
HOUSE BILL 1374

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Morris and Fey

Read first time 01/24/13. Referred to Committee on Environment.

1 AN ACT Relating to the energy facility site evaluation council;
2 amending RCW 80.50.010, 80.50.040, 80.50.045, 80.50.060, 80.50.071,
3 80.50.075, 80.50.085, 80.50.100, 80.50.105, 80.50.110, and 80.50.120;
4 reenacting and amending RCW 80.50.020 and 80.50.030; adding new
5 sections to chapter 80.50 RCW; and repealing RCW 80.50.080, 80.50.090,
6 and 80.50.320.

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

8 **Sec. 1.** RCW 80.50.010 and 2001 c 214 s 1 are each amended to read
9 as follows:

10 The legislature finds that the present and predicted growth in
11 energy demands in the state of Washington requires the development of
12 a procedure for the selection and utilization of sites for energy
13 facilities and the identification of a state position with respect to
14 ~~((each))~~ the proposed site. The legislature also finds that there is
15 a critical need for infrastructure to ensure the safe and reliable
16 operations of electrical generation and energy transmission systems in
17 Washington and the region. The legislature recognizes that the
18 selection of sites will have a significant impact upon the welfare of

1 the population, the location and growth of industry and the use of the
2 natural resources of the state.

3 It is the policy of the state of Washington to recognize the
4 (~~pressing~~) need for increased energy facilities, and to ensure
5 through available and reasonable methods, that the location and
6 operation of (~~such~~) facilities will produce minimal adverse effects
7 on the environment, ecology of the land and its wildlife, and the
8 ecology of state waters and their aquatic life.

9 It is the intent to seek courses of action that will balance the
10 increasing demands for energy facility location and operation in
11 conjunction with the broad interests of the public. Such action will
12 be based on these premises:

13 (1) To assure Washington state citizens that, where applicable,
14 operational safeguards are at least as stringent as the criteria
15 established by the federal government and are technically sufficient
16 for their welfare and protection.

17 (2) To preserve and protect the quality of the environment; to
18 enhance the public's opportunity to enjoy the esthetic and recreational
19 benefits of the air, water and land resources; to promote air
20 cleanliness; and to pursue beneficial changes in the environment.

21 (~~(3) (To provide abundant energy at reasonable cost.~~
22 ~~(4))~~) To avoid costs of complete site restoration and demolition of
23 improvements and infrastructure at unfinished nuclear energy sites, and
24 to use unfinished nuclear energy facilities for public uses, including
25 economic development, under the regulatory and management control of
26 local governments and port districts.

27 ((~~+5~~)) (4) To avoid costly duplication in the siting process and
28 ensure that decisions are made timely and without unnecessary delay.

29 **Sec. 2.** RCW 80.50.020 and 2010 c 152 s 1 are each reenacted and
30 amended to read as follows:

31 The definitions in this section apply throughout this chapter
32 unless the context clearly requires otherwise.

33 (1) "Alternative energy resource" includes energy facilities of the
34 following types: (a) Wind; (b) solar energy; (c) geothermal energy;
35 (d) landfill gas; (e) wave or tidal action; (~~(f)~~) (f) energy storage;
36 or (g) biomass energy based on solid organic fuels from wood, forest,

1 or field residues, or dedicated energy crops that do not include wood
2 pieces that have been treated with chemical preservatives such as
3 creosote, pentachlorophenol, or copper-chrome-arsenic.

4 (2) "Applicant" means any person who makes application for a site
5 certification pursuant to the provisions of this chapter.

6 (3) "Application" means any request for approval of a particular
7 site or sites filed in accordance with the procedures established
8 pursuant to this chapter, unless the context otherwise requires.

9 (4) "Associated facilities" means storage, transmission, handling,
10 or other related and supporting facilities connecting an energy plant
11 with the existing energy supply, processing, or distribution system,
12 including, but not limited to, communications, controls, mobilizing or
13 maintenance equipment, instrumentation, and other types of ancillary
14 transmission equipment, off-line storage or venting required for
15 efficient operation or safety of the transmission system and overhead,
16 and surface or subsurface lines of physical access for the inspection,
17 maintenance, and safe operations of the transmission facility and new
18 transmission lines constructed to operate at nominal voltages of at
19 least 115,000 volts to connect a thermal power plant or alternative
20 energy facilities to the northwest power grid. However, common carrier
21 railroads or motor vehicles shall not be included.

22 (5) "Biofuel" has the same meaning as defined in RCW 43.325.010.

23 (6) "Certification" means a binding agreement between an applicant
24 and the state which shall embody compliance to the siting standards and
25 guidelines, in effect as of the date of certification, which have been
26 adopted pursuant to RCW 80.50.040 as now or hereafter amended as
27 conditions to be met prior to or concurrent with the construction or
28 operation of any energy facility.

29 (7) "Construction" means on-site improvements, excluding
30 exploratory work, which cost in excess of two hundred fifty thousand
31 dollars.

32 (8) "Council" means the energy facility site evaluation council
33 created by RCW 80.50.030.

34 (9) "Counsel for the environment" means an assistant attorney
35 general or a special assistant attorney general who shall represent the
36 public (~~in accordance with RCW 80.50.080~~).

37 (10) "Electrical transmission facilities" means electrical power
38 lines and related equipment.

1 (11) "Energy facility" means an energy plant or transmission
2 facilities: PROVIDED, That the following are excluded from the
3 provisions of this chapter:

4 (a) Facilities for the extraction, conversion, transmission or
5 storage of water, other than water specifically consumed or discharged
6 by energy production or conversion for energy purposes; and

7 (b) Facilities operated by and for the armed services for military
8 purposes or by other federal authority for the national defense.

9 (12) "Energy plant" means the following facilities together with
10 their associated facilities:

11 (a) Any nuclear power facility where the primary purpose is to
12 produce and sell electricity;

13 (b) Any nonnuclear stationary thermal power plant (~~((with generating
14 capacity of three hundred fifty thousand kilowatts or more, measured
15 using maximum continuous electric generating capacity, less minimum
16 auxiliary load, at average ambient temperature and pressure,))~~) and
17 floating thermal power plants (~~((of one hundred thousand kilowatts or
18 more))~~) suspended on the surface of water by means of a barge, vessel,
19 or other floating platform;

20 (c) Facilities which will have the capacity to (~~((receive))~~) import
21 or export liquefied natural gas (~~((in the equivalent of more than one
22 hundred million standard cubic feet of natural gas per day, which))~~)
23 that has been transported over land or marine waters;

24 (d) Facilities which will have the capacity to receive (~~((more than
25 an average of fifty thousand barrels per day of))~~) crude or refined
26 petroleum or liquefied petroleum gas which has been or will be
27 transported over marine waters, except that the provisions of this
28 chapter shall not apply to storage facilities unless occasioned by such
29 new facility construction;

30 (e) Any underground reservoir for receipt and storage of natural
31 gas as defined in RCW 80.40.010 (~~((capable of delivering an average of
32 more than one hundred million standard cubic feet of natural gas per
33 day))~~); (~~((and))~~)

34 (f) Facilities capable of processing (~~((more than twenty five
35 thousand barrels per day of))~~) petroleum or biofuel into refined
36 products except where such biofuel production is undertaken at existing
37 industrial facilities; and

38 (g) Any alternative energy resource.

1 (13) "Independent consultants" means those persons who have no
2 financial interest in the applicant's proposals and who are retained by
3 the council to evaluate the applicant's proposals, supporting studies,
4 or to conduct additional studies.

5 (14) "Land use plan" means a comprehensive plan or land use element
6 thereof adopted by a unit of local government pursuant to chapter
7 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by
8 chapter 325, Laws of 2007.

9 (15) "Person" means an individual, partnership, joint venture,
10 private or public corporation, association, firm, public service
11 company, political subdivision, municipal corporation, government
12 agency, public utility district, or any other entity, public or
13 private, however organized.

14 (16) "Preapplicant" means a person considering applying for a site
15 certificate agreement for any transmission facility.

16 (17) "Preapplication process" means the process which is initiated
17 by written correspondence from the preapplicant to the council, and
18 includes the process adopted by the council for consulting with the
19 preapplicant and with cities, towns, and counties prior to accepting
20 applications for all transmission facilities.

21 (18) "Secretary" means the secretary of the United States
22 department of energy.

23 (19) "Site" means any proposed or approved location of an energy
24 facility, alternative energy resource, or electrical transmission
25 facility.

26 (20) "Thermal power plant" means, for the purpose of certification,
27 any electrical generating facility (~~(using)~~) combusting any gaseous,
28 liquid, or solid fuel (~~((for distribution of electricity by electric~~
29 ~~utilities))~~) or using heat to create steam for the generation of
30 electricity.

31 (21) "Transmission pipeline facility" means any of the following
32 together with their associated facilities:

33 (a) Crude or refined petroleum or liquid petroleum product
34 transmission pipeline (~~((of the following dimensions:—A pipeline larger~~
35 ~~than six inches minimum inside diameter between valves for the~~
36 ~~transmission of these products with a total length of at least fifteen~~
37 ~~miles))~~) with pipe strength levels in excess of twenty percent of the
38 specified minimum yield strength;

1 (b) Natural gas, synthetic fuel gas, or liquefied petroleum gas
2 transmission pipeline (~~of the following dimensions: A pipeline larger~~
3 ~~than fourteen inches minimum inside diameter between valves, for the~~
4 ~~transmission of these products, with a total length of at least fifteen~~
5 ~~miles)) with pipe strength levels in excess of twenty percent of the
6 specified minimum yield strength and the pipeline will be used for the
7 purpose of delivering gas to a distribution facility, except an
8 interstate natural gas pipeline regulated by the United States federal
9 power commission; and~~

10 (c) A transmission pipeline facility may include a pipeline
11 carrying federally listed hazardous waste to the energy facility.

12 (22) "Zoning ordinance" means an ordinance of a unit of local
13 government regulating the use of land and adopted pursuant to chapter
14 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state
15 Constitution, or as otherwise designated by chapter 325, Laws of 2007.

16 (23) "Consumer-owned utility" means any municipal electric utility
17 formed under Title 35 RCW, public utility district formed under Title
18 54 RCW, an irrigation district formed under chapter 87.03 RCW,
19 cooperative formed under chapter 23.86 RCW, a mutual corporation or
20 association formed under chapter 24.06 RCW, port district formed under
21 Title 53 RCW, or water-sewer district formed under Title 57 RCW, that
22 is engaged in the business of distributing electricity to one or more
23 retail electric customers in the state.

24 (24) "Electric utility" means an electric utility, as the term
25 "electric utility" is defined in RCW 19.29A.010.

26 (25) "Proven energy technology" means any energy technology used in
27 an energy facility offered for sale in the United States and
28 preapproved by the council.

29 **Sec. 3.** RCW 80.50.030 and 2010 c 271 s 601 and 2010 c 152 s 2 are
30 each reenacted and amended to read as follows:

31 (1) There is created and established the energy facility site
32 evaluation council.

33 (2)(a) The chair of the council shall be appointed by the governor
34 with the advice and consent of the senate, shall have a vote on matters
35 before the council, shall serve for a term coextensive with the term of
36 the governor, and is removable for cause. The chair may designate a
37 member of the council to serve as acting chair in the event of the

1 chair's absence. The salary of the chair shall be determined under RCW
2 43.03.040. The chair is a "state employee" for the purposes of chapter
3 42.52 RCW. As applicable, when attending meetings of the council,
4 members may receive reimbursement for travel expenses in accordance
5 with RCW 43.03.050 and 43.03.060, and are eligible for compensation
6 under RCW 43.03.250.

7 (b) The chair or a designee shall execute all official site
8 application documents(~~((, contracts,))~~) and other materials on behalf of
9 the council. The chair shall manage the scheduling of all public
10 meetings necessary for site certification of an energy facility and
11 preside over meetings of the council. The Washington utilities and
12 transportation commission shall provide all administrative and staff
13 support for the council. The commission has supervisory authority over
14 the staff of the council and shall employ such personnel as are
15 necessary to implement this chapter. Not more than three such
16 employees may be exempt from chapter 41.06 RCW. The utilities and
17 transportation commission shall serve as the fiscal agent for the
18 council, ensuring compliance with state law, and shall execute
19 contracts in consultation with the council. The council shall
20 otherwise retain its independence in exercising its powers, functions,
21 and duties (~~((and its supervisory control over nonadministrative staff~~
22 ~~support))~~) relating to site applications. Membership, powers,
23 functions, and duties of the Washington state utilities and
24 transportation commission and the council shall otherwise remain as
25 provided by law.

26 (3)(a) The council shall consist of (~~(the directors,~~
27 ~~administrators, or their designees, of the following departments,~~
28 ~~agencies, commissions, and committees or their statutory successors:~~

29 (i) ~~Department of ecology;~~

30 (ii) ~~Department of fish and wildlife;~~

31 (iii) ~~Department of commerce;~~

32 (iv) ~~Utilities and transportation commission; and~~

33 (v) ~~Department of natural resources.~~

34 (b) ~~The directors, administrators, or their designees, of the~~
35 ~~following departments, agencies, and commissions, or their statutory~~
36 ~~successors, may participate as councilmembers at their own discretion~~
37 ~~provided they elect to participate no later than sixty days after an~~
38 ~~application is filed:~~

1 ~~(i) Department of agriculture;~~

2 ~~(ii) Department of health;~~

3 ~~(iii) Military department; and~~

4 ~~(iv) Department of transportation.~~

5 ~~(c) Council membership is discretionary for agencies that choose to~~
6 ~~participate under (b) of this subsection only for applications that are~~
7 ~~filed with the council on or after May 8, 2001. For applications filed~~
8 ~~before May 8, 2001, council membership is mandatory for those agencies~~
9 ~~listed in (b) of this subsection)):~~

10 (i) Three members of the growth management hearings board,
11 comprised of two members residing closest to the proposed energy
12 facility and the third member drawn from one of the other regions of
13 the state;

14 (ii) The department of fish and wildlife; and

15 (iii) The department of ecology.

16 (b) If the chair of the council determines that the proposed energy
17 facility may impact shorelines or forest resources in the state, the
18 chair shall invite, depending on the impacts, either a member from the
19 shorelines hearings board or a member of the forest practices board to
20 participate as a councilmember. If a member of the shorelines hearings
21 board or the forest practices board are invited and participate in the
22 site certification of a proposed energy facility, that board member
23 shall serve on the council in place of one of the two growth management
24 hearings board members residing closest to the proposed energy
25 facility.

26 (4) The appropriate county legislative authority of every county
27 wherein an application for a proposed site is filed shall appoint a
28 member or designee as a voting member to the council. The member or
29 designee so appointed shall sit with the council only at such times as
30 the council considers the proposed site for the county which he or she
31 represents, and such member or designee shall serve until there has
32 been a final acceptance or rejection of the proposed site.

33 (5) The city legislative authority of every city within whose
34 corporate limits an energy facility is proposed to be located shall
35 appoint a member or designee as a voting member to the council. The
36 member or designee so appointed shall sit with the council only at such
37 times as the council considers the proposed site for the city which he

1 or she represents, and such member or designee shall serve until there
2 has been a final acceptance or rejection of the proposed site.

3 (6) For any port district wherein an application for a proposed
4 port facility is filed subject to this chapter, the port district shall
5 appoint a member or designee as a nonvoting member to the council. The
6 member or designee so appointed shall sit with the council only at such
7 times as the council considers the proposed site for the port district
8 which he or she represents, and such member or designee shall serve
9 until there has been a final acceptance or rejection of the proposed
10 site. The provisions of this subsection shall not apply if the port
11 district is the applicant, either singly or in partnership or
12 association with any other person.

13 **Sec. 4.** RCW 80.50.040 and 2001 c 214 s 6 are each amended to read
14 as follows:

15 The council shall have the following powers:

16 (1) To adopt, promulgate, amend, or rescind suitable rules and
17 regulations, pursuant to chapter 34.05 RCW, to carry out the provisions
18 of this chapter, and the policies and practices of the council in
19 connection therewith;

20 (2) To develop and apply environmental and ecological guidelines
21 and standards in relation to the type, design, location, construction,
22 and operational conditions of certification of energy facilities
23 subject to this chapter;

24 (3) To establish rules of practice for the conduct of public
25 hearings (~~((pursuant to the provisions of the Administrative Procedure
26 Act, as found in chapter 34.05 RCW))~~);

27 (4) To prescribe the form, content, and necessary supporting
28 documentation for site certification;

29 (5) To receive applications for energy facility locations and to
30 investigate the sufficiency thereof;

31 (6) To (~~make and~~) enter into contracts, when applicable, for
32 independent studies of sites proposed by the applicant, subject to the
33 provisions of RCW 39.26.120;

34 (7) To conduct hearings on the proposed location of the energy
35 facilities;

36 (8) (~~To prepare written reports to the governor which shall
37 include: (a) A statement indicating whether the application is in~~

1 ~~compliance with the council's guidelines, (b) criteria specific to the~~
2 ~~site and transmission line routing, (c) a council recommendation as to~~
3 ~~the disposition of the application, and (d) a draft certification~~
4 ~~agreement when the council recommends approval of the application;)) To
5 approve or deny an application for site certification of a proposed
6 energy facility;~~

7 (9) To prescribe the means for monitoring of the effects arising
8 from the construction and the operation of energy facilities to assure
9 continued compliance with terms of certification and/or permits issued
10 by the council pursuant to chapter 90.48 RCW or subsection (12) of this
11 section: PROVIDED, That any on-site inspection required by the council
12 shall be performed by other state agencies pursuant to interagency
13 agreement: PROVIDED FURTHER, That the council may retain authority for
14 determining compliance relative to monitoring;

15 (10) To integrate its site evaluation activity with activities of
16 federal agencies having jurisdiction in such matters to avoid
17 unnecessary duplication;

18 (11) To present state concerns and interests to other states,
19 regional organizations, and the federal government on the location,
20 construction, and operation of any energy facility which may affect the
21 environment, health, or safety of the citizens of the state of
22 Washington;

23 (12) To issue permits in compliance with applicable provisions of
24 the federally approved state implementation plan adopted in accordance
25 with the Federal Clean Air Act, as now existing or hereafter amended,
26 for the new construction, reconstruction, or enlargement or operation
27 of energy facilities: PROVIDED, That such permits shall become
28 effective only if the ((~~governor~~)) council approves an application for
29 certification and executes a certification agreement pursuant to this
30 chapter: AND PROVIDED FURTHER, That all such permits be conditioned
31 upon compliance with all provisions of the federally approved state
32 implementation plan which apply to energy facilities covered within the
33 provisions of this chapter; ((~~and~~))

34 (13) To serve as an interagency coordinating body for energy-
35 related issues;

36 (14) To develop minimum safety standards for cities and counties in
37 relation to the type, design, location, construction, operational

1 conditions, and decommissioning of energy facilities subject to this
2 chapter; and

3 (15) To enter into interlocal agreements with cities and counties
4 for the purpose of issuing site certifications for energy facilities
5 within the geographic jurisdiction of the local government.

6 NEW SECTION. Sec. 5. A new section is added to chapter 80.50 RCW
7 to read as follows:

8 (1) By December 1, 2014, the council shall adopt standards for the
9 siting, construction, operation, and decommissioning of energy
10 facilities. The standards must address, but not be limited to, the
11 following subjects:

12 (a) The organizational, managerial, and technical expertise of the
13 applicant to construct and operate the proposed energy facility;

14 (b) Seismic hazards;

15 (c) Areas designated for protection by the state or federal
16 government, including but not limited to: Monuments; wilderness areas;
17 wildlife refuges; scenic waterways; and similar areas;

18 (d) The financial ability and qualifications of the applicant;

19 (e) Effects of the energy facility on fish and wildlife, taking
20 into account mitigation, including threatened and endangered fish,
21 wildlife, or plant species;

22 (f) Impacts of the energy facility on historic, cultural, or
23 archaeological resources listed on the national register of historic
24 places or the Washington heritage register;

25 (g) Protection of public health and safety, including necessary
26 safety devices and procedures;

27 (h) The accumulation, storage, disposal, and transportation of
28 nuclear waste;

29 (i) Impacts of the energy facility on recreation, scenic, and
30 aesthetic values;

31 (j) Reduction of solid waste and wastewater generation to the
32 extent reasonably practicable;

33 (k) Ability of the communities in the affected area to provide
34 sewers and sewage treatment, water, storm water drainage, solid waste
35 management, housing, traffic safety, police and fire protection, health
36 care, and schools;

37 (l) Soil protection;

1 (m) Noise; and

2 (n) The distance an energy facility must be set back from adjoining
3 properties.

4 (2) The standards adopted by the council under subsection (1) of
5 this section must, at a minimum, meet the requirements, where they
6 exist, under Oregon Administrative Rules, chapter 345, in effect as of
7 January 1, 2013.

8 (3) The council may issue a site certificate for an energy facility
9 that does not meet one or more of the standards adopted under
10 subsection (1) of this section if the council determines that the
11 overall public benefits of the energy facility outweigh the impact on
12 the resources protected by the standards the facility does not meet.

13 (4)(a) By December 1, 2015, the council shall develop through rule
14 making minimum standards for cities and counties in relation to the
15 type, design, location, construction, operational conditions, and
16 decommissioning of energy facilities.

17 (b) The council and any local government in the state may enter
18 into, and are encouraged to enter into, an interlocal agreement as
19 provided under chapter 39.34 RCW for the purpose of authorizing the
20 council to issue site certifications for energy facilities within the
21 geographic jurisdiction of the local government.

22 (5)(a) The council shall develop a list of proven energy
23 technologies to be granted expedited processing under this chapter.
24 For each proven energy generation technology listed, the council shall
25 develop specific operational guidelines for the energy technology
26 consistent with the applicable standards adopted under subsection (1)
27 of this section and the state environmental policy act.

28 (b) An energy technology company may seek preapproval of its energy
29 technology by submitting to the council a proven energy technology
30 preapproval application to the council. The council may impose a
31 charge to cover necessary costs to process the preapproval application.

32 (c) For each preapproval application submitted by an applicant, the
33 council shall develop through rule making the standards an energy
34 technology must meet to be preapproved as a proven energy technology.
35 The council may collect a fee from the applicant to recover the cost of
36 the rule making.

1 **Sec. 6.** RCW 80.50.045 and 2006 c 196 s 3 are each amended to read
2 as follows:

3 (1)(a) The council shall consult with other state agencies,
4 utilities, local municipal governments, public interest groups, tribes,
5 and other interested persons to convey their views to the secretary and
6 the federal energy regulatory commission regarding appropriate limits
7 on federal regulatory authority in the siting of electrical
8 transmission corridors in the state of Washington.

9 (~~(2)~~) (b) The council is designated as the state authority for
10 purposes of siting electrical transmission facilities under the
11 national energy policy act of 2005 and for purposes of other such rules
12 or regulations adopted by the secretary. The council's authority
13 regarding electrical transmission facilities is limited to those
14 electrical transmission facilities that are the subject of section 1221
15 of the national energy policy act and this chapter.

16 (~~(3)~~) (c) For the construction and modification of electrical
17 transmission facilities that are the subject of section 1221 of the
18 national energy policy act, the council may: (~~(a)~~) (i) Approve the
19 siting of the facilities; and (~~(b)~~) (ii) consider the interstate
20 benefits expected to be achieved by the proposed construction or
21 modification of the facilities in the state.

22 (~~(4)~~) (d) When developing recommendations as to the disposition
23 of an application for the construction or modification of electrical
24 transmission facilities under this chapter, the fuel source of the
25 electricity carried by the transmission facilities shall not be
26 considered.

27 (2) The council shall monitor the activities of the federal energy
28 regulatory commission and may receive notifications for energy projects
29 located in Washington that are under the regulatory oversight of the
30 federal energy regulatory commission. These notifications must
31 include, but are not limited to, project filings, delegated orders,
32 notices, and the federal energy regulatory commission decisions.

33 **Sec. 7.** RCW 80.50.060 and 2007 c 325 s 2 are each amended to read
34 as follows:

35 (1)(a) Except as provided under (b) and (c) of this subsection, the
36 provisions of this chapter apply to the construction of energy
37 facilities which includes the new construction of energy facilities

1 (~~and the reconstruction or enlargement of existing energy facilities~~
2 ~~where the net increase in physical capacity or dimensions resulting~~
3 ~~from such reconstruction or enlargement meets or exceeds those~~
4 ~~capacities or dimensions set forth in RCW 80.50.020 (7) and (15). No~~
5 ~~construction of such energy facilities may be undertaken, except as~~
6 ~~otherwise provided in this chapter, after July 15, 1977, without first~~
7 ~~obtaining certification in the manner provided in this chapter.~~

8 ~~(2) The provisions of this chapter apply to the construction,~~
9 ~~reconstruction, or enlargement of a new or existing energy facility~~
10 ~~that exclusively uses alternative energy resources and chooses to~~
11 ~~receive certification under this chapter, regardless of the generating~~
12 ~~capacity of the project)) if the applicant chooses to receive~~
13 ~~certification under this chapter.~~

14 ~~((+3)) (b) Any proposed nuclear power facility in Washington,~~
15 ~~where the primary purpose is to produce and sell electricity, must~~
16 ~~apply to the council for site certification.~~

17 ~~(c) Any proposed transmission pipeline facility in Washington must~~
18 ~~apply to the council for site certification.~~

19 ~~(2)(a) The provisions of this chapter apply to the construction,~~
20 ~~reconstruction, or modification of electrical transmission facilities~~
21 ~~when:~~

22 ~~(i) The facilities are located in a national interest electric~~
23 ~~transmission corridor as specified in RCW 80.50.045;~~

24 ~~(ii) An applicant chooses to receive certification under this~~
25 ~~chapter, and the facilities are: (A) Of a nominal voltage of at least~~
26 ~~one hundred fifteen thousand volts and are located in a completely new~~
27 ~~corridor, except for the terminus of the new facility or~~
28 ~~interconnection of the new facility with the existing grid, and the~~
29 ~~corridor is not otherwise used for electrical transmission facilities;~~
30 ~~and (B) located in more than one jurisdiction that has promulgated land~~
31 ~~use plans or zoning ordinances; or~~

32 ~~(iii) An applicant chooses to receive certification under this~~
33 ~~chapter, and the facilities are: (A) Of a nominal voltage in excess of~~
34 ~~one hundred fifteen thousand volts; and (B) located outside an~~
35 ~~electrical transmission corridor identified in (a)(i) and (ii) of this~~
36 ~~subsection ((+3)) (2).~~

37 ~~(b) For the purposes of this subsection, "modify" means a~~
38 ~~significant change to an electrical transmission facility and does not~~

1 include the following: (i) Minor improvements such as the replacement
2 of existing electrical transmission line facilities or supporting
3 structures with equivalent facilities or structures; (ii) the
4 relocation of existing electrical transmission line facilities; (iii)
5 the conversion of existing overhead lines to underground; or (iv) the
6 placing of new or additional conductors, supporting structures,
7 insulators, or their accessories on or replacement of supporting
8 structures already built.

9 ~~((4))~~ (3) The provisions of this chapter shall not apply to
10 normal maintenance and repairs which do not increase the capacity or
11 dimensions ~~((beyond those set forth in RCW 80.50.020 (7) and (15)))~~ of
12 an energy facility.

13 (4) The provisions of this chapter do not apply to an energy
14 facility that previously has been approved or denied by a local
15 government.

16 (5) Applications for certification of energy facilities made prior
17 to July 15, 1977, shall continue to be governed by the applicable
18 provisions of law in effect on the day immediately preceding July 15,
19 1977, with the exceptions of RCW 80.50.190 and 80.50.071 which shall
20 apply to such prior applications and to site certifications
21 prospectively from July 15, 1977.

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

25 NEW SECTION. Sec. 8. A new section is added to chapter 80.50 RCW
26 to read as follows:

27 (1) Each applicant for a site certificate shall submit to the
28 council a preliminary application for a site certificate. The
29 preliminary application must provide information about the proposed
30 site and the characteristics of the energy facility sufficient for the
31 preparation of the council's notice of application requirements.

32 (2)(a) The council shall provide notice to the public within three
33 working days of receiving a preliminary application. The public notice
34 must provide a description of the proposed site and facility in
35 sufficient detail to inform the public of the location and proposed use
36 of the site. The public has fourteen days to provide comment on the
37 preliminary application.

1 (b) After the council provides public notice, a city, county, or
2 regional planning authority may not change land use plans or zoning
3 ordinances so as to affect the proposed site.

4 (3) Within three working days after the council provides public
5 notice, an applicant for a site certification shall distribute the
6 preliminary application to any agency that has regulatory or advisory
7 responsibility with respect to the facility and any city or county
8 affected by the application.

9 (4)(a) Following review of the preliminary application and any
10 public comments received in response to the public notice, the council
11 shall hold a public information meeting with state agencies and local
12 governments that have regulatory or advisory responsibility with
13 respect to the facility.

14 (b) The public information meeting must be held in the vicinity of
15 the proposed project after providing public notice.

16 (c) At the public information meeting, any person is entitled to be
17 heard in support of or in opposition to the preliminary application.

18 (5) No more than thirty days after receiving a preliminary
19 application, the staff shall issue a notice of application requirements
20 establishing the statutes, administrative rules, council standards,
21 local ordinances, application requirements, and study requirements for
22 the site certificate application. Staff may consider whether the
23 proposed facility is in compliance with city, county, or regional land
24 use plans or zoning ordinances and may specify additional requirements
25 in the notice of application based on a review of plans and ordinances
26 where the proposed facility is to be located.

27 (6) Following issuance of the notice of application requirements,
28 an applicant shall submit an application for site certification
29 consistent with the notice of application requirements within fifteen
30 days.

31 (7)(a) The staff of the council shall determine within fifteen days
32 of submission of the application whether an application meets the
33 council's requirements. If the staff determines that an application
34 meets the council's requirements, the staff shall establish the
35 timeline in which the environmental review must be completed. The
36 environmental review of a proposed energy facility must be completed
37 within six months after a preliminary application is submitted to the
38 council unless the staff determines that: (i) The environmental

1 review, due to the potential impacts of the project, requires
2 additional time to review; or (ii) the energy facility uses a
3 technology that is not listed by the council as a proven energy
4 generation technology. If the staff determines that the project
5 requires additional time to review, the environmental review may not
6 exceed twelve months in duration.

7 (b) If the staff extends the environmental review process up to
8 twelve months, the attorney general shall appoint an assistant attorney
9 general as a counsel for the environment. The counsel for the
10 environment shall represent the public and its interest in protecting
11 the quality of the environment. Costs incurred by the counsel for the
12 environment in the performance of these duties must be charged to the
13 office of the attorney general, and may not be a charge against the
14 appropriation to the energy facility site evaluation council. The
15 counsel for the environment must be accorded all the rights,
16 privileges, and responsibilities of an attorney representing a party in
17 a formal action. This section may not be construed to prevent any
18 person from being heard or represented by counsel in accordance with
19 the other provisions of this chapter.

20 NEW SECTION. **Sec. 9.** A new section is added to chapter 80.50 RCW
21 to read as follows:

22 (1)(a) Following requirements set forth under chapter 43.21C RCW,
23 the chair must oversee an environmental review of the proposed energy
24 facility.

25 (b) After the council determines whether an application meets
26 council requirements as provided under section 8 of this act, the chair
27 shall initiate a scoping process to determine the range of proposed
28 actions, alternatives, and impacts to be examined in the environmental
29 impact statement.

30 (c) Council staff shall notify any agency that has regulatory or
31 advisory responsibility with respect to the facility and any city or
32 county affected by the application of the scoping process.

33 (d) The chair shall conduct a public hearing within thirty days of
34 initiating the scoping process.

35 (e) The council staff, within sixty days after initiating the
36 scoping process, shall publish a draft environmental impact statement.

1 (f) The chair shall solicit comments on the draft environmental
2 impact statement and hold a public hearing fifteen days after making
3 the draft environmental impact statement public.

4 (g) Within fifteen days after the public hearing on the draft
5 environmental impact statement, the chair shall submit to the council
6 a recommended final environmental impact statement. In submitting the
7 recommended final environmental impact statement to the council, the
8 chair shall specify whether there are any disputed items based on
9 public input provided during the development of the recommended final
10 environmental impact statement.

11 (i) If there are disputed items in the recommended final
12 environmental impact statement, the council shall hold a public hearing
13 within fifteen days on the draft environmental impact statement under
14 (f) of this subsection. At the hearing, the chair shall provide a
15 report to the council regarding the recommended environmental impact
16 statement and regarding the disputed items in the recommended
17 environmental impact statement. The issues that may be considered at
18 the public hearing under this subsection are limited to those issues
19 raised during the preliminary application process and during the
20 development of the recommended environmental impact statement. The
21 chair shall specify to the council the basis for decisions made
22 relating to the disputed items contained in the recommended final
23 environmental impact statement. Based on the input of the chair, the
24 applicant, and the public at the public hearing, the council may elect
25 to address the disputed items from the recommended environmental impact
26 statement in the final environmental impact statement. The council
27 shall issue the final environmental impact statement within fifteen
28 days of the public hearing required under this subsection.

29 (ii) If there are no disputed items in the recommended final
30 environmental impact statement, the chair shall submit to the council
31 the recommended final environmental impact statement within fifteen
32 days of the public hearing under (f) of this subsection and the council
33 shall adopt the recommended final environmental impact statement as the
34 final environmental impact statement.

35 (2) The council may contract with independent consultants to review
36 information from the public hearing and to prepare the draft and final
37 environmental impact assessments.

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 80.50 RCW
2 to read as follows:

3 (1) Within fifteen days of issuing the final environmental impact
4 statement, council staff shall prepare and issue an initial order and
5 draft site certification based on the final environmental impact
6 statement.

7 (2) Within fifteen days of receiving an initial order and draft
8 site certification, the council must make a final decision on the
9 application. The council must either approve the application and
10 execute the draft certification agreement or reject the application for
11 site certification. If the council fails to make a final decision, the
12 initial order submitted by the chair becomes the final order on the
13 fifteenth day following receipt of the initial order.

14 **Sec. 11.** RCW 80.50.071 and 2011 c 261 s 1 are each amended to read
15 as follows:

16 (1) The council shall receive all preliminary applications and
17 applications for energy facility site certification under this chapter.
18 Each applicant shall pay such reasonable costs as are actually and
19 necessarily incurred by the council in processing a preliminary
20 application or an application.

21 (a) Each applicant shall, at the time of application submission,
22 deposit fifty thousand dollars, or such greater amount as may be
23 specified by the council after consultation with the applicant. Costs
24 that may be charged against the deposit include, but are not limited
25 to, independent consultants' costs, councilmember's wages, employee
26 benefits, costs of a hearing examiner, costs of a court reporter, staff
27 salaries, wages and employee benefits, goods and services, travel
28 expenses, and miscellaneous direct expenses as arise directly from
29 processing an application.

30 (b) The council may commission its own independent consultant study
31 to measure the consequences of the proposed energy facility on the
32 environment or any matter that it deems essential to an adequate
33 appraisal of the site. The council shall provide an estimate of the
34 cost of the study to the applicant and consider applicant comments.

35 (c) The council shall submit to each applicant a statement of such
36 expenditures made during the preceding calendar quarter which shall be
37 in sufficient detail to explain such expenditures. The applicant shall

1 pay the state treasurer the amount of such statement to restore the
2 total amount on deposit to the originally established level: PROVIDED,
3 That such applicant may, at the request of the council, increase the
4 amount of funds on deposit to cover anticipated expenses during peak
5 periods of application processing. Any funds remaining unexpended at
6 the conclusion of application processing shall be refunded to the
7 applicant, or at the applicant's option, credited against required
8 deposits of certificate holders.

9 (2) Each certificate holder shall pay such reasonable costs as are
10 actually and necessarily incurred by the council for inspection and
11 determination of compliance by the certificate holder with the terms of
12 the certification relative to monitoring the effects of construction,
13 operation, and site restoration of the facility.

14 (a) Each certificate holder, within thirty days of execution of the
15 site certification agreement, shall have on deposit fifty thousand
16 dollars, or such greater amount as may be specified by the council
17 after consultation with the certificate holder. Costs that may be
18 charged against the deposit include, but are not limited to, those
19 specified in subsection (1)(a) of this section as arise from inspection
20 and determination of compliance by the certificate holder with the
21 terms of the certification.

22 (b) The council shall submit to each certificate holder a statement
23 of such expenditures actually made during the preceding calendar
24 quarter which shall be in sufficient detail to explain such
25 expenditures. The certificate holder shall pay the state treasurer the
26 amount of such statement to restore the total amount on deposit to the
27 originally established level: PROVIDED, That if the actual
28 expenditures for inspection and determination of compliance in the
29 preceding calendar quarter have exceeded the amount of funds on
30 deposit, such excess costs shall be paid by the certificate holder.

31 (3) If an applicant or certificate holder fails to provide the
32 initial deposit, or if subsequently required payments are not received
33 within thirty days following receipt of the statement from the council,
34 the council may (a) in the case of the applicant, suspend processing of
35 the application until payment is received; or (b) in the case of a
36 certificate holder, suspend the certification.

37 (4) All payments required of the applicant or certificate holder
38 under this section are to be made to the state treasurer who shall make

1 payments as instructed by the council from the funds submitted. All
2 such funds shall be subject to state auditing procedures. Any
3 unexpended portions thereof shall be returned to the applicant or
4 certificate holder.

5 (5)(a) Upon receipt of an application for an energy facility site
6 certification proposing an energy plant (~~(or alternative energy~~
7 ~~resource))~~) that is connected to electrical transmission facilities of
8 a nominal voltage of at least one hundred fifteen thousand volts, the
9 council shall notify in writing the United States department of
10 defense. The notification shall include, but not be limited to, the
11 following:

12 (i) A description of the proposed energy plant or alternative
13 energy resource;

14 (ii) The location of the site;

15 (iii) The placement of the energy plant or alternative energy
16 resource on the site;

17 (iv) The date and time by which comments must be received by the
18 council; and

19 (v) Contact information of the council and the applicant.

20 (b) The purpose of the written notification is to provide an
21 opportunity for the United States department of defense to comment upon
22 the application, and to identify potential issues relating to the
23 placement and operations of the energy plant or alternative energy
24 resource, before a site certification application is approved. The
25 time period set forth by the council for receipt of such comments shall
26 not extend the time period for the council's processing of the
27 application.

28 (c) In order to assist local governments required to notify the
29 United States department of defense under RCW 35.63.270, 35A.63.290,
30 and 36.01.320, the council shall post on its web site the appropriate
31 information for contacting the United States department of defense.

32 **Sec. 12.** RCW 80.50.075 and 2006 c 205 s 2 are each amended to read
33 as follows:

34 (1) Any person filing an application for certification of an energy
35 facility (~~(or an alternative energy resource facility))~~) pursuant to
36 this chapter may apply to the council for an expedited processing of
37 such an application. The application for expedited processing shall be

1 submitted to the council in such form and manner and accompanied by
2 such information as may be prescribed by council rule. The council may
3 grant an applicant expedited processing of an application for
4 certification upon finding that the environmental impact of the
5 proposed energy facility is not significant or will be mitigated to a
6 nonsignificant level under RCW 43.21C.031 (~~and the project is found~~
7 ~~under RCW 80.50.090(2) to be consistent and in~~). Review must consider
8 compliance with city, county, or regional land use plans or zoning
9 ordinances.

10 (2) Upon granting an applicant expedited processing of an
11 application for certification, the council shall not be required to:

12 (a) Commission an independent study to further measure the
13 consequences of the proposed energy facility (~~or alternative energy~~
14 ~~resource facility~~) on the environment, notwithstanding the other
15 provisions of RCW 80.50.071; nor

16 (b) Hold an adjudicative proceeding under chapter 34.05 RCW, the
17 administrative procedure act, on the application.

18 (3) The council shall adopt rules governing the expedited
19 processing of an application for certification pursuant to this
20 section.

21 **Sec. 13.** RCW 80.50.085 and 2001 c 214 s 5 are each amended to read
22 as follows:

23 (1) After the council has received a preliminary site application,
24 council staff shall assist applicants in identifying issues presented
25 by the preliminary application and the application.

26 (2) Council staff shall review all information submitted and
27 recommend resolutions to issues in dispute that would allow site
28 approval.

29 (3) Council staff may make recommendations to the council on
30 conditions that would allow site approval.

31 **Sec. 14.** RCW 80.50.100 and 2011 c 180 s 109 are each amended to
32 read as follows:

33 (~~(1)(a) The council shall report to the governor its~~
34 ~~recommendations as to the approval or rejection of an application for~~
35 ~~certification within twelve months of receipt by the council of such an~~

1 ~~application, or such later time as is mutually agreed by the council~~
2 ~~and the applicant.~~

3 ~~(b))~~ In the case of an application filed prior to December 31,
4 2025, for certification of an energy facility proposed for
5 construction, modification, or expansion for the purpose of providing
6 generating facilities that meet the requirements of RCW 80.80.040 and
7 are located in a county with a coal-fired electric (~~generating~~
8 ~~[generation]~~) generation facility subject to RCW 80.80.040(3)(c), the
9 council shall expedite the processing of the application pursuant to
10 RCW 80.50.075 and shall (~~report its recommendations to the governor~~)
11 issue a site certification or reject the site certification application
12 within one hundred eighty days of receipt by the council of such an
13 application, or a later time as is mutually agreed by the council and
14 the applicant.

15 (~~(2)~~ If the council recommends approval of an application for
16 certification, it shall also submit a draft certification agreement
17 with the report. The council shall include conditions in the draft
18 certification agreement to implement the provisions of this chapter,
19 including, but not limited to, conditions to protect state or local
20 governmental or community interests affected by the construction or
21 operation of the energy facility, and conditions designed to recognize
22 the purpose of laws or ordinances, or rules or regulations promulgated
23 thereunder, that are preempted or superseded pursuant to RCW 80.50.110
24 as now or hereafter amended.

25 ~~(3)(a)~~ Within sixty days of receipt of the council's report the
26 governor shall take one of the following actions:

27 ~~(i)~~ Approve the application and execute the draft certification
28 agreement; or

29 ~~(ii)~~ Reject the application; or

30 ~~(iii)~~ Direct the council to reconsider certain aspects of the draft
31 certification agreement.

32 ~~(b)~~ The council shall reconsider such aspects of the draft
33 certification agreement by reviewing the existing record of the
34 application or, as necessary, by reopening the adjudicative proceeding
35 for the purposes of receiving additional evidence. Such
36 reconsideration shall be conducted expeditiously. The council shall
37 resubmit the draft certification to the governor incorporating any
38 amendments deemed necessary upon reconsideration. Within sixty days of

1 receipt of such draft certification agreement, the governor shall
2 either approve the application and execute the certification agreement
3 or reject the application. The certification agreement shall be
4 binding upon execution by the governor and the applicant.

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

9 **Sec. 15.** RCW 80.50.105 and 1991 c 200 s 1112 are each amended to
10 read as follows:

11 ((~~In making its recommendations to the governor under this chapter~~
12 ~~regarding~~)) For an application that includes transmission pipeline
13 facilities for petroleum products, the council shall give appropriate
14 weight to city or county facility siting standards adopted for the
15 protection of sole source aquifers.

16 **Sec. 16.** RCW 80.50.110 and 1975-'76 2nd ex.s. c 108 s 37 are each
17 amended to read as follows:

18 (1) If any provision of this chapter is in conflict with any other
19 provision, limitation, or restriction which is now in effect under any
20 other law of this state, or any rule or regulation promulgated
21 thereunder, this chapter shall govern and control and such other law or
22 rule or regulation promulgated thereunder shall be deemed superseded
23 for the purposes of this chapter.

24 (2) The state hereby preempts the regulation and certification of
25 the location, construction, and operational conditions of certification
26 of the energy facilities included under RCW 80.50.060 as now or
27 hereafter amended.

28 (3) Notwithstanding any other provision of this chapter or this
29 section, no permit or certification or any condition or provision of
30 any permit, certification, or agreement issued under this chapter may
31 preempt or supersede any provision of chapter 80.60 RCW.

32 **Sec. 17.** RCW 80.50.120 and 1977 ex.s. c 371 s 10 are each amended
33 to read as follows:

34 Except as provided in RCW 80.50.110:

1 (1) Subject to the conditions set forth therein any certification
2 shall bind the state and each of its departments, agencies, divisions,
3 bureaus, commissions, boards, and political subdivisions, whether a
4 member of the council or not, as to the approval of the site and the
5 construction and operation of the proposed energy facility.

6 (2) The certification shall authorize the person named therein to
7 construct and operate the proposed energy facility subject only to the
8 conditions set forth in such certification.

9 (3) The issuance of a certification shall be in lieu of any permit,
10 certificate or similar document required by any department, agency,
11 division, bureau, commission, board, or political subdivision of this
12 state, whether a member of the council or not.

13 NEW SECTION. **Sec. 18.** A new section is added to chapter 80.50 RCW
14 to read as follows:

15 A city and county that has approved an energy facility through a
16 local permitting process shall submit to the council within thirty days
17 of the issuance of a permit a copy of the permit and any conditions of
18 approval.

19 NEW SECTION. **Sec. 19.** The following acts or parts of acts are
20 each repealed:

21 (1) RCW 80.50.080 (Counsel for the environment) and 1977 ex.s. c
22 371 s 6 & 1970 ex.s. c 45 s 8;

23 (2) RCW 80.50.090 (Public hearings) and 2006 c 205 s 3, 2006 c 196
24 s 6, 2001 c 214 s 7, 1989 c 175 s 173, & 1970 ex.s. c 45 s 9; and

25 (3) RCW 80.50.320 (Governor to evaluate council efficiency, make
26 recommendations) and 2001 c 214 s 8.

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