

HOUSE BILL REPORT

ESHB 2406

As Passed House:
February 12, 2014

Title: An act relating to administrative processes for managing deposits and cost reimbursements of the energy facility site evaluation council.

Brief Description: Modifying administrative processes for managing deposits and cost reimbursements of the energy facility site evaluation council.

Sponsors: House Committee on Technology & Economic Development (originally sponsored by Representatives Tarleton, Short, Ryu and Smith; by request of Utilities & Transportation Commission and Energy Facility Site Evaluation Council).

Brief History:

Committee Activity:

Technology & Economic Development: 1/28/14 [DPS].

Floor Activity:

Passed House: 2/12/14, 95-3.

Brief Summary of Engrossed Substitute Bill

- Modifies requirements pertaining to deposits and other payments submitted to the Energy Facility Site Evaluation Council for the costs of the application process and for the costs of inspections and determinations of compliance.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Morris, Chair; Habib, Vice Chair; Smith, Ranking Minority Member; Short, Assistant Ranking Minority Member; Dahlquist, Fey, Freeman, Hudgins, Kochmar, Magendanz, Morrell, Ryu, Stonier, Tarleton, Vick, Walsh, Wylie and Zeiger.

Staff: Kelly Leonard (786-7147).

Background:

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.

Energy Facility Site Evaluation Council.

The Energy Facility Site Evaluation Council (Council) was created in 1970 to provide a "one-stop" siting process for major energy facilities in Washington. The Council coordinates all evaluation and licensing and specifies the conditions of construction and operation. The Council's siting authority includes several types of energy facilities, including, for example, large natural gas and petroleum pipelines, thermal electric power plants of 350 megawatts (MWs) or greater and their dedicated transmission lines, and new oil and biofuel refineries or large expansions of existing facilities.

There are six major steps in the site certification process: (1) application submittal; (2) application review; (3) initial public hearings; (4) environmental impact statement; (5) adjudicative proceedings and permits review; and (6) recommendation to the Governor. Each step has specific requirements the applicant and the Council must follow to ensure a comprehensive review of the project. If approved, a site certification agreement is issued in lieu of any other individual state or local agency permits. The Council retains ongoing monitoring and enforcement authority over facilities that are certified and approved by the Governor.

In 2010 the Legislature transferred the administration of the Council from the Department of Commerce to the Washington Utilities and Transportation Commission (UTC). The UTC provides all administrative and staff support for the Council. The UTC has supervisory authority over the staff of the Council. The Council otherwise retains its independence in exercising its powers, functions, and duties and its supervisory control over nonadministrative staff support.

Site Certification Application and Monitoring Costs.

The deposits and charges associated with application processing and certification monitoring by the Council are established in state law.

Each applicant seeking energy facility site certification is required to pay reasonable costs as are actually and necessarily incurred by the Council in processing his or her application. A site certification application to the Council must be accompanied by a \$50,000 deposit. The Council may charge costs against the deposit, including, for example, independent consultants' costs, staff salaries, wages and benefits, goods and services, and travel expenses arising directly from processing an application.

A \$50,000 deposit is also required for each certificate holder in order to cover the Council's reasonable costs associated with inspections and determinations of compliance with the terms of certification. The Council may charge costs against the deposit in the same manner as is permitted for processing applications.

The Council must provide each applicant and certificate holder with a statement of expenditures for each calendar quarter. The applicant must provide payment in order to restore the deposit to the originally established level. An applicant is permitted to increase the amount of funds in the deposit to cover anticipated expenses during peak periods of application processing.

Applicants and certificate holders are required to make all payments to the State Treasurer.

Summary of Engrossed Substitute Bill:

The requirements for administering deposits and payments are modified.

Applicants and certificate holders are required to pay actual costs incurred by the Council and the UTC. The deposit amount is modified to be an amount up to \$50,000. In addition to the amount of the deposit, applicants and certificate holders must reimburse the UTC, on behalf of the Council, for actual expenditures that arise in considering the application or conducting inspections and determining compliance, including the cost of any independent consultant studies. Any unexpended portions of the deposit must be returned to the applicant within 60 days following the conclusion of the application process or to the certificate holder within 60 days after a determination that the certificate is no longer required.

The Council and the UTC must charge costs against the deposit if the applicant withdraws its application and has not reimbursed the UTC, on behalf of the Council, for all actual expenditures incurred. The same process applies for certificate holders that cease operations and fail to reimburse the commission for actual expenditures incurred in conducting inspections and determining compliance.

Applicants and certificate holders are required to make all payments to the UTC.

The bill does not extend or modify the jurisdiction of the Council or the UTC with respect to any energy facility that is not subject to the jurisdiction of the Council or the Commission as of the effective date of the bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill is intended to address agency efficiency issues and create clarity in statute as to the roles of the UTC and the Council. Four years ago the Legislature transferred certain administrative responsibilities pertaining to the Council from the Department of Commerce to the UTC. The UTC provides administrative support because the Council is not a budget agency. The bill clarifies the role of the UTC with respect to the management of deposits and payments. In addition to clarifying roles, the bill changes the required deposit to an amount up to \$50,000. It also clarifies the process for cost reimbursements and returning unexpended portions of deposits to applicants and site certificate holders.

The changes in the proposed substitute bill will help clarify that the bill is not intended to change or expand the jurisdiction of the UTC or the Council.

The Council is currently administering a certification and review process for a new facility located at the Port of Vancouver, Washington. During the application submittal process, the Attorney General appointed an assistant attorney general to serve as Counsel for the Environment in order to represent the public and its interest in protecting the environment. The public can submit comments to the Counsel for the Environment with respect to the siting of the new facility.

(Opposed) None.

Persons Testifying: Representative Tarleton, prime sponsor; Ann Rendahl, Utilities and Transportation Commission; and Bill Lynch, Energy Facility Site Evaluation Council.

Persons Signed In To Testify But Not Testifying: None.