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**SENATE BILL 5329**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Nguyen, Palumbo, Wellman, Carlyle, and Sheldon; by request of Energy Facilities Siting and Evaluation Council

1 AN ACT Relating to updating and streamlining the energy facility  
2 site evaluation council operations; amending RCW 80.50.010,  
3 80.50.040, 80.50.060, 80.50.100, and 80.50.175; and reenacting and  
4 amending RCW 80.50.030 and 80.50.090.

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

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

8 The legislature finds that (~~the present and predicted growth in~~  
9 ~~energy demands in~~) the state of Washington requires (~~the~~  
10 ~~development of~~) a procedure for the selection and (~~utilization~~)  
11 use of sites for energy facilities and the identification of a state  
12 position with respect to each proposed site. The legislature  
13 recognizes that the selection of sites will have a significant impact  
14 upon the welfare of the population, the location and growth of  
15 industry and the use of the natural resources of the state.

16 It is the policy of the state of Washington to (~~recognize the~~  
17 ~~pressing need for increased energy facilities, and to~~) ensure  
18 through available and reasonable methods(~~(r)~~) that the location and  
19 operation of (~~such~~) energy facilities will produce minimal adverse  
20 effects on the environment, ecology of the land and its wildlife, and  
21 the ecology of state waters and their aquatic life.

1 It is the policy of the state of Washington to reduce dependence  
2 on fossil fuels by recognizing the need for clean energy in order to  
3 strengthen the state's economy, meet the state's greenhouse gas  
4 reduction obligations, and mitigate the significant near-term and  
5 long-term impacts from climate change.

6 It is the intent to seek courses of action that will balance  
7 (~~the increasing~~) demands for energy facility location and operation  
8 in conjunction with the broad interests of the public. In addition,  
9 it is the intent of the legislature to streamline application review  
10 for energy facilities that use alternative energy resources to meet  
11 the state's energy goals. Such action will be based on these  
12 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  
19 recreational benefits of the air, water and land resources; to  
20 promote air cleanliness; (~~and~~) to pursue beneficial changes in the  
21 environment; and to promote environmental justice.

22 (3) To encourage the development and integration of cleaner  
23 energy sources.

24 (4) To provide abundant clean energy at reasonable cost.

25 (~~(4)~~) (5) To avoid costs of complete site restoration and  
26 demolition of improvements and infrastructure at unfinished nuclear  
27 energy sites, and to use unfinished nuclear energy facilities for  
28 public uses, including economic development, under the regulatory and  
29 management control of local governments and port districts.

30 (~~(5)~~) (6) To avoid costly duplication in the siting process and  
31 ensure that decisions are made timely and without unnecessary delay.

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

34 (1) There is created and established the energy facility site  
35 evaluation council.

36 (2)(a) The chair of the council shall be appointed by the  
37 governor with the advice and consent of the senate, shall have a vote  
38 on matters before the council, shall serve for a term coextensive  
39 with the term of the governor, and is removable for cause. The chair

1 may designate a member of the council to serve as acting chair in the  
2 event of the chair's absence. The salary of the chair shall be  
3 determined under RCW 43.03.040. The chair is a "state employee" for  
4 the purposes of chapter 42.52 RCW. As applicable, when attending  
5 meetings of the council, members may receive reimbursement for travel  
6 expenses in accordance with RCW 43.03.050 and 43.03.060, and are  
7 eligible for compensation under RCW 43.03.250.

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

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

- 27 ~~(i) Department of ecology;~~
- 28 ~~(ii) Department of fish and wildlife;~~
- 29 ~~(iii) Department of commerce;~~
- 30 ~~(iv) Utilities and transportation commission; and~~
- 31 ~~(v) Department of natural resources.~~

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

- 37 ~~(i) Department of agriculture;~~
- 38 ~~(ii) Department of health;~~
- 39 ~~(iii) Military department; and~~
- 40 ~~(iv) Department of transportation.~~

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

6 ~~(4) The appropriate county legislative authority of every county~~  
7 ~~wherein an application for a proposed site is filed shall appoint a~~  
8 ~~member or designee as a voting member to the council. The member or~~  
9 ~~designee so appointed shall sit with the council only at such times~~  
10 ~~as the council considers the proposed site for the county which he or~~  
11 ~~she represents, and such member or designee shall serve until there~~  
12 ~~has been a final acceptance or rejection of the proposed site.~~

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

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

31 ~~(a) The director of the department of ecology or the director's~~  
32 ~~designee;~~

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

35 ~~(c) The director of the department of commerce or the director's~~  
36 ~~designee;~~

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

39 ~~(e) The commissioner of public lands or the commissioner's~~  
40 ~~designee;~~

1 (f) One member designated by the board of directors of the  
2 Washington state association of counties or its successor;

3 (g) One member designated by the board of directors of the  
4 association of Washington cities or its successor; and

5 (h) One member designated by sovereign tribal governments.

6 (4) A quorum of the council consists of a majority of members. If  
7 a member has not been designated for a position set forth in  
8 subsection (3)(a) through (h) of this section, that position may not  
9 be counted for purposes of determining a quorum.

10 **Sec. 3.** RCW 80.50.040 and 2001 c 214 s 6 are each amended to  
11 read as follows:

12 The council shall have the following powers:

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

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

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

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

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

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

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

33 (8) To prepare written reports to the governor which shall  
34 include: (a) A statement indicating whether the application is in  
35 compliance with the council's guidelines, (b) criteria specific to  
36 the site and transmission line routing, (c) a council recommendation  
37 as to the disposition of the application, and (d) a draft  
38 certification agreement when the council recommends approval of the  
39 application;

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

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

13 (11) To present state concerns and interests to other states,  
14 regional organizations, and the federal government on the location,  
15 construction, and operation of any energy facility which may affect  
16 the environment, health, or safety of the citizens of the state of  
17 Washington;

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

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

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

33 (1) The provisions of this chapter apply to the construction of  
34 energy facilities which includes the new construction of energy  
35 facilities and the reconstruction or enlargement of existing energy  
36 facilities where the net increase in physical capacity or dimensions  
37 resulting from such reconstruction or enlargement meets or exceeds  
38 those capacities or dimensions set forth in RCW 80.50.020 (~~((7) and~~  
39 ~~(15))~~) (12) and (21). No construction of such energy facilities may

1 be undertaken, except as otherwise provided in this chapter, after  
2 July 15, 1977, without first obtaining certification in the manner  
3 provided in this chapter.

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

9 (3) (a) The provisions of this chapter apply to the construction,  
10 reconstruction, or modification of electrical transmission facilities  
11 when:

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

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

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

27 (b) For the purposes of this subsection, "modify" means a  
28 significant change to an electrical transmission facility and does  
29 not include the following: (i) Minor improvements such as the  
30 replacement of existing transmission line facilities or supporting  
31 structures with equivalent facilities or structures; (ii) the  
32 relocation of existing electrical transmission line facilities; (iii)  
33 the conversion of existing overhead lines to underground; or (iv) the  
34 placing of new or additional conductors, supporting structures,  
35 insulators, or their accessories on or replacement of supporting  
36 structures already built.

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

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

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

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

12 (a) The department of agriculture;

13 (b) The department of health;

14 (c) The military department;

15 (d) The department of transportation;

16 (e) The appropriate county legislative authority where the  
17 proposed facility is located;

18 (f) The appropriate city legislative authority where the proposed  
19 facility is located; and

20 (g) The appropriate tribal governments affected by the proposed  
21 facility.

22 (8) The council shall work with local and tribal governments  
23 where a project is proposed to be sited in order to ensure meaningful  
24 participation and input during siting review and compliance  
25 monitoring.

26 **Sec. 5.** RCW 80.50.090 and 2006 c 205 s 3 and 2006 c 196 s 6 are  
27 each reenacted and amended to read as follows:

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



1 ~~as of the date of the application, the city, county, or regional~~  
2 ~~planning authority shall not thereafter change such land use plans or~~  
3 ~~zoning ordinances so as to affect the proposed site.)~~)

4 (2) After the completion of its environmental review under  
5 chapter 43.21C RCW, the council shall determine whether genuine  
6 issues of fact exist on matters the council deems material to its  
7 recommendation to the governor. A council determination that such  
8 issues do not exist may only be made after holding a hearing to take  
9 public comment on the question. If the council determines that such  
10 issues do not exist and that under subsection (1) of this section the  
11 proposed site is consistent and in compliance with city, county, or  
12 regional land use plans or zoning ordinances, the council may waive  
13 the adjudicative proceeding required by subsection (3) of this  
14 section.

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

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

25 **Sec. 6.** RCW 80.50.100 and 2011 c 180 s 109 are each amended to  
26 read as follows:

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

32 (b) In the case of an application filed prior to December 31,  
33 2025, for certification of an energy facility proposed for  
34 construction, modification, or expansion for the purpose of providing  
35 generating facilities that meet the requirements of RCW 80.80.040 and  
36 are located in a county with a coal-fired electric ~~((generating~~  
37 ~~[generation]))~~ generation facility subject to RCW 80.80.040(3)(c),  
38 the council shall expedite the processing of the application pursuant  
39 to RCW 80.50.075 and shall report its recommendations to the governor

1 within one hundred eighty days of receipt by the council of such an  
2 application, or a later time as is mutually agreed by the council and  
3 the applicant.

4 (2) If the council recommends approval of an application for  
5 certification, it shall also submit a draft certification agreement  
6 with the report. The council shall include conditions in the draft  
7 certification agreement to implement the provisions of this chapter,  
8 including, but not limited to, conditions to protect state or local  
9 governmental or community interests affected by the construction or  
10 operation of the energy facility, and conditions designed to  
11 recognize the purpose of laws or ordinances, or rules or regulations  
12 promulgated thereunder, that are preempted or superseded pursuant to  
13 RCW 80.50.110 as now or hereafter amended.

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

16 (i) Approve the application and execute the draft certification  
17 agreement; or

18 (ii) Reject the application; or

19 (iii) Direct the council to reconsider certain aspects of the  
20 draft certification agreement.

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

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

36 **Sec. 7.** RCW 80.50.175 and 1983 c 3 s 205 are each amended to  
37 read as follows:

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

4 (2)(a) The council, upon ~~((request of))~~ agreement with any  
5 potential applicant, is authorized, as provided in this section, to  
6 conduct a preliminary study of any potential ~~((site))~~ project prior  
7 to receipt of an application for site certification. A fee of ten  
8 thousand dollars for each potential ~~((site))~~ project, to be applied  
9 toward the cost of any study agreed upon pursuant to (b) of this  
10 subsection ~~((3) of this section))~~, shall accompany the ~~((request))~~  
11 agreement and shall be a condition precedent to any action on the  
12 ~~((request))~~ agreement by the council.

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

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

35 ~~(5))~~ (3) All payments required of the potential applicant under  
36 this section are to be ~~((made to the state treasurer, who in turn~~  
37 ~~shall pay the consultant as instructed by the council))~~ deposited  
38 with the utilities and transportation commission. All such funds  
39 shall be subject to state auditing procedures. Any unexpended  
40 portions thereof shall be returned to the potential applicant.

1        ~~((6) Nothing in this section shall change the requirements for~~  
2 ~~an application for site certification or the requirement of payment~~  
3 ~~of a fee as)) (4) If a potential applicant subsequently submits a~~  
4 ~~formal application for site certification for an energy facility at~~  
5 ~~the site where a preliminary study was conducted, payments made under~~  
6 ~~this section for that study may be considered as payment towards the~~  
7 ~~application fee provided in RCW 80.50.071 (, or change the time for~~  
8 ~~disposition of an application for certification as provided in RCW~~  
9 ~~80.50.100.~~

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

--- END ---