filings, delegated orders,
26 notices, and the federal energy regulatory commission decisions.

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

29 (1)(a) Except as provided under (b) and (c) of this subsection, the
30 provisions of this chapter apply to the construction of energy
31 facilities which includes the new construction of energy facilities
32 ((and the reconstruction or enlargement of existing energy facilities
33 where the net increase in physical capacity or dimensions resulting
34 from such reconstruction or enlargement meets or exceeds those
35 capacities or dimensions set forth in RCW 80.50.020 (7) and (15). No
36 construction of such energy facilities may be undertaken, except as

1 otherwise provided in this chapter, after July 15, 1977, without first
2 obtaining certification in the manner provided in this chapter.

3 ~~(2) The provisions of this chapter apply to the construction,~~
4 ~~reconstruction, or enlargement of a new or existing energy facility~~
5 ~~that exclusively uses alternative energy resources and chooses to~~
6 ~~receive certification under this chapter, regardless of the generating~~
7 ~~capacity of the project)) if the applicant chooses to receive~~
8 ~~certification under this chapter.~~

9 ~~((3))~~ (b) Any proposed nuclear power facility in Washington,
10 where the primary purpose is to produce and sell electricity, must
11 apply to the council for site certification.

12 (c) Any proposed transmission pipeline facility in Washington must
13 apply to the council for site certification.

14 (2)(a) The provisions of this chapter apply to the construction,
15 reconstruction, or modification of electrical transmission facilities
16 when:

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

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

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

32 (b) For the purposes of this subsection, "modify" means a
33 significant change to an electrical transmission facility and does not
34 include the following: (i) Minor improvements such as the replacement
35 of existing electrical transmission line facilities or supporting
36 structures with equivalent facilities or structures; (ii) the
37 relocation of existing electrical transmission line facilities; (iii)
38 the conversion of existing overhead lines to underground; or (iv) the

1 placing of new or additional conductors, supporting structures,
2 insulators, or their accessories on or replacement of supporting
3 structures already built.

4 ~~((4))~~ (3) The provisions of this chapter shall not apply to
5 normal maintenance and repairs which do not increase the capacity or
6 dimensions ~~((beyond those set forth in RCW 80.50.020 (7) and (15)))~~ of
7 an energy facility.

8 (4) The provisions of this chapter do not apply to an energy
9 facility that previously has been approved or denied by a local
10 government.

11 (5) Applications for certification of energy facilities made prior
12 to July 15, 1977, shall continue to be governed by the applicable
13 provisions of law in effect on the day immediately preceding July 15,
14 1977, with the exceptions of RCW 80.50.190 and 80.50.071 which shall
15 apply to such prior applications and to site certifications
16 prospectively from July 15, 1977.

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

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

22 (1) Each applicant for a site certificate shall submit to the
23 council a preliminary application for a site certificate. The
24 preliminary application must provide information about the proposed
25 site and the characteristics of the energy facility sufficient for the
26 preparation of the council's notice of application requirements. The
27 preliminary application must specify whether the proposed energy
28 facility will comply with local land use ordinances in the jurisdiction
29 or jurisdictions in which it is proposed.

30 (2)(a) The chair of the council shall provide notice to the public
31 within three working days of receiving a preliminary application.
32 Within one week of submitting a preliminary application to the council,
33 an applicant must provide notice of the application to adjacent
34 landowners by mailing the notice to the latest recorded real property
35 owners, as shown by the records of the county assessor, who own
36 property located within one mile of the proposed site of the energy

1 facility. The public notice must provide a description of the proposed
2 site and facility in sufficient detail to inform the public of the
3 location and proposed use of the site.

4 (b) After the chair of the council provides public notice, a city,
5 county, or regional planning authority may not change land use plans or
6 zoning ordinances so as to affect the proposed site.

7 (3) Within three working days after the chair of the council
8 provides public notice, an applicant for a site certification shall
9 distribute the preliminary application to any agency that has
10 regulatory or advisory responsibility with respect to the facility and
11 any city or county affected by the application.

12 (4) No more than thirty-five days after receiving a preliminary
13 application, the chair of the council shall issue a notice of
14 application requirements establishing the statutes, administrative
15 rules, council standards, local ordinances, application requirements,
16 and study requirements for the site certificate application. The chair
17 of the council may consider whether the proposed facility is in
18 compliance with city, county, or regional land use plans or zoning
19 ordinances and may specify additional requirements in the notice of
20 application based on a review of plans and ordinances where the
21 proposed facility is to be located.

22 (5) Following issuance of the notice of application requirements,
23 an applicant must submit an application for site certification
24 consistent with the notice of application.

25 (6) The chair of the council shall determine within fifteen days of
26 submission of the application whether an application meets the
27 council's requirements.

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

30 (1)(a) Following requirements set forth under chapter 43.21C RCW,
31 the chair must oversee an environmental review of the proposed energy
32 facility.

33 (b) After the chair of the council determines whether an
34 application meets council requirements as provided under section 8 of
35 this act, the chair shall within three working days initiate a scoping
36 process to determine the range of proposed actions, alternatives, and
37 impacts to be examined in the environmental impact statement.

1 (c) The chair of the council shall notify any agency that has
2 regulatory or advisory responsibility with respect to the facility and
3 any city or county affected by the application of the scoping process.

4 (d) Within thirty days of initiating the scoping process, the chair
5 of the council shall conduct a public hearing and submit scoping
6 recommendations to the council in order for the council to establish a
7 timeline for the environmental review of the proposed energy facility.

8 (e) Within fourteen days of receiving the timeline recommendations
9 from the chair of the council, the council must determine whether the
10 environmental review process as required under chapter 43.21C RCW for
11 the proposed energy facility must be completed within six months,
12 twelve months, or longer. In determining the timeline, the council may
13 adjust the timeline depending on the proposed energy facility's
14 compliance with the standards under section 5 of this act. If a
15 proposed energy facility meets the energy facility siting standards
16 under section 5 of this act, the environmental review of the proposed
17 energy facility must be completed within six months. The environment
18 review for proposed energy facilities that do not meet the standards in
19 section 5 of this act must be completed within twelve months, unless
20 the council determines that due to the complexity of the proposed
21 energy facility, the environmental review should be longer.

22 (f) If the council establishes an environmental review process for
23 more than six months, the attorney general shall appoint an assistant
24 attorney general as a counsel for the environment. The counsel for the
25 environment shall represent the public and its interest in protecting
26 the quality of the environment. Costs incurred by the counsel for the
27 environment in the performance of these duties must be charged to the
28 office of the attorney general, and may not be a charge against the
29 appropriation to the energy facility site evaluation council. The
30 counsel for the environment must be accorded all the rights,
31 privileges, and responsibilities of an attorney representing a party in
32 a formal action. This section may not be construed to prevent any
33 person from being heard or represented by counsel in accordance with
34 the other provisions of this chapter.

35 (g) Within the timeline established by the council, the chair of
36 the council shall publish a draft environmental impact statement,
37 solicit comments on the draft environmental impact statement, hold a
38 public hearing on the draft environmental impact statement, consider

1 comments received on the draft environmental impact statement, and
2 submit to the council a recommended final environmental impact
3 statement. In submitting the recommended final environmental impact
4 statement to the council, the chair shall specify whether there are any
5 disputed items based on public input provided during the development of
6 the recommended final environmental impact statement.

7 (i) If there are disputed items in the recommended final
8 environmental impact statement, the council shall hold a public hearing
9 within fifteen days on the draft environmental impact statement under
10 this subsection (1)(g). At the hearing, the chair shall provide a
11 report to the council regarding the recommended environmental impact
12 statement and regarding the disputed items in the recommended
13 environmental impact statement. The issues that may be considered at
14 the public hearing under this subsection are limited to those issues
15 raised during the preliminary application process and during the
16 environmental review process that lead to the development of the
17 recommended environmental impact statement. The chair shall specify to
18 the council the basis for decisions made relating to the disputed items
19 contained in the recommended final environmental impact statement.
20 Based on the input of the chair, the applicant, and the public at the
21 public hearing, the council may elect to address the disputed items
22 from the recommended environmental impact statement in the final
23 environmental impact statement. The council shall issue the final
24 environmental impact statement within fifteen days of the public
25 hearing required under this subsection.

26 (ii) If there are no disputed items in the recommended final
27 environmental impact statement, the chair shall submit to the council
28 the recommended final environmental impact statement within fifteen
29 days of the public hearing under this subsection (1)(g) and the council
30 shall adopt the recommended final environmental impact statement as the
31 final environmental impact statement.

32 (2) The council may contract with independent consultants to review
33 information from the public hearing and to prepare the draft and final
34 environmental impact assessments.

35 NEW SECTION. **Sec. 10.** A new section is added to chapter 80.50 RCW
36 to read as follows:

37 (1) Within fifteen days of issuing the final environmental impact

1 statement, the chair of the council shall prepare and issue an initial
2 order and draft site certification based on the final environmental
3 impact statement.

4 (2) Within fifteen days of receiving an initial order and draft
5 site certification, the council must make a final decision on the
6 application. The council must either approve the application and
7 execute the draft certification agreement or reject the application for
8 site certification. If the council fails to make a final decision, the
9 initial order submitted by the chair becomes the final order on the
10 fifteenth day following receipt of the initial order.

11 **Sec. 11.** RCW 80.50.071 and 2011 c 261 s 1 are each amended to read
12 as follows:

13 (1) The council shall receive all preliminary applications and
14 applications for energy facility site certification under this chapter.
15 Each applicant shall pay such reasonable costs as are actually and
16 necessarily incurred by the council in processing a preliminary
17 application or an application.

18 (a) Each applicant shall, at the time of application submission,
19 deposit fifty thousand dollars, or such greater amount as may be
20 specified by the council after consultation with the applicant. Costs
21 that may be charged against the deposit include, but are not limited
22 to, independent consultants' costs, councilmember's wages, employee
23 benefits, costs of a hearing examiner, costs of a court reporter, staff
24 salaries, wages and employee benefits, goods and services, travel
25 expenses, and miscellaneous direct expenses as arise directly from
26 processing an application.

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

32 (c) The council shall submit to each applicant a statement of such
33 expenditures made during the preceding calendar quarter which shall be
34 in sufficient detail to explain such expenditures. The applicant shall
35 pay the state treasurer the amount of such statement to restore the
36 total amount on deposit to the originally established level: PROVIDED,
37 That such applicant may, at the request of the council, increase the

1 amount of funds on deposit to cover anticipated expenses during peak
2 periods of application processing. Any funds remaining unexpended at
3 the conclusion of application processing shall be refunded to the
4 applicant, or at the applicant's option, credited against required
5 deposits of certificate holders.

6 (2) Each certificate holder shall pay such reasonable costs as are
7 actually and necessarily incurred by the council for inspection and
8 determination of compliance by the certificate holder with the terms of
9 the certification relative to monitoring the effects of construction,
10 operation, and site restoration of the facility.

11 (a) Each certificate holder, within thirty days of execution of the
12 site certification agreement, shall have on deposit fifty thousand
13 dollars, or such greater amount as may be specified by the council
14 after consultation with the certificate holder. Costs that may be
15 charged against the deposit include, but are not limited to, those
16 specified in subsection (1)(a) of this section as arise from inspection
17 and determination of compliance by the certificate holder with the
18 terms of the certification.

19 (b) The council shall submit to each certificate holder a statement
20 of such expenditures actually made during the preceding calendar
21 quarter which shall be in sufficient detail to explain such
22 expenditures. The certificate holder shall pay the state treasurer the
23 amount of such statement to restore the total amount on deposit to the
24 originally established level: PROVIDED, That if the actual
25 expenditures for inspection and determination of compliance in the
26 preceding calendar quarter have exceeded the amount of funds on
27 deposit, such excess costs shall be paid by the certificate holder.

28 (3) If an applicant or certificate holder fails to provide the
29 initial deposit, or if subsequently required payments are not received
30 within thirty days following receipt of the statement from the council,
31 the council may (a) in the case of the applicant, suspend processing of
32 the application until payment is received; or (b) in the case of a
33 certificate holder, suspend the certification.

34 (4) All payments required of the applicant or certificate holder
35 under this section are to be made to the state treasurer who shall make
36 payments as instructed by the council from the funds submitted. All
37 such funds shall be subject to state auditing procedures. Any

1 unexpended portions thereof shall be returned to the applicant or
2 certificate holder.

3 (5)(a) Upon receipt of an application for an energy facility site
4 certification proposing an energy plant (~~(or—alternative—energy~~
5 ~~resource))~~) that is connected to electrical transmission facilities of
6 a nominal voltage of at least one hundred fifteen thousand volts, the
7 council shall notify in writing the United States department of
8 defense. The notification shall include, but not be limited to, the
9 following:

10 (i) A description of the proposed energy plant or alternative
11 energy resource;

12 (ii) The location of the site;

13 (iii) The placement of the energy plant or alternative energy
14 resource on the site;

15 (iv) The date and time by which comments must be received by the
16 council; and

17 (v) Contact information of the council and the applicant.

18 (b) The purpose of the written notification is to provide an
19 opportunity for the United States department of defense to comment upon
20 the application, and to identify potential issues relating to the
21 placement and operations of the energy plant or alternative energy
22 resource, before a site certification application is approved. The
23 time period set forth by the council for receipt of such comments shall
24 not extend the time period for the council's processing of the
25 application.

26 (c) In order to assist local governments required to notify the
27 United States department of defense under RCW 35.63.270, 35A.63.290,
28 and 36.01.320, the council shall post on its web site the appropriate
29 information for contacting the United States department of defense.

30 **Sec. 12.** RCW 80.50.075 and 2006 c 205 s 2 are each amended to read
31 as follows:

32 (1) Any person filing an application for certification of an energy
33 facility (~~(or—an—alternative—energy—resource—facility))~~) pursuant to
34 this chapter may apply to the council for an expedited processing of
35 such an application. The application for expedited processing shall be
36 submitted to the council in such form and manner and accompanied by
37 such information as may be prescribed by council rule. The council may

1 grant an applicant expedited processing of an application for
2 certification upon finding that the environmental impact of the
3 proposed energy facility is not significant or will be mitigated to a
4 nonsignificant level under RCW 43.21C.031 (~~and the project is found~~
5 ~~under RCW 80.50.090(2) to be consistent and in~~). Review must consider
6 compliance with city, county, or regional land use plans or zoning
7 ordinances.

8 (2) Upon granting an applicant expedited processing of an
9 application for certification, the council shall not be required to:

10 (a) Commission an independent study to further measure the
11 consequences of the proposed energy facility (~~or alternative energy~~
12 ~~resource-facility~~) on the environment, notwithstanding the other
13 provisions of RCW 80.50.071; nor

14 (b) Hold an adjudicative proceeding under chapter 34.05 RCW, the
15 administrative procedure act, on the application.

16 (3) The council shall adopt rules governing the expedited
17 processing of an application for certification pursuant to this
18 section.

19 **Sec. 13.** RCW 80.50.085 and 2001 c 214 s 5 are each amended to read
20 as follows:

21 (1) After the council has received a preliminary site application,
22 council staff shall assist applicants in identifying issues presented
23 by the preliminary application and the application.

24 (2) Council staff shall review all information submitted and
25 recommend resolutions to issues in dispute that would allow site
26 approval.

27 (3) Council staff may make recommendations to the council on
28 conditions that would allow site approval.

29 **Sec. 14.** RCW 80.50.100 and 2011 c 180 s 109 are each amended to
30 read as follows:

31 (~~((1)(a) — The — council — shall — report — to — the — governor — its~~
32 ~~recommendations as to the approval or rejection of an application for~~
33 ~~certification within twelve months of receipt by the council of such an~~
34 ~~application, or such later time as is mutually agreed by the council~~
35 ~~and the applicant.~~

1 ~~(b))~~) In the case of an application filed prior to December 31,
2 2025, for certification of an energy facility proposed for
3 construction, modification, or expansion for the purpose of providing
4 generating facilities that meet the requirements of RCW 80.80.040 and
5 are located in a county with a coal-fired electric (~~generating~~
6 ~~[generation]~~) generation facility subject to RCW 80.80.040(3)(c), the
7 council shall expedite the processing of the application pursuant to
8 RCW 80.50.075 and shall (~~report its recommendations to the governor~~)
9 issue a site certification or reject the site certification application
10 within one hundred eighty days of receipt by the council of such an
11 application, or a later time as is mutually agreed by the council and
12 the applicant.

13 ~~((2) If the council recommends approval of an application for~~
14 ~~certification, it shall also submit a draft certification agreement~~
15 ~~with the report. The council shall include conditions in the draft~~
16 ~~certification agreement to implement the provisions of this chapter,~~
17 ~~including, but not limited to, conditions to protect state or local~~
18 ~~governmental or community interests affected by the construction or~~
19 ~~operation of the energy facility, and conditions designed to recognize~~
20 ~~the purpose of laws or ordinances, or rules or regulations promulgated~~
21 ~~thereunder, that are preempted or superseded pursuant to RCW 80.50.110~~
22 ~~as now or hereafter amended.~~

23 ~~(3)(a) Within sixty days of receipt of the council's report the~~
24 ~~governor shall take one of the following actions:~~

25 ~~(i) Approve the application and execute the draft certification~~
26 ~~agreement; or~~

27 ~~(ii) Reject the application; or~~

28 ~~(iii) Direct the council to reconsider certain aspects of the draft~~
29 ~~certification agreement.~~

30 ~~(b) The council shall reconsider such aspects of the draft~~
31 ~~certification agreement by reviewing the existing record of the~~
32 ~~application or, as necessary, by reopening the adjudicative proceeding~~
33 ~~for the purposes of receiving additional evidence. Such~~
34 ~~reconsideration shall be conducted expeditiously. The council shall~~
35 ~~resubmit the draft certification to the governor incorporating any~~
36 ~~amendments deemed necessary upon reconsideration. Within sixty days of~~
37 ~~receipt of such draft certification agreement, the governor shall~~

1 ~~either approve the application and execute the certification agreement~~
2 ~~or reject the application. The certification agreement shall be~~
3 ~~binding upon execution by the governor and the applicant.~~

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

8 **Sec. 15.** RCW 80.50.105 and 1991 c 200 s 1112 are each amended to
9 read as follows:

10 ~~((In making its recommendations to the governor under this chapter~~
11 ~~regarding))~~ For an application that includes transmission pipeline
12 facilities for petroleum products, the council shall give appropriate
13 weight to city or county facility siting standards adopted for the
14 protection of sole source aquifers.

15 **Sec. 16.** RCW 80.50.110 and 1975-'76 2nd ex.s. c 108 s 37 are each
16 amended to read as follows:

17 (1) If any provision of this chapter is in conflict with any other
18 provision, limitation, or restriction which is now in effect under any
19 other law of this state, or any rule or regulation promulgated
20 thereunder, this chapter shall govern and control and such other law or
21 rule or regulation promulgated thereunder shall be deemed superseded
22 for the purposes of this chapter.

23 (2) The state hereby preempts the regulation and certification of
24 the location, construction, and operational conditions of certification
25 of the energy facilities included under RCW 80.50.060 as now or
26 hereafter amended.

27 (3) For an energy facility interconnecting to an electric utility's
28 distribution system, the application of standards and terms of a site
29 certification by the council under this chapter only applies to the
30 part of the facility within the geographic boundaries of the proposed
31 facility and not to the electrical interconnection of a facility to the
32 electric utility's distribution system.

33 **Sec. 17.** RCW 80.50.120 and 1977 ex.s. c 371 s 10 are each amended
34 to read as follows:

35 Except as provided in RCW 80.50.110:

1 (1) Subject to the conditions set forth therein any certification
2 shall bind the state and each of its departments, agencies, divisions,
3 bureaus, commissions, boards, and political subdivisions, whether a
4 member of the council or not, as to the approval of the site and the
5 construction and operation of the proposed energy facility.

6 (2) The certification shall authorize the person named therein to
7 construct and operate the proposed energy facility subject only to the
8 conditions set forth in such certification.

9 (3) The issuance of a certification shall be in lieu of any permit,
10 certificate or similar document required by any department, agency,
11 division, bureau, commission, board, or political subdivision of this
12 state, whether a member of the council or not.

13 NEW SECTION. **Sec. 18.** A new section is added to chapter 80.50 RCW
14 to read as follows:

15 A city and county that has approved an energy facility through a
16 local permitting process shall submit to the council within thirty days
17 of the issuance of a permit a copy of the permit and any conditions of
18 approval.

19 NEW SECTION. **Sec. 19.** A new section is added to chapter 43.21C
20 RCW to read as follows:

21 For the purposes of this chapter, the energy facility site
22 evaluation council may choose to establish timelines related to the
23 siting of energy facilities under chapter 80.50 RCW that are shorter
24 than those required by this chapter. A town, city, or county may
25 choose to establish timelines related to the siting of energy
26 facilities that are shorter than those required by this chapter if a
27 proposed energy facility meets the siting standards under section 5 of
28 this act.

29 NEW SECTION. **Sec. 20.** The following acts or parts of acts are
30 each repealed:

31 (1) RCW 80.50.080 (Counsel for the environment) and 1977 ex.s. c
32 371 s 6 & 1970 ex.s. c 45 s 8;

33 (2) RCW 80.50.090 (Public hearings) and 2006 c 205 s 3, 2006 c 196
34 s 6, 2001 c 214 s 7, 1989 c 175 s 173, & 1970 ex.s. c 45 s 9; and

1 (3) RCW 80.50.320 (Governor to evaluate council efficiency, make
2 recommendations) and 2001 c 214 s 8.

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