

SENATE BILL REPORT

SB 6471

As of January 20, 2010

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

Brief Description: Regarding the energy facility site evaluation council.

Sponsors: Senators Fraser, Rockefeller, Pridemore, Marr and Kline.

Brief History:

Committee Activity: Environment, Water & Energy: 1/19/10.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: William Bridges (786-7416)

Background: The Energy Facility Site Evaluation Council (EFSEC) is the permitting and certificating authority for the siting of major energy facilities in Washington. It is comprised of a chair appointed by the Governor, and representatives from five state agencies: the Department of Commerce, the Department of Ecology, the Department of Fish and Wildlife, the Department of Natural Resources, and the Washington Utilities and Transportation Commission (WUTC). Four other departments may each choose to participate in EFSEC for a particular project: Agriculture, Health, Transportation, and Military. Finally, local governments must also appoint members to the council for the review of proposed facilities located in their jurisdictions.

EFSEC Jurisdiction. EFSEC's siting jurisdiction includes the following: (1) large natural gas and oil pipelines; (2) thermal electric power plants 350 megawatts (MWs) or greater and their dedicated transmission lines; (3) new oil refineries or large expansions of existing facilities; and (4) underground natural gas storage fields. In addition, energy facilities of any size that exclusively use alternative energy resources (wind, solar, geothermal, landfill gas, wave or tidal action, or biomass energy) can opt-in to the EFSEC process as well as certain electrical transmission lines. EFSEC's jurisdiction does not extend to hydro based power plants or thermal electric plants that are less than 350 MWs.

EFSEC Application Fee. A site certification application to EFSEC must be accompanied by a \$45,000 fee that is applied toward the direct costs of processing the application, such as the retention of an independent consultant and a hearing examiner, as well as inspection and compliance costs.

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

EFSEC under the Department of Commerce. EFSEC staff are part of the Department of Commerce and the Director of Commerce has supervisory authority over them.

Counsel for the Environment. The Attorney General's Counsel of the Environment represents the public and its interest in protecting the environment in proceedings before EFSEC. The counsel's costs are paid by the Office of the Attorney General and not EFSEC applicants.

Summary of Bill: Expanding EFSEC Jurisdiction. Commercially operated nuclear power facilities of any size and biofuel refineries capable of processing more than 25,000 barrels per day are added to EFSEC's siting jurisdiction.

Moving EFSEC from the Department of Commerce to the WUTC. Administrative and staff support for EFSEC must be provided by the WUTC. The WUTC is granted supervisory authority over EFSEC personnel.

Increasing the Application Deposit for EFSEC. The \$45,000 application deposit for EFSEC siting certification is increased to \$50,000. All direct and indirect expenses of processing the application may be charged against the deposit.

Increasing the Duties of the Counsel for the Environment and Shifting Costs to the Applicant. The Attorney General must appoint a Counsel for the Environment in all local siting proceedings for the following facilities: (1) an energy facility with a generating capacity of 10 MWs or more, or (2) an electric transmission facility greater than 115 kilovolts that is not otherwise under EFSEC jurisdiction. The siting applicant must pay for the reasonable costs of the Counsel for the Environment in all EFSEC and local siting proceedings.

In all siting proceedings where the Counsel for the Environment must participate, the following factors may be considered when determining the public interest: aesthetics, cultural resources, lighting, fish and wildlife protection, setback distances, maximum noise levels, telecommunications interference, decommissioning, and site restoration.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: According to the prime sponsor, the main purpose of this bill is to consolidate EFSEC with the WUTC. The Governor's bill reorganizing Commerce is the preferred vehicle for transferring EFSEC to the WUTC. EFSEC's jurisdiction should be expanded to include commercial nuclear reactors of any size because technologies have advanced. Biofuel refineries should be included because that

would be consistent with EFSEC's current jurisdiction over petroleum refineries. The site certification is a property right that grants enormous benefits and is worth millions of dollars so applicants should be required to pay for the Counsel for the Environment (CE), which currently is a .5 FTE position. The CE's role should be expanded to local siting proceedings because the statewide public does have an interest in the local siting of facilities. The Attorney General's Office has done a good job limiting the costs of the CE.

CON: Since the 1980s, the CE has taken a critical view of all projects and it would be unfair to require applicants to pay for an adversary's costs, particularly if there are no limits to what that adversary could charge. Requiring an applicant to pay an adversary's costs is unprecedented. The CE's role should not be extended to local siting proceedings because that would raise siting costs. If EFSEC is transferred to the WUTC, there should be measures in the bill to insure the impartiality of EFSEC staff. It is incorrect to call a site certification a valuable property right; it is a permit that can expire and its value can be worthless if it incorporates burdensome conditions. Many of the factors the CE must consider seem too local, not statewide.

OTHER: Support the bill but the fee structure for the CE should be reworked and many of the factors the CE must consider seem too local. Support the idea of a one-stop shop for nuclear energy and biofuel refineries and the transfer of EFSEC to WUTC; but, the unprecedented cost transfer of the CE to applicants is unfair and sends the wrong message to developers. In addition, recent local siting proceedings demonstrate the public is well represented without CE involvement.

Persons Testifying: PRO: Senator Fraser, prime sponsor; Carrie Dolwick, NW Energy Coalition; Allen Fiksdal, Jim Luce, EFSEC; Jim Rowland, Energy NW.

CON: Ken Johnson, PSE; Darrel Peeples, NW Intermountain Power Producers; Collins Sprague, Avista.

OTHER: Carrie Dolwick, NW Energy Coalition; Chris McCabe, AWB.