

SENATE BILL REPORT

SB 5380

As of January 24, 2023

Title: An act relating to clean energy siting.

Brief Description: Concerning clean energy siting.

Sponsors: Senators Nguyen, Billig, Boehnke, Cleveland, Frame, Keiser, Kuderer, Liias, Pedersen, Valdez and Wilson, C..

Brief History:

Committee Activity: Environment, Energy & Technology: 1/24/23.

Brief Summary of Bill

- Creates a designation for clean energy projects of statewide significance, with access to agency regulatory assistance and a coordinated permitting process.
- Requires preparation of programmatic environmental impact statements for green electrolytic and renewable hydrogen projects statewide, and for solar energy projects located in the Columbia Basin.
- Amends State Environmental Policy Act processes for clean energy projects, including notification of an anticipated determination of significance and limiting environmental impact statement preparation to 24 months.
- Establishes an interagency clean energy siting coordinating council to improve siting and permitting of clean energy projects.
- Directs the Washington State University Energy Program to complete a least-conflict siting process for pumped storage projects.

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: Gregory Vogel (786-7413)

Background: Energy Facility Siting. The Energy Facility Site Evaluation Council (EFSEC) was established in 1970 to provide a single siting process for major energy facilities located in the state. 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, EFSEC submits a recommendation either approving or rejecting an application to the Governor, who makes the final decision on site certification. This recommendation must be reported to the Governor within 12 months of application receipt, or at a later time if agreed to by the applicant and EFSEC. The recommendation must include a draft certification agreement, which must include various conditions including conditions to protect state, local, and community interests affected by the construction or operation of the energy facility. If approved by the Governor, a site certification agreement is issued in lieu of any other individual state or local agency permits.

The laws that require or allow a facility to seek certification through the EFSEC process apply to the construction, reconstruction, and enlargement of energy facilities, biorefineries, and electrical transmission facilities, with many specifications. Energy facilities of any size that exclusively use alternative energy resources, such as wind or solar energy, may opt into the EFSEC review and certification process. Energy facilities that exclusively use alternative energy resources that choose not to opt in to the EFSEC review and certification process must instead receive applicable state and local agency development and environmental permits for their projects directly from each agency.

Projects of Statewide Significance. In 1997, a process was enacted to expedite the development of certain types of industrial projects of statewide significance. To qualify for designation as a project of statewide significance, a project must meet capital investment or job creation requirements. Possible designations include border-crossing projects; private projects investing in manufacturing, research, and development; projects that will provide a net environmental benefit; and projects that will further commercialization of an innovation. The Legislature has designated certain types of projects as projects of statewide significance; for all other types of projects, an application for designation as a project of statewide significance must be submitted to the Department of Commerce (Commerce). The application must include a letter of approval from jurisdictions where a project is located and must commit to providing the local staff necessary to expedite the completion of a project. Counties and cities with projects must enter into agreements with the Governor's Office of Regulatory Innovation and Assistance (ORIA) and local project managers to expedite the processes necessary for the design and construction of projects. ORIA must provide facilitation and coordination services to expedite completion of industrial projects of statewide significance. The project proponents may provide the funding necessary for the local jurisdiction to hire the staff required to expedite the process.

State Environmental Policy Act. The State Environmental Policy Act (SEPA) establishes a

review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. If an initial review of the checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact, known as a threshold determination, the proposal must undergo a more comprehensive environmental analysis in the form of an environmental impact statement (EIS). If the SEPA review process identifies significant adverse environmental impacts, the lead agency may deny a government decision or may require mitigation for identified environmental impacts.

Under SEPA rules adopted by the Department of Ecology (Ecology), after the submission of an environmental checklist and prior to a lead agency's threshold determination, an applicant may ask the lead agency to indicate whether it is considering a determination of significance. If the lead agency indicates a determination of significance is likely, the applicant may clarify or change features of the proposal to mitigate the impacts which led the agency to consider a determination of significance to be the likely threshold determination. If an applicant revises the environmental checklist as necessary to describe the clarifications or changes, the lead agency must make its threshold determination based on the changed or clarified proposal.

Lead agencies undertaking SEPA review are directed to aspire to finish an EIS as expeditiously as possible without compromising the integrity of the analysis. For complex government decisions, the lead agency must aspire to finish an EIS within 24 months of making a threshold determination that an EIS is needed; for government decisions with narrower and more easily identifiable environmental impacts, the lead agency must aspire to finish in far less time than 24 months. The aspirational time limit does not create civil liability or a new cause of action against a lead agency. Ecology must submit a report to the Legislature every two years on recent EISs.

Under SEPA rules, when a lead agency prepares an EIS on a nonproject proposal (programmatic EIS), the lead agency has less detailed information available on environmental impacts and the environmental impacts of any subsequent project proposals that may follow the EIS. The lead agency's programmatic EIS discusses impacts and alternatives in the level of detail appropriate to the scope of the proposal and the level of planning for the proposal. If a specific geographic area is the focus of a programmatic EIS, site specific analyses are not required, but may be included for specific areas of concern. After the approval of a programmatic EIS by the lead agency based on the EIS assessing the proposal's broad impacts, when a project is proposed that is consistent with the approved nonproject action that was the subject of the programmatic EIS, the EIS for the project proposal must focus on the impacts and alternatives, including mitigation measures, specific to the subsequent project and that were not analyzed in the nonproject EIS. SEPA procedures allow for the adoption and use of portions of the programmatic EIS in a

subsequent project-level SEPA review. Lead agencies must, at the time of project-level SEPA review, evaluate the programmatic EIS previously completed to ensure the programmatic analysis is valid when applied to the current proposal, knowledge, and technology. If a programmatic EIS's analysis is no longer valid, the analysis must be reanalyzed in the project-level EIS.

Local Project Review. Legislation enacted in 1995 required counties and cities planning under the Growth Management Act (GMA) to establish an integrated and consolidated development permit process for all projects involving two or more permits and to provide for no more than one open record hearing and one closed record appeal. Other jurisdictions may incorporate some or all of the integrated and consolidated development permit process. The 1995 legislation specified the permit process must include a determination of completeness of the project application within 28 days of submission. A project permit application is determined to be complete when it meets the local procedural submission requirements even if additional information is needed because of subsequent project modifications. Within 14 days of receiving requested additional information, the local government must notify the applicant whether the application is deemed complete. The determination of completeness does not preclude the local government from requesting additional information if new information is required or substantial project changes occur. A project permit application is deemed complete if the GMA jurisdiction does not provide the determination within the required time period.

Summary of Bill: Interagency Clean Energy Siting Coordinating Council. An Interagency Clean Energy Siting Coordinating Council (Council) is created, and is co-chaired and co-staffed by Ecology and Commerce. The Council must have participation from at least ten named state agencies or offices in addition to Ecology and Commerce. The Council's responsibilities include identifying actions to improve the siting and permitting of clean energy projects, tracking federal government efforts, soliciting input from parties with interests in clean energy project siting and permitting, and supporting the creation and annual update of a list to be published by the Governor's Office of Indian Affairs containing contacts at federally recognized Indian tribes and tribal preferences regarding clean energy project siting and outreach. The Council must provide annual updates to the Governor and the Legislature.

The Council must advise Commerce when contracting for an independent third party to evaluate state agency siting and permitting processes, identify successful models used in other states for siting and permitting clean energy projects, and make recommendations for improvements by July 1, 2024. The Council, led by Ecology, must also pursue development of a consolidated clean energy application and must explore development of a consolidated permit for clean energy projects. Ecology must update the Legislature on the consolidated clean energy application and the consolidated permit and make recommendations by October 1, 2024.

Clean Energy Projects of Statewide Significance. Commerce must establish an application

process for the designation of Clean Energy Projects of Statewide Significance (CEPSS). The CEPSS process contains similar elements to the existing Projects of Statewide Significance process, but is independent of that process. Applicants must demonstrate certain information to Commerce as part of the CEPSS application, including an explanation of how the project will contribute to the state's achievement of state greenhouse gas emission limits and be consistent with the state energy strategy, how the project will contribute to the state's economic development goals, and a plan for meaningful engagement and information sharing with federally recognized Indian tribes with interests on or near a proposed site.

Projects eligible for the CEPSS designation include:

- certain types of clean energy product manufacturing facilities;
- electrical transmission facilities;
- facilities that produce electric generation from renewable resources or that do not result in greenhouse gas emissions;
- renewable energy storage facilities;
- facilities or projects at any facilities that exclusively or primarily process biogenic feedstocks into refined products;
- facilities or projects at any facilities that exclusively or primarily process alternative jet fuel that has 40 percent lower greenhouse gas emissions than conventional jet fuel; and
- storage, transmission, handling, or other related and supporting facilities associated with any of the above facilities.

Commerce must determine within 60 days of receipt of an application whether to designate a clean energy project as a CEPSS, taking into consideration criteria including the applicant's need for coordinated state assistance, whether a programmatic environmental review process or least-conflict siting process has been carried out in the project's area, and the potential impacts on environmental and public health. Commerce may designate an unlimited number of CEPSS.

To each designated CEPSS, Commerce must assign a clean energy navigator responsible for convening and working to expedite the actions of select partners from state and local government, private entities, nongovernmental organizations, and others.

Upon a designation by Commerce of a CEPSS, Ecology must conduct an initial assessment of the CEPSS to determine the level of coordination needed, and the complexity, size, and need for assistance of the project, including specified permitting and environmental review processes. Ecology's initial assessment must be documented in writing, made available to the public, and completed within 60 days of the designation of a CEPSS.

Coordinated Permit Process. CEPSS project proponents may submit a written request to Ecology for participation in a fully coordinated permit process. A CEPSS project proponent must enter into a cost reimbursement agreement with Ecology to cover the costs to Ecology

and other agencies in carrying out the coordinated permit process. To be eligible, Ecology must determine that the CEPSS raises complex coordination, permit processing, or substantive permit review issues. Ecology must serve as the main point of contact for the project proponent and participating agencies, and keep a schedule identifying procedural steps in the permitting process and highlighting substantive issues that require resolution. A project proponent may withdraw from the coordinated permit process.

Within 30 days of accepting a project for the coordinated permit process, Ecology must convene a work plan meeting to develop a coordinated permit process schedule with the project proponent, Commerce's clean energy navigator for the project, and participating permit agencies. Each participating agency and the lead agency under SEPA must send representatives to the work plan meeting. Any accelerated time periods for permits or SEPA review under the coordinated permit process schedule must be consistent with laws, rules, or adopted state policies, standards, and guidelines for public participation, and the participation of other agencies and federally recognized Indian tribes. The coordinated permit process schedule must be finalized, and made available to the public after the work plan meeting.

Cities and counties with development projects designated as a CEPSS within their jurisdictions must enter into an agreement with Ecology and project proponents for expediting the completion of projects, including expedited permit processing and environmental review processing.

Ecology must offer early, meaningful, and individual consultation with any affected federally recognized Indian tribe on a CEPSS. Ecology must identify overburdened communities that might be potentially affected by a CEPSS, and verify that these communities have been meaningfully engaged in the regulatory processes in a timely manner by participating agencies.

The CEPSS designation and coordinated permit process does not affect the jurisdiction of EFSEC, limit or abridge the powers of a participating permit agency, or prohibit a state agency or CEPSS applicant or project proponent from entering into nondisclosure agreements related to confidential proprietary information.

State Environmental Policy Act for Clean Energy Projects. Lead agencies are directed to complete an EIS for a clean energy project within 24 months of a threshold determination. Lead agencies may work with a project applicant to set or extend a time limit longer than 24 months. Lead agencies must work collaboratively with agencies that have actions requiring SEPA review for a clean energy project to develop a schedule that includes a list of agency responsibilities, actions, and deadlines. Failure to comply with the SEPA timeline requirements is not subject to appeal, does not invalidate SEPA review, and does not create civil liability or create a new cause of action.

Lead agencies may not combine the evaluation of a clean energy project proposal with other

proposals unless the proposals are closely related or the applicant agrees to a combined SEPA review. Lead agencies may require mitigation measures for clean energy projects only to address the environmental impacts attributable to and caused by a proposal, and are additional relative to the environmental impacts that would occur in absence of the proposal. Lead agencies may not reopen, reconsider, or modify mitigation that was required in connection with a local, state, or federal permit unless requested by an applicant or the mitigation modification was anticipated as part of an adaptive management strategy in a previously issued permit or modification.

After submitting an environmental checklist, but prior to a threshold determination, a lead agency must notify a clean energy project applicant that a project proposal is likely to result in a determination of significance. The lead agency must provide the project applicant the option of withdrawing or revising the application, and must use any revised application as the basis for the threshold determination.

Ecology must prepare programmatic EISs for solar energy projects in the Columbia Basin and green electrolytic or renewable hydrogen projects. Ecology must include certain information in the programmatic EIS, and determine the EIS's scope based on input from specified parties. Project proponents of actions covered by these programmatic EISs must incorporate impact analysis from the programmatic EIS into project-level SEPA reviews. Lead agencies conducting project-level environmental review for projects covered by the programmatic EISs must adopt, where appropriate, the programmatic EIS to identify and mitigate project-level probable significant impacts. Project-level SEPA reviews by lead agencies must address any probable significant impacts not analyzed in the programmatic EIS, and identify any avoidance, minimization, and mitigation measures specific to the project. Project-level SEPA reviews by lead agencies must ensure the programmatic EIS's analysis is valid when applied to the current proposal, knowledge, and technology.

Local Project Review. During a local project review of a project to construct or improve electric generation, transmission or distribution facilities, a local government may not require a project applicant to demonstrate the necessity or utility of the project, other than to require as part of the completed project application the submission of documentation required by the Federal Energy Regulatory Commission or other federal agencies with regulatory authority over electric power transmission and distribution needs, or the Utilities and Transportation Commission.

Least-Conflict Siting for Pumped Storage. The Washington State University Energy Program (WSU Energy Program) must conduct a least-conflict pumped storage siting process to support expanded capacity to store intermittently produced renewable energy, with a goal of identifying areas with the least amount of potential conflict in the siting of pumped storage. The WSU Energy Program must allow ample opportunity for participation by stakeholders and federally recognized Indian tribes who self-identify an interest in the process, and must complete the process by June 30, 2025. The WSU Energy Program must develop and make available a map with geographical information systems data layers

highlighting areas identified through the process, but the map may not include sensitive tribal information as identified by federally recognized Indian tribes, and the WSU Energy Program must take precautions to prevent disclosure of any sensitive tribal information it receives.

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: In order to meet emissions limits, we have to site new clean electricity, clean fuels, and manufacturing of products and components. We have a climate imperative for our health, salmon, and the environment. The bill takes important steps to make permitting work better, aligning government, upfront planning, and identifying mitigation, and bringing people together around this shared challenge.

This is an unprecedented moment of opportunity. Billions of federal dollars will be made available in the next few years to incentivize deployment of clean energy infrastructure. This an opportunity to recruit clean energy technology locally.

The bill takes a proactive approach to improve siting and environmental review of clean energy projects while protecting the environment, tribes, and overburdened communities. Efficient and effective siting requires early and meaningful engagement. The process could be quite time-saving for project proponents and local governments.

We would like to see an expanded suite of energy sources included in the programmatic EIS process. This work is important for implementation of policies but also delivering the promise of jobs that the clean energy transformation is to bring.

OTHER: Local impacts is an issue for counties. The projects are often located in rural areas and bring in very few jobs. We are glad to see that the bill addresses this issue. We would like to see more details around community benefit agreements and county obligations to expedite permit review, as well as reasonable costs for reimbursement under the coordinated permitting process.

We appreciate the conversion on this bill but don't believe it goes far enough to help the state meet its clean energy goals. The definition of clean energy projects should be as broad and encompassing as possible, and be technology agnostic. The bill also doesn't do enough to protect habitat and cultural resources. We need to recognize there are existing projects right on top of cultural resources for tribes. We would like to see funding for protecting key habitat sage lands.

Persons Testifying: PRO: Senator Joe Nguyen, Prime Sponsor; Becky Kelley, Office of Governor Jay Inslee; Jasmine Vasavada, WA Department of Commerce; Diane Butorac, WA Department of Ecology; Ryan Calkins, Port of Seattle Commissioner; Mark Riker, Washington State Building & Construction Trades Council; Cassie Bordelon, Puget Sound Energy; Kate Brouns, Renewable NW; Donny Donovan, IAM 751; Kelly Hall, Climate Solutions; Clifford Traisman, Washington Conservation Action; Scott Richards, The Nature Conservancy; Emily Wittman, Aerospace Futures Alliance; Tom Wolf, bp America; Isaac Kastama, Clean & Prosperous Washington; John Rothlin, Avista; John Traynor, Washington State Labor Council, AFL-CIO; Jan Hasselman, Earthjustice; John Stuhlmiller, Washington Public Ports Association; Dave Warren, WA Green Hydrogen Alliance.

OTHER: Paul Jewell, Washington State Association of Counties; Peter Godlewski, Association of Washington Business; Adam Maxwell, Audubon Washington; Nicolas Garcia, WPUA; Jennifer Ziegler, National Construction Alliance; Phil Rigdon, Yakama Nation; Jay Kehne, Conservation Northwest; Josh Lozano, Energy Northwest.

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