
SUBSTITUTE HOUSE BILL 1332

State of Washington

66th Legislature

2019 Regular Session

By House Environment & Energy (originally sponsored by Representatives Wylie, DeBolt, Mead, Doglio, Fitzgibbon, and Tharinger; by request of Energy Facility Site Evaluation Council)

READ FIRST TIME 02/18/19.

1 AN ACT Relating to updating and streamlining the energy facility
2 site evaluation council operations; amending RCW 80.50.040,
3 80.50.060, 80.50.100, and 80.50.175; and reenacting and amending RCW
4 80.50.030 and 80.50.090.

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

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

8 (1) There is created and established the energy facility site
9 evaluation council.

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

1 (b) The chair or a designee shall execute all official documents,
2 contracts, and other materials on behalf of the council. (~~The~~
3 ~~Washington utilities and transportation commission shall provide all~~
4 ~~administrative and staff support for the council.~~) The
5 (~~commission~~) chair is the appointing authority and has supervisory
6 authority over the staff of the council and shall employ such
7 personnel as are necessary to implement this chapter. Not more than
8 three such employees may be exempt from chapter 41.06 RCW. The
9 Washington utilities and transportation commission shall provide
10 administrative support for the council. The council shall
11 (~~otherwise~~) retain its independence in exercising its powers,
12 functions, and duties and its supervisory control over
13 (~~nonadministrative~~) council staff (~~support~~). Membership, powers,
14 functions, and duties of the Washington state utilities and
15 transportation commission and the council shall otherwise remain as
16 provided by law.

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

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

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

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

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

39 (4) ~~The appropriate county legislative authority of every county~~
40 ~~wherein an application for a proposed site is filed shall appoint a~~

~~1 member or designee as a voting member to the council. The member or
2 designee so appointed shall sit with the council only at such times
3 as the council considers the proposed site for the county which he or
4 she represents, and such member or designee shall serve until there
5 has been a final acceptance or rejection of the proposed site.~~

~~6 (5) The city legislative authority of every city within whose
7 corporate limits an energy facility is proposed to be located shall
8 appoint a member or designee as a voting member to the council. The
9 member or designee so appointed shall sit with the council only at
10 such times as the council considers the proposed site for the city
11 which he or she represents, and such member or designee shall serve
12 until there has been a final acceptance or rejection of the proposed
13 site.~~

~~14 (6) For any port district wherein an application for a proposed
15 port facility is filed subject to this chapter, the port district
16 shall appoint a member or designee as a nonvoting member to the
17 council. The member or designee so appointed shall sit with the
18 council only at such times as the council considers the proposed site
19 for the port district which he or she represents, and such member or
20 designee shall serve until there has been a final acceptance or
21 rejection of the proposed site. The provisions of this subsection
22 shall not apply if the port district is the applicant, either singly
23 or in partnership or association with any other person)) chair and:~~

~~24 (a) The director of the department of ecology or the director's
25 designee;~~

~~26 (b) The director of the department of fish and wildlife or the
27 director's designee;~~

~~28 (c) The director of the department of commerce or the director's
29 designee;~~

~~30 (d) The chair of the utilities and transportation commission or
31 the chair's designee;~~

~~32 (e) The commissioner of public lands or the commissioner's
33 designee;~~

~~34 (f) One member designated by the board of directors of the
35 Washington state association of counties or its successor; and~~

~~36 (g) Two members designated by tribal governments, as follows:~~

~~37 (i) One member who is an elected tribal government member from a
38 federally recognized tribe under one of the following treaties,
39 rotating on a biennial basis beginning January 1, 2019:~~

~~40 (A) Treaty of Medicine Creek, 1854;~~

- 1 (B) Treaty of Point Elliot, 1855;
- 2 (C) Treaty of Point No Point, 1855;
- 3 (D) Treaty of Neah Bay, 1855;
- 4 (E) Treaty with the Yakama, 1855;
- 5 (F) Quinault Treaty, 1856; and
- 6 (G) Treaty with Walla Walla, 1855.

7 (ii) One member who is an elected tribal government member from a
8 federally recognized tribe with trust resource agreements.

9 (iii) The members designated under (g)(i) and (ii) of this
10 subsection will together have one vote.

11 (4) The city legislative authority of every city within whose
12 corporate limits an energy facility is proposed to be located must
13 appoint a member or designee as a voting member to the council. The
14 member or designee so appointed must sit with the council only at
15 such times as the council considers the proposed site for the city
16 that the member represents. The member or designee must serve until
17 there has been a final acceptance or rejection of the proposed site.

18 (5) A quorum of the council consists of a majority of members. If
19 a member has not been designated for a position set forth in
20 subsection (3)(a) through (g) of this section, that position may not
21 be counted for purposes of determining a quorum.

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

24 The council shall have the following powers:

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

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

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

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

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

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

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

6 (8) To prepare written reports to the governor which shall
7 include: (a) A statement indicating whether the application is in
8 compliance with the council's guidelines, (b) criteria specific to
9 the site and transmission line routing, (c) a council recommendation
10 as to the disposition of the application, and (d) a draft
11 certification agreement when the council recommends approval of the
12 application;

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

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

25 (11) To present state concerns and interests to other states,
26 regional organizations, and the federal government on the location,
27 construction, and operation of any energy facility which may affect
28 the environment, health, or safety of the citizens of the state of
29 Washington;

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

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

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

5 (1) The provisions of this chapter apply to the construction of
6 energy facilities which includes the new construction of energy
7 facilities and the reconstruction or enlargement of existing energy
8 facilities where the net increase in physical capacity or dimensions
9 resulting from such reconstruction or enlargement meets or exceeds
10 those capacities or dimensions set forth in RCW 80.50.020 (~~((7) and~~
11 ~~(15))~~) (12) and (21). No construction of such energy facilities may
12 be undertaken, except as otherwise provided in this chapter, after
13 July 15, 1977, without first obtaining certification in the manner
14 provided in this chapter.

15 (2) The provisions of this chapter apply to the construction,
16 reconstruction, or enlargement of a new or existing energy facility
17 that exclusively uses alternative energy resources and chooses to
18 receive certification under this chapter, regardless of the
19 generating capacity of the project.

20 (3)(a) The provisions of this chapter apply to the construction,
21 reconstruction, or modification of electrical transmission facilities
22 when:

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

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

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

38 (b) For the purposes of this subsection, "modify" means a
39 significant change to an electrical transmission facility and does

1 not include the following: (i) Minor improvements such as the
2 replacement of existing transmission line facilities or supporting
3 structures with equivalent facilities or structures; (ii) the
4 relocation of existing electrical transmission line facilities; (iii)
5 the conversion of existing overhead lines to underground; or (iv) the
6 placing of new or additional conductors, supporting structures,
7 insulators, or their accessories on or replacement of supporting
8 structures already built.

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

13 (5) Applications for certification of energy facilities made
14 prior to July 15, 1977, shall continue to be governed by the
15 applicable provisions of law in effect on the day immediately
16 preceding July 15, 1977, with the exceptions of RCW 80.50.190 and
17 80.50.071 which shall apply to such prior applications and to site
18 certifications prospectively from July 15, 1977.

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

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

24 (a) The department of agriculture;

25 (b) The department of health;

26 (c) The military department;

27 (d) The department of transportation;

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

30 (f) The appropriate federally recognized treaty and trust
31 resource tribal governments affected by the proposed facility.

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

35 (9) The council must work with all federally recognized treaty
36 and trust resource tribal governments affected by a proposed facility
37 in order to ensure meaningful participation and input during siting
38 review and compliance monitoring. The chair and the tribal members of
39 the council must seek comments from representatives of each of the

1 affected tribal governments prior to the issuance of a council
2 recommendation to the governor under RCW 80.50.100.

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

5 (1) The council shall conduct an informational public hearing in
6 the county of the proposed site as soon as practicable but not later
7 than sixty days after receipt of an application for site
8 certification. However, the place of such public hearing shall be as
9 close as practical to the proposed site. (~~((2) Subsequent to the~~
10 ~~informational public)~~) At this hearing, the council ((shall conduct a
11 ~~public hearing to determine)) must take public comment on the~~
12 application for site certification, as well as whether or not the
13 proposed site is consistent and in compliance with city, county, or
14 regional land use plans or zoning ordinances in effect on the date of
15 the application. (~~((If it is determined that the proposed site does~~
16 ~~conform with existing land use plans or zoning ordinances in effect~~
17 ~~as of the date of the application, the city, county, or regional~~
18 ~~planning authority shall not thereafter change such land use plans or~~
19 ~~zoning ordinances so as to affect the proposed site.))~~)

20 (2) After the completion of its environmental review under
21 chapter 43.21C RCW, the council shall determine whether genuine
22 issues of fact exist on matters the council deems material to its
23 recommendation to the governor. A council determination that such
24 issues do not exist may only be made after holding a hearing to take
25 public comment on the question. If the council determines that such
26 issues do not exist and that under subsection (1) of this section the
27 proposed site is consistent and in compliance with city, county, or
28 regional land use plans or zoning ordinances, the council may waive
29 the adjudicative proceeding required by subsection (3) of this
30 section.

31 (3) Prior to the issuance of a council recommendation to the
32 governor under RCW 80.50.100, a public hearing, conducted as an
33 adjudicative proceeding under chapter 34.05 RCW, the administrative
34 procedure act, shall be held unless previously waived in accordance
35 with subsection (2) of this section. At such a public hearing any
36 person shall be entitled to be heard in support of or in opposition
37 to the application for certification.

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

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

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

11 (b) In the case of an application filed prior to December 31,
12 2025, for certification of an energy facility proposed for
13 construction, modification, or expansion for the purpose of providing
14 generating facilities that meet the requirements of RCW 80.80.040 and
15 are located in a county with a coal-fired electric (~~generating~~
16 ~~[generation]~~) generation facility subject to RCW 80.80.040(3)(c),
17 the council shall expedite the processing of the application pursuant
18 to RCW 80.50.075 and shall report its recommendations to the governor
19 within one hundred eighty days of receipt by the council of such an
20 application, or a later time as is mutually agreed by the council and
21 the applicant.

22 (2) If the council recommends approval of an application for
23 certification, it shall also submit a draft certification agreement
24 with the report. The council shall include conditions in the draft
25 certification agreement to implement the provisions of this chapter,
26 including, but not limited to, conditions to protect state or local
27 governmental or community interests affected by the construction or
28 operation of the energy facility, and conditions designed to
29 recognize the purpose of laws or ordinances, or rules or regulations
30 promulgated thereunder, that are preempted or superseded pursuant to
31 RCW 80.50.110 as now or hereafter amended.

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

34 (i) Approve the application and execute the draft certification
35 agreement; or

36 (ii) Reject the application; or

37 (iii) Direct the council to reconsider certain aspects of the
38 draft certification agreement.

1 (b) The council shall reconsider such aspects of the draft
2 certification agreement by reviewing the existing record of the
3 application or, as necessary, by reopening the adjudicative
4 proceeding for the purposes of receiving additional evidence. Such
5 reconsideration shall be conducted expeditiously. The council shall
6 resubmit the draft certification to the governor incorporating any
7 amendments deemed necessary upon reconsideration. Within sixty days
8 of receipt of such draft certification agreement, the governor shall
9 either approve the application and execute the certification
10 agreement or reject the application. The certification agreement
11 shall be binding upon execution by the governor and the applicant.

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

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

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

21 (2) (a) The council, upon ~~((request of))~~ agreement with any
22 potential applicant, is authorized, as provided in this section, to
23 conduct a preliminary study of any potential ~~((site))~~ project prior
24 to receipt of an application for site certification. A fee of ten
25 thousand dollars for each potential ~~((site))~~ project, to be applied
26 toward the cost of any study agreed upon pursuant to (b) of this
27 subsection ~~((3) of this section))~~, shall accompany the ~~((request))~~
28 agreement and shall be a condition precedent to any action on the
29 ~~((request))~~ agreement by the council.

30 ~~((3) After receiving a request to study a potential site,))~~ (b)
31 Upon agreement with the potential applicant, the council ~~((shall))~~
32 may commission its own independent consultant to study matters
33 relative to the potential ~~((site))~~ project. The study shall include,
34 but need not be limited to, the preparation and analysis of
35 environmental impact information for the ~~((proposed))~~ potential
36 ~~((site))~~ project and any other matter the council and the potential
37 applicant deem essential to an adequate appraisal of the potential
38 ~~((site))~~ project. In conducting the study, the council is authorized
39 to cooperate and work jointly with the county or counties in which

1 the potential ~~((site))~~ project is located, any federal, state, ~~((or))~~
2 local, or tribal governmental agency that might be requested to
3 comment upon the potential ~~((site))~~ project, and any municipal or
4 public corporation having an interest in the matter. The full cost of
5 the study shall be paid by the potential applicant: PROVIDED, That
6 such costs exceeding a total of ten thousand dollars shall be payable
7 subject to the potential applicant giving prior approval to such
8 excess amount.

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

13 ~~(5))~~ (3) All payments required of the potential applicant under
14 this section are to be ~~((made to the state treasurer, who in turn~~
15 ~~shall pay the consultant as instructed by the council))~~ deposited
16 with the utilities and transportation commission. All such funds
17 shall be subject to state auditing procedures. Any unexpended
18 portions thereof shall be returned to the potential applicant.

19 ~~((6) Nothing in this section shall change the requirements for~~
20 ~~an application for site certification or the requirement of payment~~
21 ~~of a fee as))~~ (4) If a potential applicant subsequently submits a
22 formal application for site certification for an energy facility at
23 the site where a preliminary study was conducted, payments made under
24 this section for that study may be considered as payment towards the
25 application fee provided in RCW 80.50.071 ~~((, or change the time for~~
26 ~~disposition of an application for certification as provided in RCW~~
27 ~~80.50.100.~~

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

--- END ---