

SENATE BILL REPORT

SB 5415

As of February 9, 2021

Title: An act relating to the energy facility site evaluation council.

Brief Description: Concerning the energy facility site evaluation council.

Sponsors: Senators Lovelett, Billig, Hasegawa, Keiser, Liias, Nguyen, Nobles, Saldaña, Wellman and Wilson, C..

Brief History:

Committee Activity: Environment, Energy & Technology: 2/09/21.

Brief Summary of Bill

- Allows clean energy projects to opt in to the Energy Facility Site Evaluation Council (EFSEC) review and certification process.
- Adds new permanent members to 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, and incorporates EFSEC consideration of land-use laws into the informational public hearing.
- Creates a least-conflict priority clean energy project siting program.
- Requires a list of mitigation measures for likely environmental impacts of clean energy projects seeking EFSEC certification.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Kimberly Cushing (786-7421)

Background: Energy Facility Site Evaluation Council. Created in 1970, the Energy Facility Site Evaluation Council (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: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Clean Energy Projects. Clean energy projects may opt in to the EFSEC review and certification process. Clean energy project is defined as a project that is one of the following types of facilities:

- alternative energy resource;
- electric energy storage;
- facilities capable of processing more than 1500 barrels per day of biofuel into refined products, except where this production is undertaken at existing industrial facilities;
- projects capable of producing replacements for natural gas from renewable sources, including renewable natural gas and renewable hydrogen; and
- clean energy manufacturing projects.

A clean energy manufacturing project is defined as a facility that manufactures products, equipment, or components used for:

- renewable energy generation and electricity storage;
- production of electric, hydrogen, or other zero-emission vehicles; or
- charging and fueling infrastructure for electric, hydrogen, or other zero-emission vehicles.

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 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 or clean energy project, 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 governments 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 throughout the application review process, 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 EFSEC.

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 completing tribal consultation and holding a hearing to take public comment on the completed environmental impact statement, EFSEC may waive the required adjudicative proceeding if it determines genuine issues of fact do not exist with the application for site certification and the application is consistent and in compliance with 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.

Least-Conflict Priority Siting Program. Subject to the availability of appropriated funds,

EFSEC must initiate, in coordination with its members, a least-conflict priority clean energy project siting program. The Washington State University's (WSU) Energy Program must carry out the program.

The program must engage all relevant stakeholders and identify least-conflict zones—priority areas where there is the least amount of potential environmental and other conflict for siting of clean energy projects. A map must be developed to highlight these areas. EFSEC may create different maps for divergent categories of clean energy projects to address multiple types of environmental and other conflicts. The program must compile the latest information on opportunities for dual-use and colocation of clean energy projects with other land-use values. EFSEC must update this information at least once every six years.

A project sited in a least-conflict zone does not receive a guarantee of EFSEC certification. Additionally, project proponents are not limited to proposing projects in least-conflict zones.

Mitigation Measures for Clean Energy Projects. Subject to the availability of appropriated funds, EFSEC must, in coordination with its members, develop a nonexhaustive list of mitigation measures for significant likely environmental impacts of clean energy projects seeking EFSEC certification. Environmental impacts include impacts to air quality, land and aquatic habitats, wildlife, and others EFSEC identifies. EFSEC must use its best judgment to determine the highest priority impacts. A mitigation measure must be developed using the best available science, have a high likelihood of mitigating the identified environmental impact, and include the involvement of local communities and other stakeholders. EFSEC must consider mitigation banks and siting and design best practices for clean energy projects.

An applicant may use mitigation measures listed in statute or propose others not identified. The list of mitigation measures does not replace the requirement to evaluate applicability to any specific proposal under consideration and, if necessary, develop individualized site-specific mitigation evaluations and requirements for each project or facility.

EFSEC may retain a consultant, contract with a state institution of higher education in Washington, delegate to an agency member, or retain outside assistance in completing the list of mitigation measures. EFSEC must update the list at least once every six years.

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.

Judicial Review. For petitions for review of EFSEC's final decision on an application for

certification of a clean energy project, the Thurston County superior court must schedule a hearing within 60 days of receiving a completed petition. After certification by the superior court, the supreme court must complete its review and issue a final determination in less than six months.

Energy Facility Site Evaluation Account. An energy facility site evaluation account is created in the custody of the state treasurer. All receipts from fees received by EFSEC must be deposited into the account. The EFSEC chair, or chair's designee, may authorize expenditures from the account for EFSEC purposes specified in statute. All funds currently credited to EFSEC must be transferred to the account as of July 1, 2021. The account is subject to allotment procedures, but appropriation is not required for expenditures.

The account must receive its proportionate share of earnings from the Treasurer's Trust Fund. The statute directing the state general fund to be credited with all receipts from EFSEC applicants is repealed.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2021.

Staff Summary of Public Testimony on Proposed Substitute: PRO: A transition to clean and low-carbon economy will require a significant amount of new construction and manufacturing to replace the current fossil fuel energy infrastructure. Siting reform is climate action. A climate-aware industrial policy would benefit from a dedicated siting agency like EFSEC. The bill does not lower environmental standards or weaken the standard of review of projects or prevent stakeholder from having their day in court. The bill adds tribal nations to the council. The applicants would be held to the same high standard of environmental law but have an increased certainty for how long that process will take. We need welcome industry here to transition to a clean energy future. The conversation of siting needs to catch up with development of solar. We appreciate the least-conflict priority siting program and it can work for clean energy. The bill could be improved with increased incentives for where to place solar to avoid habitat impacts. Streamlined permitting could encourage more developers to use the EFSEC process. The current permitting process can take years to navigate a single permit. This costs the state clean energy jobs. The projects move to areas with less strict environmental laws. The process must have certainty and clarity. We strongly believe in inclusive stakeholder driven solutions. Driving clean energy development to places of low impact is a must have. EFSEC engages with other agencies and provides resources for thorough review. This bill requires clear legal timelines.

CON: It is problematic to expand the definition of clean energy projects to include manufacturing. Renewable natural gas is not a clean energy project. Biofuels present same problem. The waste stream for clean energy projects presents a problem. EFSEC is not expert in these potential impacts. Section 6 weakens state environmental protections. We are in favor of the least conflict section. We have concerns with the clean energy projects definitions. Local governments are completely cable of reviewing these projects. These decisions for land use are rooted in locate government.

OTHER: The current law provides a non-voting member when projects are considered when within the boundaries of the district. This provision does not apply when the port is applicant. We ask for these provisions to be preserved. We need a more comprehensive stakeholder process before the bill is implemented. Transparency over EFSEC finances and funding should be a priority. The definition of clean energy project is inconsistent with the clean energy transformation project. New kinds of energy facilities need to be built to meet clean energy needs but the permitting system is impassable. We strongly support collaborating to create job projects in the right site location. But the expansion of scope to include clean manufacturing projects is a big change and does not mean clean energy. The mitigation pieces are a concern. Biogas needs more scrutiny before being designated as a clean energy source. The state and utilities will need an improved siting process under the clean energy transformation act (CETA) for renewable energy and transmission. Current laws for siting do not support efficiency and speed. Clean energy projects are a new area of projects and will require new EFSEC staff. EFSEC has never had problems with the timeliness of appeals. The least-conflict siting process should be conducted by WSU's Energy Program. The council should convene a stakeholder group instead of listing all mitigation measures. We have concerns about the broad definitions of biofuels and biogas in the bill.

Persons Testifying: PRO: Senator Liz Lovelett, Prime Sponsor; Vladimir Gutman-Britten, Washington State Labor Council; Michael Garrity, Washington Department of Fish and Wildlife; Mark Riker, Washington State Building & Construction Trades Council; Adam Maxwell, Audubon Washington; Justin Allegro, The Nature Conservancy.

CON: Dawn Vyvyan, Puyallup Tribe and Yakama Nation; Paul Jewell, Washington State Association of Counties.

OTHER: Gerry O'Keefe, Washington Public Ports Association; Jason Herbert, Energy Northwest; Jessica Spiegel, Western States Petroleum Association; Darcy Nonemacher, Washington Environmental Council; Janet Kelly, Puget Sound Energy; Jeff Gombosky, Renewable Northwest; Kathleen Drew, Energy Facility Site Evaluation Council; Robert Dengel, Ecology.

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