
HOUSE BILL 1237

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By Representatives Fitzgibbon, Berry, Fosse, Simmons, Duerr, Ormsby, Hill, and Tharinger

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1 AN ACT Relating to facilitating predictable and timely
2 application decisions by the energy facility site evaluation council;
3 amending RCW 80.50.090 and 80.50.100; and repealing RCW 80.50.075 and
4 80.50.320.

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

6 **Sec. 1.** RCW 80.50.090 and 2022 c 183 s 9 are each amended to
7 read as follows:

8 (1) The council shall conduct an informational public hearing in
9 the county of the proposed site as soon as practicable but not later
10 than ((~~sixty~~)) 60 days after receipt of an application for site
11 certification. However, the place of such public hearing shall be as
12 close as practical to the proposed site.

13 (2) Subsequent to the informational public hearing, the council
14 shall conduct a public hearing to determine whether or not the
15 proposed site is consistent and in compliance with city, county, or
16 regional land use plans or zoning ordinances on the date of the
17 application.

18 (3)(a) After the submission of an environmental checklist and
19 prior to issuing a threshold determination that a facility is likely
20 to cause a significant adverse environmental impact under chapter
21 43.21C RCW, the director must notify the project applicant and

1 explain in writing the basis for its anticipated determination of
2 significance. Prior to issuing the threshold determination of
3 significance, the director must give the project applicant the option
4 of withdrawing and revising its application and the associated
5 environmental checklist to clarify or make changes to features of the
6 proposal that are designed to mitigate the impacts that were the
7 basis of the director's anticipated determination of significance.
8 The director shall make the threshold determination based upon the
9 changed or clarified proposal following the applicant's submittal.
10 The director must provide an opportunity for public comment on a
11 project for which a project applicant has withdrawn and revised the
12 application and environmental checklist and subsequently received a
13 threshold determination of nonsignificance or mitigated determination
14 of nonsignificance.

15 (b) The notification required under (a) of this subsection is not
16 an official determination by the director and is not subject to
17 appeal under chapter 43.21C RCW.

18 (4) (~~Prior to the issuance of a council recommendation to the~~
19 ~~governor under RCW 80.50.100~~) If the council determines under
20 subsection (2) of this section that the proposed site is inconsistent
21 or not in compliance with applicable land use plans or zoning
22 ordinances on the date of application, a public hearing, conducted as
23 an adjudicative proceeding under chapter 34.05 RCW, the
24 administrative procedure act, shall be held prior to the issuance of
25 a council recommendation to the governor under RCW 80.50.100.

26 (~~(a) At such public hearing any person shall be entitled to be~~
27 ~~heard in support of or in opposition to the application for~~
28 ~~certification by raising one or more specific issues, provided that~~
29 ~~the person has raised the issue or issues in writing with specificity~~
30 ~~during the application review process or during the public comment~~
31 ~~period that will be held prior to the start of the adjudicative~~
32 ~~hearing.~~

33 ~~(b) If the environmental impact of the proposed facility in an~~
34 ~~application for certification is not significant or will be mitigated~~
35 ~~to a nonsignificant level under RCW 43.21C.031, the council may limit~~
36 ~~the topic of the public hearing conducted as an)) The adjudicative
37 proceeding (~~under this section to~~) shall consider whether any land
38 use plans or zoning ordinances with which the proposed site is
39 determined to be inconsistent under subsection (2) of this section
40 should be preempted.~~

1 (5) (~~After expedited processing is granted under RCW 80.50.075,~~
2 ~~the~~) The council must hold a public (~~meeting~~) hearing to take
3 comments on the proposed application after the issuance of a final
4 environmental impact statement, if any, and prior to issuing a
5 council recommendation to the governor.

6 (6) Additional public hearings shall be held as deemed
7 appropriate by the council in the exercise of its functions under
8 this chapter.

9 **Sec. 2.** RCW 80.50.100 and 2022 c 183 s 10 are each amended to
10 read as follows:

11 (1)(a) The council shall report to the governor its
12 recommendations as to the approval or rejection of an application for
13 certification within (~~twelve~~) 12 months of receipt by the council
14 of an application deemed complete by the director, or such later time
15 as is mutually agreed by the council and the applicant.

16 (b) The council shall review and consider comments received
17 during the application process in making its recommendation.

18 (c) In the case of an application filed prior to December 31,
19 2025, for certification of an energy facility proposed for
20 construction, modification, or expansion for the purpose of providing
21 generating facilities that meet the requirements of RCW 80.80.040 and
22 are located in a county with a coal-fired electric generation
23 facility subject to RCW 80.80.040(3)(c), the council shall expedite
24 the processing of the application (~~pursuant to RCW 80.50.075~~) and
25 shall report its recommendations to the governor within (~~one hundred~~
26 ~~eighty~~) 180 days of receipt by the council of such an application,
27 or a later time as is mutually agreed by the council and the
28 applicant.

29 (2) If the council recommends approval of an application for
30 certification, it shall also submit a draft certification agreement
31 with the report. The council shall include conditions in the draft
32 certification agreement to implement the provisions of this chapter
33 including, but not limited to, conditions to protect state, local
34 governmental, or community interests, or overburdened communities as
35 defined in RCW 70A.02.010 affected by the construction or operation
36 of the facility, and conditions designed to recognize the purpose of
37 laws or ordinances, or rules or regulations promulgated thereunder,
38 that are preempted or superseded pursuant to RCW 80.50.110 as now or
39 hereafter amended.

1 (3)(a) The council shall recommend that the governor approve an
2 application for an alternative energy resource, a clean energy
3 manufacturing facility, a biofuel production facility, a fusion
4 energy facility, a storage facility, or an electric transmission
5 facility if it determines that the preponderance of evidence on the
6 record supports the following conclusions:

7 (i) The project provides public benefits that include:

8 (A) Contributions to meeting:

9 (I) The greenhouse gas emissions limits under RCW 70A.45.020;

10 (II) The requirements for the sale of greenhouse gas neutral
11 electricity by 2030 and 100 percent nonemitting, electric generation
12 and electricity from renewable resources by 2045 under RCW 19.405.040
13 and 19.405.050; or

14 (III) The state energy strategy prepared by the department of
15 commerce;

16 (B) Public health, environmental, economic, and other benefits of
17 greenhouse gas reductions, considering the social cost of carbon as
18 determined under RCW 80.28.405;

19 (C) Tax benefits;

20 (D) Community benefits; and

21 (E) Creation of jobs;

22 (ii) The project avoids, minimizes, or mitigates, to the maximum
23 extent practicable, significant adverse environmental impacts
24 identified through review under chapter 43.21C RCW related to the
25 siting, design, construction, and operation of the project;

26 (iii) The project avoids, minimizes, or mitigates to the maximum
27 extent practicable, significant adverse impacts identified through
28 review under chapter 43.21C RCW on historical, archaeological, and
29 cultural resources;

30 (iv) The project avoids, minimizes, or mitigates to the maximum
31 extent practicable, significant adverse impacts identified through
32 review under chapter 43.21C RCW to threatened and endangered species;

33 (v) The applicant has taken measures to ensure that the project
34 avoids, minimizes, or mitigates impacts to overburdened communities
35 and vulnerable populations, as those terms are defined in RCW
36 70A.02.010, and that the project will provide benefits to
37 overburdened communities and vulnerable populations in the vicinity
38 of the project;

39 (vi) The project does not present an unreasonable threat to
40 health and safety; and

1 (vii) The applicant has agreed to reasonable requirements for
2 project decommissioning that ensure, to the maximum extent
3 practicable, that project components are reused, refurbished, or
4 disposed of in a manner consistent with state and federal
5 requirements for waste disposal or recycling, and that lands affected
6 by the project are restored to their pre-project condition to the
7 maximum extent practicable.

8 (b) For purposes of this subsection (3), the council's
9 determination of what is practicable must include consideration of
10 economic viability.

11 (4)(a) Within 60 days of receipt of the council's report the
12 governor shall take one of the following actions:

13 (i) Approve the application and execute the draft certification
14 agreement; or

15 (ii) Reject the application; or

16 (iii) Direct the council to reconsider certain aspects of the
17 draft certification agreement.

18 (b) The council shall reconsider such aspects of the draft
19 certification agreement by reviewing the existing record of the
20 application or, as necessary, by reopening the adjudicative
21 proceeding for the purposes of receiving additional evidence. Such
22 reconsideration shall be conducted expeditiously. The council shall
23 resubmit the draft certification to the governor incorporating any
24 amendments deemed necessary upon reconsideration. Within 60 days of
25 receipt of such draft certification agreement, the governor shall
26 either approve the application and execute the certification
27 agreement or reject the application. The certification agreement
28 shall be binding upon execution by the governor and the applicant.

29 ~~((4))~~ (5) The rejection of an application for certification by
30 the governor shall be final as to that application but shall not
31 preclude submission of a subsequent application for the same site on
32 the basis of changed conditions or new information.

33 NEW SECTION. Sec. 3. The following acts or parts of acts are
34 each repealed:

35 (1) RCW 80.50.075 (Expedited processing of applications) and 2022
36 c 183 s 18, 2006 c 205 s 2, 1989 c 175 s 172, & 1977 ex.s. c 371 s
37 17; and

1 (2) RCW 80.50.320 (Governor to evaluate council efficiency, make
2 recommendations) and 2001 c 214 s 8.

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