

SENATE BILL REPORT

2ESHB 1332

As Reported by Senate Committee On:
Environment, Energy & Technology, February 25, 2020

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: Passed House: 3/09/19, 88-8; 1/27/20, 87-10.

Committee Activity: Environment, Energy & Technology: 2/20/20, 2/25/20 [DP, DNP, w/oRec].

Brief Summary of Bill

- Adds new permanent members to the Energy Facility Site Evaluation Council (EFSEC) and removes discretionary members.
- Requires EFSEC to work with local and tribal governments where a project is proposed to ensure meaningful participation and input during the siting review and compliance monitoring.
- Includes ongoing regulatory oversight to EFSEC's current authorization to develop and apply environmental and ecological guidelines to certain energy facilities.
- Incorporates EFSEC consideration of land-use laws into the informational public hearing.
- Amends EFSEC's authority to conduct a preliminary study of potential energy facility projects.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass.

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.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Liias, McCoy, Nguyen, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senators Ericksen, Ranking Member; Brown.

Minority Report: That it be referred without recommendation.

Signed by Senators Fortunato, Assistant Ranking Member, Environment; Sheldon, Assistant Ranking Member, Energy & Technology; Short.

Staff: Kimberly Cushing (786-7421)

Background: Energy Facility Site Evaluation Council. Created in 1970, EFSEC is the permitting and certifying authority for siting major energy facilities in Washington. An EFSEC site certification agreement (SCA) authorizes an applicant to construct and operate an energy facility in lieu of permits or documents required by any other state agency or subdivision. As part of the SCA process, EFSEC issues all state and federal air and water-discharge permits.

Energy Facility Site Evaluation Council Members. EFSEC is comprised of a chair appointed by the Governor, and representatives from five state agencies: the departments of Commerce, Ecology, Fish and Wildlife, and Natural Resources, and the Utilities and Transportation Commission. Four other departments may each choose to participate in EFSEC for a particular project: Agriculture, Health, Transportation, and Military. Local governments must also appoint members to EFSEC to review proposed facilities located in their jurisdictions.

Energy Facility Site Evaluation Council Jurisdiction. EFSEC's siting jurisdiction includes 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 power, can also opt into the EFSEC review and certification process.

Summary of Bill: Energy Facility Site Evaluation Council Membership and Staffing. EFSEC membership is expanded to include one member designated by the Washington State Association of Counties and two members selected by federally recognized tribes within Washington.

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 EFSEC, no later than 90 days after notification from EFSEC. The appointed member or designee must sit with EFSEC only at such times as the EFSEC considers the proposed site for the city that the member represents.

A quorum consists of a majority of members appointed for business to be conducted.

Discretionary membership is eliminated. Instead, upon receiving an application for certification for an energy facility, the EFSEC chair must notify the departments of

Agriculture, Health, Military, and Transportation, as well as the appropriate county legislative authority and appropriate federally recognized tribal governments. The discretionary position for a local port district as a nonvoting member is eliminated.

EFSEC must work with local government where a project is proposed to be sited and all federally recognized tribes affected by a proposed facility in order to ensure meaningful participation and input during siting review and compliance monitoring. The EFSEC chair and designated staff must conduct government-to-government meetings to address tribal issues of concern, and a summary of these meetings must be included in the required report to the Governor on energy facility proposals.

The EFSEC chair, instead of the Utilities and Transportation Commission (UTC), may appoint and supervise staff to the council.

Public Hearings. EFSEC is directed to take public comment on whether or not the proposed site is compliant with current local land-use plans or zoning ordinances at the informational public hearing, instead of conducting a separate hearing.

After holding a hearing to take public comment on the completed environmental impact statement and the completion of tribal consultation, the council may waive the required adjudicative proceeding if it determines genuine issues of fact do not exist with the application for site certification and local land-use laws. Waiving the adjudicative proceeding requires a vote of EFSEC.

Pre-Application Process. EFSEC may agree to conduct a preliminary study of a potential project prior to a formal application for site certification. A potential applicant must deposit a \$10,000 fee with the UTC, rather than the state treasurer, for each potential project. Payments made for a preliminary study may now be credited toward the application fee of a subsequent application for an energy facility at the same site.

Other Clarifying Changes. EFSEC must develop and apply environmental and ecological guidelines to initial operational conditions of certification as well as ongoing regulatory oversight of energy facilities under its jurisdiction. EFSEC must report its recommendations to approve or reject an application for certification to the Governor within 12 months, once it deems the application is complete.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The purpose of having the EFSEC process is to get facilities sited. EFSEC must strike a balance between efficiency and accountability. The Governor directed the EFSEC chair to make EFSEC more efficient. The chair worked with stakeholders and drafted a bill based on a broad consensus. The bill streamlines the

review process of alternative energy facilities to align with the Clean Energy Transformation Act (CETA). A robust environmental review is important under the EFSEC process. One suggestion is to add an opt-in for biofuel facilities. EFSEC statutes are old and should be updated for currently proposed projects.

Persons Testifying: PRO: Representative Sharon Wylie, Prime Sponsor; Vlad Gutman-Britten, Washington State Labor Council; Stewart Henderson, Senior Policy Manager, EFSEC.

Persons Signed In To Testify But Not Testifying: No one.