

# HOUSE BILL REPORT

## ESHB 1332

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**As Passed House:**  
March 9, 2019

**Title:** An act relating to updating and streamlining the energy facility site evaluation council operations.

**Brief Description:** Concerning updating and streamlining energy facility site evaluation council operations.

**Sponsors:** House Committee on Environment & Energy (originally sponsored by Representatives Wylie, DeBolt, Mead, Doglio, Fitzgibbon and Tharinger; by request of Energy Facility Site Evaluation Council).

**Brief History:**

**Committee Activity:**

Environment & Energy: 1/28/19, 2/14/19 [DPS].

**Floor Activity:**

Passed House: 3/9/19, 88-8.

**Brief Summary of Engrossed Substitute Bill**

- Grants the Chair of the Energy Facility Site Evaluation Council (EFSEC) supervisory and appointing authority over EFSEC staff.
- Authorizes the EFSEC to develop and apply environmental and ecological guidelines in relation to ongoing regulatory oversight of certain energy facilities.
- Consolidates and amends the requirements for public hearing on a site certification application.
- Amends the EFSEC's authority to conduct a preliminary study of potential energy facility projects.

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### HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Shea,

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*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.*

Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke, DeBolt, Doglio, Fey, Mead, Peterson and Shewmake.

**Staff:** Nikkole Hughes (786-7156).

**Background:**

The Energy Facility Site Evaluation Council.

The Energy Facility Site Evaluation Council (EFSEC or Council) was established in 1970 to provide a single siting process for major energy facilities located in the state. The EFSEC coordinates all evaluation and licensing steps for siting certain energy facilities, as well as specifies the conditions of construction and operation. After evaluating an application, the EFSEC submits a recommendation either approving or rejecting an application to the Governor, who makes the final decision on site certification. If approved by the Governor, a site certification agreement is issued in lieu of any other individual state or local agency permits.

The Utilities and Transportation Commission (UTC) provides all administrative and staff support for the EFSEC. The UTC has supervisory authority over the staff of the EFSEC. The EFSEC otherwise retains its independence in exercising its powers, functions, and duties and its supervisory control over non-administrative staff support.

The Governor, with the advice and consent of the Senate, appoints the EFSEC Chair. The Chair or the Chair's designee executes all official documents, contracts, and other materials on behalf of the EFSEC. Along with the Chair, the permanent membership of the EFSEC consists of the directors, administrators, or their designees, of the following:

- the Department of Ecology;
- the Department of Fish and Wildlife;
- the Department of Commerce;
- the UTC; and
- the Department of Natural Resources.

The directors, administrators, or their designees, of the following may participate as Council members in a specific site certification proceeding at their own discretion, provided they elect to participate no later than 60 days after an application is filed:

- the Department of Agriculture;
- the Department of Health;
- the Washington State Military Department; and
- the Department of Transportation.

The county legislative authority of every county in which an application for a proposed site is filed must appoint a member or designee as a voting member to the Council. The appointed member or designee sits with the Council only at such times as the Council considers the proposed site for the city which the member represents, and such member or designee must serve until there is a final acceptance or rejection of the proposed site.

Any port district in which an application for a proposed port facility is filed must appoint a member or designee as a nonvoting member to the Council. The appointed member or

designee sits with the Council only at such times as the Council considers the proposed site for the port district which the member represents, and such member or designee must serve until there is a final acceptance or rejection of the proposed site. However, if the port district is an applicant for a port facility, the port may not appoint a member or designee to the Council for review of that application.

#### The Council's Site Certification and Permitting Authority.

The EFSEC's siting authority extends over nuclear power plants of any size and thermal electric power plants with a generating capacity of 350 megawatts or greater. Energy facilities of any size that exclusively use alternative energy resources such as wind may opt into the EFSEC review and certification process. The EFSEC's jurisdiction does not extend to hydropower facilities or to thermal electric plants that have a generating capacity of less than 350 megawatts.

Among the EFSEC's enumerated powers are the authorities to:

- develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities;
- issue air quality permits in compliance with applicable provisions of the federally approved State Implementation Plan adopted in accordance with the federal Clean Air Act; and
- prescribe the means for monitoring the effects arising from the construction and operation of energy facilities to assure continued compliance with terms of certification or water and air quality permits issued by the EFSEC.

The EFSEC may enforce compliance with conditions in a site certification agreement or with a permit through fines or by ceasing construction or operation of the facility.

#### Public Hearings.

In reviewing an application for site certification, the EFSEC must hold three sequential public hearings:

- an informational hearing;
- a land use hearing; and
- a public hearing conducted as an adjudicative proceeding prior to the issuance of a certification recommendation to the Governor.

#### Study of Potential Sites.

Upon the request of a potential applicant, the EFSEC may conduct a preliminary study of any potential site prior to receipt of an application for site certification. A fee of \$10,000 for each potential site, applied toward the cost of the study, must accompany the request and is a condition precedent to any action on the request by the EFSEC. Any study of potential sites prepared by the EFSEC may be used in place of the detailed environmental impact statement required by the State Environmental Policy Act.

#### **Summary of Engrossed Substitute Bill:**

#### The Energy Facility Site Evaluation Council.

Supervisory and appointing authority over staff for the Energy Facility Site Evaluation Council (EFSEC) is shifted away from the Utilities and Transportation Commission (UTC) and granted explicitly to the EFSEC Chair. The UTC must continue to provide administrative support to the EFSEC, however.

Along with the Chair, the permanent membership of the EFSEC consists of:

- the Director of the Department of Ecology or a designee;
- the Director of the Department of Fish and Wildlife or a designee;
- the Director of the Department of Commerce or a designee;
- the Chair of the UTC or a designee;
- the Commissioner of Public Lands or a designee;
- one member designated by the board of directors of the Washington State Association of Counties or its successor;
- one member designated by the board of directors of the Association of Washington Cities or its successor; and
- two members designated by tribal governments.

Of the two members designated by tribal governments, one member must be an elected tribal government member from a federally recognized treaty tribe and one member must be an elected tribal government member from a federally recognized tribe with trust resource agreements. The two tribal members of the EFSEC together have one vote.

The legislative authority of every city within whose corporate limits an energy facility is proposed to be located must appoint a member or designee as a voting member to the EFSEC. The appointed member or designee must sit with the EFSEC only at such times as the EFSEC considers the proposed site for the city that the member represents. The member or designee must serve until there has been a final acceptance or rejection of the proposed site.

A quorum of the EFSEC consists of a majority of members. If a member has not been designated for a position, that position may not be counted for purposes of determining a quorum.

Upon receipt of an application for site certification, the Chair must notify:

- the Department of Agriculture;
- the Department of Health;
- the Washington State Military Department;
- the Department of Transportation;
- the appropriate county legislative authority where the proposed facility is located; and
- the appropriate federally recognized treaty and trust resource tribal governments affected by the proposed facility.

The EFSEC must work with local governments where a project is proposed to be sited in order to ensure meaningful participation and input during siting review and compliance monitoring. The EFSEC must work with all federally recognized treaty and trust resource tribal governments affected by a proposed facility in order to ensure meaningful participation and input during siting review and compliance monitoring. The Chair and the tribal

members of the EFSEC must seek comments from representatives of each of the affected tribal governments prior to the issuance of a siting recommendation to the Governor.

The EFSEC must work with local and tribal governments where a project is proposed to be sited in order to ensure meaningful participation and input during siting review and compliance monitoring.

The Council's Site Certification and Permitting Authority.

In addition to developing and applying environmental and ecological guidelines for the initial operational conditions of site certification, the EFSEC is granted the authority to develop and apply environmental and ecological guidelines for ongoing regulatory oversight of energy facilities. The EFSEC may also conduct hearings on operational conditions of energy facilities, in addition to hearings on the proposed locations of facilities.

Public Hearings.

The requirements for public hearing on a site certification application are consolidated such that public comment on both the application and on land use issues is taken at the first informational hearing.

After completion of tribal consultation and an environmental review under the State Environmental Policy Act, the EFSEC must determine whether genuine issues of fact exist on matters the EFSEC deems material to its recommendation to the Governor. A determination by the EFSEC that such issues do not exist may only be made after holding a second public hearing to take public comment on the question and after tribal consultation is complete. If the EFSEC determines that such issues do not exist and that the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances, the EFSEC may waive the adjudicative proceeding. Waiving the adjudicative proceeding requires a vote of the EFSEC.

Study of Potential Projects.

Rather than the authority to study potential energy facility sites, the EFSEC is granted the authority to conduct a preliminary study of potential energy facility projects. Upon agreement with a potential applicant, the EFSEC may, but is not required to, contract with an independent consultant to study the potential project. A study of a potential project may not be used in place of a detailed environmental impact statement required under the State Environmental Policy Act.

If a potential applicant subsequently submits a formal application for site certification for an energy facility at the site where a preliminary study was conducted, payments made for that study may be considered as payment toward the site certification application fee.

**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:**

(In support) This bill takes a deep, comprehensive look at the enabling authority of the Energy Facility Site Evaluation Council (EFSEC) and streamlines the site certification application process without sacrificing environmental protection. This bill expands representation of tribal communities in the energy facility siting process and creates a stronger ongoing partnership with local governments. Siting clean energy projects is a critical aspect of advancing a diverse, clean energy future.

(Opposed) None.

(Other) The changes made to the intent language inappropriately expand the policymaking scope of the EFSEC and de-emphasize the need to site new facilities to serve growing energy demand in the state. The change to the local government membership on the EFSEC sacrifices the benefits of local knowledge for more longitudinal knowledge on the EFSEC.

**Persons Testifying:** (In support) Representative Wylie, prime sponsor; Kathleen Drew, Energy Facility Site Evaluation Council; Amanda Jahshan, Renewable Northwest; Joni Bosh, Northwest Energy Coalition; and Paul Jewell, Washington State Association of Counties.

(Other) Peter Godlewski, Association of Washington Business; Brian Enslow, City of Vancouver; and Charlie Brown, Cascade Natural Gas Company.

**Persons Signed In To Testify But Not Testifying:** None.