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**SENATE BILL 5640**

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**State of Washington 69th Legislature 2025 Regular Session**

**By** Senators Boehnke and Dozier

AN ACT Relating to requiring proof of adequate water supply before permitting new energy facilities; and amending RCW 80.50.060.

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

**Sec.**  RCW 80.50.060 and 2023 c 229 s 4 are each amended to read as follows:

(1)(a) The provisions of this chapter apply to the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of existing energy facilities where the net increase in physical capacity or dimensions resulting from such reconstruction or enlargement meets or exceeds those capacities or dimensions set forth in RCW 80.50.020 (14) and (29). No construction or reconstruction of such energy facilities may be undertaken, except as otherwise provided in this chapter, without first obtaining certification in the manner provided in this chapter.

(b) If applicants proposing the following types of facilities choose to receive certification under this chapter, the provisions of this chapter apply to the construction, reconstruction, or enlargement of these new or existing facilities:

(i) Facilities that produce refined biofuel, but which are not capable of producing 25,000 barrels or more per day;

(ii) Alternative energy resource facilities;

(iii) Electrical transmission facilities: (A) Of a nominal voltage of at least 115,000 volts; and (B) located in more than one jurisdiction that has promulgated land use plans or zoning ordinances;

(iv) Clean energy product manufacturing facilities; and

(v) Storage facilities.

(c) All of the council's powers with regard to energy facilities apply to all of the facilities in (b) of this subsection and these facilities are subject to all provisions of this chapter that apply to an energy facility.

(2)(a) The provisions of this chapter must apply to:

(i) The construction, reconstruction, or enlargement of new or existing electrical transmission facilities: (A) Of a nominal voltage of at least 500,000 volts alternating current or at least 300,000 volts direct current; (B) located in more than one county; and (C) located in the Washington service area of more than one retail electric utility; and

(ii) The construction, reconstruction, or modification of electrical transmission facilities when the facilities are located in a national interest electric transmission corridor as specified in RCW 80.50.045.

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

(3) The provisions of this chapter shall not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those set forth in RCW 80.50.020 (14) and (29).

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

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

(6) An application for certification of energy facilities must:

(a) Describe the location and type of water intakes, water lines, pipelines and water conveyance systems, and other associated facilities required for providing water to the energy facility for which certification is being requested;

(b) Include detailed information regarding using air cooling as an alternative to consumptive water use, including associated costs;

(c) Describe water conservation methods that will be used during construction and operation of the facility;

(d) Include reports of examination identifying the water rights or water right changes submitted to and under review by the department of ecology and the quantities of water in gallons per minute and acre feet per year that are eligible for change, together with any limitations on use, including time of year. The reports of examination must also include comments by the department of fish and wildlife with respect to the proposed water right applications under review by the department of ecology;

(e) Contain a description of mitigation proposed for water supply and include any and all mitigation required by the department of ecology pursuant to the review of water rights or certificates, or changes to water rights or certificates required in (d) of this subsection; and

(f) Describe all supply alternatives considered, including the associated cost of implementing such alternatives, and the resulting benefits and penalties that would be incurred.

(7) Applicants for certification of energy facilities under this section shall:

(a) Consider water supply alternatives, including use of reclaimed water, water reuse projects, and conservation methods; and

(b) If an applicant is proposing to use surface or groundwater for the facility, describe the source and the amount of water required during construction and operation of the energy facility and do one or more of the following:

(i) Submit a water use authorization or a contractual right to use water supplied by a municipal corporation or other water purveyor;

(ii) Submit a water right permit or water right certificate issued by the department of ecology for the proposed facility in an amount sufficient to meet the need of the facility. If the permit or certificate has been issued five years prior to the submittal date, the applicant shall provide evidence that the water right permit is in good standing, or that the certificate has not relinquished through nonuse; or

(iii) For applications for new surface or groundwater withdrawals, or applications for water right changes or transfers of existing rights or certificates for withdrawal, submit appropriate applications for such rights, certificates, or changes in rights and certificates to the department of ecology prior to submittal of the application for site certification to the council.

(8) Upon receipt of an application for certification under this chapter, the chair of the council shall notify:

(a) The appropriate county legislative authority or authorities where the proposed facility is located;

(b) The appropriate city legislative authority or authorities where the proposed facility is located;

(c) The department of archaeology and historic preservation; and

(d) The appropriate federally recognized tribal governments that may be affected by the proposed facility.

((~~(7)~~)) (9) The council must work with local governments where a project is proposed to be sited in order to provide for meaningful participation and input during siting review and compliance monitoring.

((~~(8)~~)) (10) The council must consult with all federally recognized tribes that possess resources, rights, or interests reserved or protected by federal treaty, statute, or executive order in the area where an energy facility is proposed to be located to provide early and meaningful participation and input during siting review and compliance monitoring. The chair and designated staff must offer to conduct government-to-government consultation to address issues of concern raised by such a tribe. The goal of the consultation process is to identify tribal resources or rights potentially affected by the proposed energy facility and to seek ways to avoid, minimize, or mitigate any adverse effects on tribal resources or rights. The chair must provide regular updates on the consultation to the council throughout the application review process. The report from the council to the governor required in RCW 80.50.100 must include a summary of the government-to-government consultation process that complies with RCW 42.56.300, including the issues and proposed resolutions.

((~~(9)~~)) (11) The department of archaeology and historic preservation shall coordinate with the affected federally recognized tribes and the applicant in order to assess potential effects to tribal cultural resources, archaeological sites, and sacred sites.

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