

ESHB 1332 - S COMM AMD

By Committee on Environment, Energy & Technology

NOT CONSIDERED 12/23/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 80.50.030 and 2010 c 271 s 601 and 2010 c 152 s 2
4 are each reenacted and amended to read as follows:

5 (1) There is created and established the energy facility site
6 evaluation council.

7 (2)(a) The chair of the council shall be appointed by the
8 governor with the advice and consent of the senate, shall have a vote
9 on matters before the council, shall serve for a term coextensive
10 with the term of the governor, and is removable for cause. The chair
11 may designate a member of the council to serve as acting chair in the
12 event of the chair's absence. The salary of the chair shall be
13 determined under RCW 43.03.040. The chair is a "state employee" for
14 the purposes of chapter 42.52 RCW. As applicable, when attending
15 meetings of the council, members may receive reimbursement for travel
16 expenses in accordance with RCW 43.03.050 and 43.03.060, and are
17 eligible for compensation under RCW 43.03.250.

18 (b) The chair or a designee shall execute all official documents,
19 contracts, and other materials on behalf of the council. (~~The~~
20 ~~Washington utilities and transportation commission shall provide all~~
21 ~~administrative and staff support for the council.~~) The
22 (~~commission~~) chair is the appointing authority and has supervisory
23 authority over the staff of the council and shall employ such
24 personnel as are necessary to implement this chapter. Not more than
25 three such employees may be exempt from chapter 41.06 RCW. The
26 Washington utilities and transportation commission shall provide
27 administrative support for the council. The council shall
28 (~~otherwise~~) retain its independence in exercising its powers,
29 functions, and duties and its supervisory control over
30 (~~nonadministrative~~) council staff (~~support~~). Membership, powers,
31 functions, and duties of the Washington state utilities and

1 transportation commission and the council shall otherwise remain as
2 provided by law.

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

6 ~~(i) Department of ecology;~~

7 ~~(ii) Department of fish and wildlife;~~

8 ~~(iii) Department of commerce;~~

9 ~~(iv) Utilities and transportation commission; and~~

10 ~~(v) Department of natural resources.~~

11 ~~(b) The directors, administrators, or their designees, of the~~
12 ~~following departments, agencies, and commissions, or their statutory~~
13 ~~successors, may participate as councilmembers at their own discretion~~
14 ~~provided they elect to participate no later than sixty days after an~~
15 ~~application is filed:~~

16 ~~(i) Department of agriculture;~~

17 ~~(ii) Department of health;~~

18 ~~(iii) Military department; and~~

19 ~~(iv) Department of transportation.~~

20 ~~(c) Council membership is discretionary for agencies that choose~~
21 ~~to participate under (b) of this subsection only for applications~~
22 ~~that are filed with the council on or after May 8, 2001. For~~
23 ~~applications filed before May 8, 2001, council membership is~~
24 ~~mandatory for those agencies listed in (b) of this subsection.~~

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

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

1 ~~(6) For any port district wherein an application for a proposed~~
2 ~~port facility is filed subject to this chapter, the port district~~
3 ~~shall appoint a member or designee as a nonvoting member to the~~
4 ~~council. The member or designee so appointed shall sit with the~~
5 ~~council only at such times as the council considers the proposed site~~
6 ~~for the port district which he or she represents, and such member or~~
7 ~~designee shall serve until there has been a final acceptance or~~
8 ~~rejection of the proposed site. The provisions of this subsection~~
9 ~~shall not apply if the port district is the applicant, either singly~~
10 ~~or in partnership or association with any other person)) chair and:~~

11 (a) The director of the department of ecology or the director's
12 designee;

13 (b) The director of the department of fish and wildlife or the
14 director's designee;

15 (c) The director of the department of commerce or the director's
16 designee;

17 (d) The chair of the utilities and transportation commission or
18 the chair's designee;

19 (e) The commissioner of public lands or the commissioner's
20 designee;

21 (f) One member designated by the board of directors of the
22 Washington state association of counties or its successor; and

23 (g) Two members from federally recognized tribes.

24 (4) The city legislative authority of every city within whose
25 corporate limits an energy facility is proposed to be located may
26 appoint a member or designee as a voting member to the council. The
27 city legislative authority must make the appointment no later than
28 ninety days after notification from the council. The member or
29 designee so appointed may only sit with the council only at such
30 times as the council considers the proposed site for the city that
31 the member represents.

32 (5) A quorum of the council consists of a majority of members
33 appointed for business to be conducted.

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

36 The council shall have the following powers:

37 (1) To adopt, promulgate, amend, or rescind suitable rules and
38 regulations, pursuant to chapter 34.05 RCW, to carry out the

1 provisions of this chapter, and the policies and practices of the
2 council in connection therewith;

3 (2) To develop and apply environmental and ecological guidelines
4 in relation to the type, design, location, construction, ~~((and))~~
5 initial operational conditions of certification, and ongoing
6 regulatory oversight of energy facilities subject to this chapter;

7 (3) To establish rules of practice for the conduct of public
8 hearings pursuant to the provisions of the Administrative Procedure
9 Act, as found in chapter 34.05 RCW;

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

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

14 (6) To ~~((make and contract, when applicable, for independent~~
15 ~~studies of sites proposed by the applicant))~~ enter into contracts to
16 carry out the provisions of this chapter;

17 (7) To conduct hearings on the proposed location and operational
18 conditions of the energy facilities;

19 (8) To prepare written reports to the governor which shall
20 include: (a) A statement indicating whether the application is in
21 compliance with the council's guidelines, (b) criteria specific to
22 the site and transmission line routing, (c) a council recommendation
23 as to the disposition of the application, and (d) a draft
24 certification agreement when the council recommends approval of the
25 application;

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

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

38 (11) To present state concerns and interests to other states,
39 regional organizations, and the federal government on the location,
40 construction, and operation of any energy facility which may affect

1 the environment, health, or safety of the citizens of the state of
2 Washington;

3 (12) To issue permits in compliance with applicable provisions of
4 the federally approved state implementation plan adopted in
5 accordance with the Federal Clean Air Act, as now existing or
6 hereafter amended, for the new construction, reconstruction, or
7 enlargement or operation of energy facilities: PROVIDED, That such
8 permits shall become effective only if the governor approves an
9 application for certification and executes a certification agreement
10 pursuant to this chapter: AND PROVIDED FURTHER, That all such permits
11 be conditioned upon compliance with all provisions of the federally
12 approved state implementation plan which apply to energy facilities
13 covered within the provisions of this chapter; and

14 (13) To serve as an interagency coordinating body for energy-
15 related issues.

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

18 (1) The provisions of this chapter apply to the construction of
19 energy facilities which includes the new construction of energy
20 facilities and the reconstruction or enlargement of existing energy
21 facilities where the net increase in physical capacity or dimensions
22 resulting from such reconstruction or enlargement meets or exceeds
23 those capacities or dimensions set forth in RCW 80.50.020 (~~((7) and~~
24 ~~(15))~~) (12) and (21). No construction of such energy facilities may
25 be undertaken, except as otherwise provided in this chapter, after
26 July 15, 1977, without first obtaining certification in the manner
27 provided in this chapter.

28 (2) The provisions of this chapter apply to the construction,
29 reconstruction, or enlargement of a new or existing energy facility
30 that exclusively uses alternative energy resources and chooses to
31 receive certification under this chapter, regardless of the
32 generating capacity of the project.

33 (3) (a) The provisions of this chapter apply to the construction,
34 reconstruction, or modification of electrical transmission facilities
35 when:

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

38 (ii) An applicant chooses to receive certification under this
39 chapter, and the facilities are: (A) Of a nominal voltage of at least

1 one hundred fifteen thousand volts and are located in a completely
2 new corridor, except for the terminus of the new facility or
3 interconnection of the new facility with the existing grid, and the
4 corridor is not otherwise used for electrical transmission
5 facilities; and (B) located in more than one jurisdiction that has
6 promulgated land use plans or zoning ordinances; or

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

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

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

26 (5) Applications for certification of energy facilities made
27 prior to July 15, 1977, shall continue to be governed by the
28 applicable provisions of law in effect on the day immediately
29 preceding July 15, 1977, with the exceptions of RCW 80.50.190 and
30 80.50.071 which shall apply to such prior applications and to site
31 certifications prospectively from July 15, 1977.

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

35 (7) Upon receipt of an application for certification under this
36 chapter, the chair shall notify:

37 (a) The department of agriculture;

38 (b) The department of health;

39 (c) The military department;

40 (d) The department of transportation;

1 (e) The appropriate county legislative authority where the
2 proposed facility is located; and

3 (f) The appropriate federally recognized tribal governments
4 affected by the proposed facility.

5 (8) The council shall work with local governments where a project
6 is proposed to be sited in order to ensure meaningful participation
7 and input during siting review and compliance monitoring.

8 (9) The council must work with all federally recognized tribal
9 governments affected by a proposed facility in order to ensure
10 meaningful participation and input during siting review and
11 compliance monitoring. Consistent with RCW 43.376.020, the chair and
12 designated staff must conduct government-to-government meetings to
13 address tribal issues of concern. The chair must provide regular
14 meeting updates to the council throughout the application review
15 process. The report required in RCW 80.50.100 must include a summary
16 of the government-to-government meetings, including the issues and
17 resolutions.

18 **Sec. 4.** RCW 80.50.090 and 2006 c 205 s 3 and 2006 c 196 s 6 are
19 each reenacted and amended to read as follows:

20 (1) The council shall conduct an informational public hearing in
21 the county of the proposed site as soon as practicable but not later
22 than sixty days after receipt of an application for site
23 certification. However, the place of such public hearing shall be as
24 close as practical to the proposed site. (~~((2) Subsequent to the~~
25 ~~informational public)~~) At this hearing, the council (~~((shall conduct a~~
26 ~~public hearing to determine))~~) must take public comment on the
27 application for site certification, as well as whether or not the
28 proposed site is consistent and in compliance with city, county, or
29 regional land use plans or zoning ordinances in effect on the date of
30 the application. (~~((If it is determined that the proposed site does~~
31 ~~conform with existing land use plans or zoning ordinances in effect~~
32 ~~as of the date of the application, the city, county, or regional~~
33 ~~planning authority shall not thereafter change such land use plans or~~
34 ~~zoning ordinances so as to affect the proposed site.))~~)

35 (2) After the completion of tribal consultation and its
36 environmental review under chapter 43.21C RCW, the council shall
37 determine whether genuine issues of fact exist on matters the council
38 deems material to its recommendation to the governor. A council
39 determination that such issues do not exist may only be made after

1 holding a hearing to take public comment on the question and after
2 tribal consultation is complete. If the council determines that such
3 issues do not exist and that under subsection (1) of this section the
4 proposed site is consistent and in compliance with city, county, or
5 regional land use plans or zoning ordinances, the council may waive
6 the adjudicative proceeding required by subsection (3) of this
7 section. Waiving the adjudicative proceeding requires a vote of the
8 council.

9 (3) Prior to the issuance of a council recommendation to the
10 governor under RCW 80.50.100, a public hearing, conducted as an
11 adjudicative proceeding under chapter 34.05 RCW, the administrative
12 procedure act, shall be held unless previously waived in accordance
13 with subsection (2) of this section. At such a public hearing any
14 person shall be entitled to be heard in support of or in opposition
15 to the application for certification.

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

19 **Sec. 5.** RCW 80.50.100 and 2011 c 180 s 109 are each amended to
20 read as follows:

21 (1) (a) The council shall report to the governor its
22 recommendations as to the approval or rejection of an application for
23 certification within twelve months of receipt by the council of
24 (~~such~~) an application deemed complete by the council, or such later
25 time as is mutually agreed by the council and the applicant.

26 (b) In the case of an application filed prior to December 31,
27 2025, for certification of an energy facility proposed for
28 construction, modification, or expansion for the purpose of providing
29 generating facilities that meet the requirements of RCW 80.80.040 and
30 are located in a county with a coal-fired electric (~~generating~~
31 ~~[generation]~~) generation facility subject to RCW 80.80.040(3)(c),
32 the council shall expedite the processing of the application pursuant
33 to RCW 80.50.075 and shall report its recommendations to the governor
34 within one hundred eighty days of receipt by the council of such an
35 application, or a later time as is mutually agreed by the council and
36 the applicant.

37 (2) If the council recommends approval of an application for
38 certification, it shall also submit a draft certification agreement
39 with the report. The council shall include conditions in the draft

1 certification agreement to implement the provisions of this chapter,
2 including, but not limited to, conditions to protect state or local
3 governmental or community interests affected by the construction or
4 operation of the energy facility, and conditions designed to
5 recognize the purpose of laws or ordinances, or rules or regulations
6 promulgated thereunder, that are preempted or superseded pursuant to
7 RCW 80.50.110 as now or hereafter amended.

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

10 (i) Approve the application and execute the draft certification
11 agreement; or

12 (ii) Reject the application; or

13 (iii) Direct the council to reconsider certain aspects of the
14 draft certification agreement.

15 (b) The council shall reconsider such aspects of the draft
16 certification agreement by reviewing the existing record of the
17 application or, as necessary, by reopening the adjudicative
18 proceeding for the purposes of receiving additional evidence. Such
19 reconsideration shall be conducted expeditiously. The council shall
20 resubmit the draft certification to the governor incorporating any
21 amendments deemed necessary upon reconsideration. Within sixty days
22 of receipt of such draft certification agreement, the governor shall
23 either approve the application and execute the certification
24 agreement or reject the application. The certification agreement
25 shall be binding upon execution by the governor and the applicant.

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

30 **Sec. 6.** RCW 80.50.175 and 1983 c 3 s 205 are each amended to
31 read as follows:

32 (1) In addition to all other powers conferred on the council
33 under this chapter, the council shall have the powers set forth in
34 this section.

35 (2) (a) The council, upon ~~((request of))~~ agreement with any
36 potential applicant, is authorized, as provided in this section, to
37 conduct a preliminary study of any potential ~~((site))~~ project prior
38 to receipt of an application for site certification. A fee of ten
39 thousand dollars for each potential ~~((site))~~ project, to be applied

1 toward the cost of any study agreed upon pursuant to (b) of this
2 subsection (~~((3) of this section)~~), shall accompany the (~~(request)~~)
3 agreement and shall be a condition precedent to any action on the
4 (~~(request)~~) agreement by the council.

5 (~~((3) After receiving a request to study a potential site,)~~) (b)
6 Upon agreement with the potential applicant, the council (~~(shall)~~)
7 may commission its own independent consultant to study matters
8 relative to the potential (~~(site)~~) project. The study shall include,
9 but need not be limited to, the preparation and analysis of
10 environmental impact information for the (~~(proposed)~~) potential
11 (~~(site)~~) project and any other matter the council and the potential
12 applicant deem essential to an adequate appraisal of the potential
13 (~~(site)~~) project. In conducting the study, the council is authorized
14 to cooperate and work jointly with the county or counties in which
15 the potential (~~(site)~~) project is located, any federal, state, (~~(or)~~)
16 local, or tribal governmental agency that might be requested to
17 comment upon the potential (~~(site)~~) project, and any municipal or
18 public corporation having an interest in the matter. The full cost of
19 the study shall be paid by the potential applicant: PROVIDED, That
20 such costs exceeding a total of ten thousand dollars shall be payable
21 subject to the potential applicant giving prior approval to such
22 excess amount.

23 (~~((4) Any study prepared by the council pursuant to subsection~~
24 ~~(3) of this section may be used in place of the "detailed statement"~~
25 ~~required by RCW 43.21C.030(2)(c) by any branch of government except~~
26 ~~the council created pursuant to chapter 80.50 RCW.~~

27 ~~(5))~~ (3) All payments required of the potential applicant under
28 this section are to be (~~(made to the state treasurer, who in turn~~
29 ~~shall pay the consultant as instructed by the council)~~) deposited
30 with the utilities and transportation commission. All such funds
31 shall be subject to state auditing procedures. Any unexpended
32 portions thereof shall be returned to the potential applicant.

33 (~~((6) Nothing in this section shall change the requirements for~~
34 ~~an application for site certification or the requirement of payment~~
35 ~~of a fee as)) (4) If a potential applicant subsequently submits a
36 formal application for site certification for an energy facility at
37 the site where a preliminary study was conducted, payments made under
38 this section for that study may be considered as payment towards the
39 application fee provided in RCW 80.50.071(~~(, or change the time for~~~~

1 ~~disposition of an application for certification as provided in RCW~~
2 ~~80.50.100.~~

3 ~~(7) Nothing in this section shall be construed as preventing a~~
4 ~~city or county from requiring any information it deems appropriate to~~
5 ~~make a decision approving a particular location))."~~

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6 On page 1, line 2 of the title, after "operations;" strike the
7 remainder of the title and insert "amending RCW 80.50.040, 80.50.060,
8 80.50.100, and 80.50.175; and reenacting and amending RCW 80.50.030
9 and 80.50.090."

EFFECT: Specifies that the Energy Facility Site Evaluation Council (EFSEC) include two members from federally recognized tribes.

Removes language specifying that the tribal members must be from either a treaty tribe or tribe with a trust resource agreement and the language requiring the two tribal members to have one vote.

Clarifies that cities are allowed, rather than required, to appoint one member when an energy facility is proposed to be located within its limits.

Requires the legislative authority of a city to appoint a member no later than 90 days after notification from the EFSEC.

Clarifies that a quorum of the EFSEC consists of a majority of the members appointed for business to be conducted.

Requires the EFSEC chair and designated staff to conduct government-to-government meetings to address tribal issues of concern, and a summary of these meetings to be included in the required report to the Governor on energy facility proposals.

--- END ---