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**HOUSE BILL 2002**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Representatives Fitzgibbon, Berry, Duerr, Peterson, Ryu, Tharinger, Bateman, and Lekanoff

AN ACT Relating to the siting of energy infrastructure necessary for the fulfillment of the state's decarbonization goals; amending RCW 43.21C.033, 43.21B.160, 90.58.180, 90.58.190, and 42.56.420; adding a new section to chapter 36.70B RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that the achievement of the state's greenhouse gas emissions limits in chapter 70A.45 RCW will, as laid out in the state energy strategy, require the construction of substantial new energy infrastructure, including electricity generation, electricity transmission, electricity storage, biofuel production, and clean energy component manufacturing. The legislature intends to facilitate the predictable siting and permitting of energy infrastructure while maintaining strong environmental review processes and protections for Washington's land, water, and air.

**Sec.**  RCW 43.21C.033 and 1995 c 347 s 422 are each amended to read as follows:

(1) Except as provided in subsection ((~~(2)~~)) (3) of this section, the responsible official shall make a threshold determination on a completed application within ((~~ninety~~)) 90 days after the application and supporting documentation are complete. The applicant may request an additional ((~~thirty~~)) 30 days for the threshold determination. The governmental entity responsible for making the threshold determination shall by rule, resolution, or ordinance adopt standards, consistent with rules adopted by the department to implement this chapter, for determining when an application and supporting documentation are complete.

(2) ((~~This~~)) (a) After the submission of an environmental checklist and prior to issuing a threshold determination that a clean energy project proposal is likely to cause a significant adverse environmental impact, the lead agency must notify the project applicant and explain in writing the basis for its anticipated determination of significance. Prior to issuing the threshold determination of significance, the lead agency must give the project applicant the option of withdrawing and revising its application and the associated environmental checklist to clarify or make changes to features of the proposal that are designed to mitigate the impacts that were the basis of the lead agency's anticipated determination of significance. The lead agency shall make its threshold determination based upon the changed or clarified proposal following the applicant's submittal.

(b) The notification required under (a) of this subsection is not an official determination by the lead agency and is not subject to appeal under this chapter.

(c) The definitions in this subsection (2)(c) apply throughout this subsection unless the context clearly requires otherwise.

(i) "Clean energy project" means a proposal for:

(A) A clean energy product manufacturing facility;

(B) Electrical transmission facilities as defined in RCW 80.50.020; or

(C) A facility to produce nonemitting electric generation or electric generation from renewable resources, as those terms are defined in chapter 19.405 RCW.

(ii) "Clean energy product manufacturing facility" means a facility that exclusively or primarily manufactures the following products or components of such products:

(A) Passenger cars, light duty trucks, medium duty passenger vehicles, buses, commercial vehicles as defined in RCW 46.04.140, or motorcycles, that emit no exhaust gas from the onboard source of power, other than water vapor;

(B) Charging and fueling infrastructure for electric, hydrogen, or other types of vehicles that emit no exhaust gas from the onboard source of power, other than water vapor;

(C) Renewable or green electrolytic hydrogen, including preparing renewable or green electrolytic hydrogen for distribution as an energy carrier or manufacturing feedstock;

(D) Clean fuel that is reasonably anticipated to be determined under chapter 70A.535 RCW to have life-cycle greenhouse gas emissions not exceeding 80 percent of the 2017 levels established under RCW 70A.535.020;

(E) Equipment and products used to produce energy from alternative energy resources; and

(F) Equipment that can retain energy, storing it by chemical, thermal, mechanical, or other means for a period of time and then delivering energy after storage.

(iii)(A) "Green electrolytic hydrogen" means hydrogen produced through electrolysis.

(B) "Green electrolytic hydrogen" does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(iv) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for the hydrogen and the source for the energy input into the production process.

(3) Subsection (1) of this section shall not apply to a city, town, or county that((~~:~~

~~(a) By~~)) by ordinance adopted prior to April 1, 1992, ((~~has adopted~~)) procedures to integrate permit and land use decisions with the requirements of this chapter((~~; or~~

~~(b) Is planning under RCW 36.70A.040 and is subject to the requirements of RCW 36.70B.090~~)).

**Sec.**  RCW 43.21B.160 and 1995 c 382 s 2 are each amended to read as follows:

(1) In all appeals, the hearings board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies in chapter 34.05 RCW, the Administrative Procedure Act. The hearings board, and each member thereof, shall be subject to all duties imposed upon((~~, and shall have all powers granted to,~~)) an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings. In the case of appeals within the jurisdiction of the hearings board, the hearings board, or any member thereof, may, where consistent with the scope of review described in subsection (2) of this section, obtain such assistance, including the making of field investigations, from the staff of the director as the hearings board, or any member thereof, may deem necessary or appropriate. Any communication, oral or written, from the staff of the director to the hearings board shall be presented only in an open hearing.

(2)(a) For the purposes of appeals of decisions of a type specified in RCW 43.21B.110(1) (c) and (d) that address proposed clean energy projects as defined in RCW 43.21C.033(2)(c), the hearings board may consider new issues only to the same extent as courts when reviewing agency decisions as specified in RCW 34.05.554 and may consider new evidence only to the same extent as courts may consider new evidence as specified in RCW 34.05.562.

(b) Nothing in this subsection limits the evidence or issues that the hearings board may consider for purposes of appeals of decisions specified in RCW 43.21B.110(1) (a), (b), and (e) through (n) or for appeals of decisions that are not related to proposed clean energy projects.

**Sec.**  RCW 90.58.180 and 2011 c 277 s 4 are each amended to read as follows:

(1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the shorelines hearings board by filing a petition for review within ((~~twenty-one~~)) 21 days of the date of filing of the decision as defined in RCW 90.58.140(6).

Within seven days of the filing of any petition for review with the board as provided in this section pertaining to a final decision of a local government, the petitioner shall serve copies of the petition on the department, the office of the attorney general, and the local government. The department and the attorney general may intervene to protect the public interest and ensure that the provisions of this chapter are complied with at any time within ((~~fifteen~~)) 15 days from the date of the receipt by the department or the attorney general of a copy of the petition for review filed pursuant to this section. The shorelines hearings board shall schedule review proceedings on the petition for review without regard as to whether the period for the department or the attorney general to intervene has or has not expired.

(2) The department or the attorney general may obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition with the shorelines hearings board and the appropriate local government within ((~~twenty-one~~)) 21 days from the date the final decision was filed as provided in RCW 90.58.140(6).

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings, except that for clean energy projects as defined in RCW 43.21C.033(2)(c), the hearings board may consider new issues only to the same extent as courts when reviewing agency decisions as specified in RCW 34.05.554 and may consider new evidence only to the same extent as courts may consider new evidence as specified in RCW 34.05.562. Judicial review of such proceedings of the shorelines hearings board is governed by chapter 34.05 RCW. The board shall issue its decision on the appeal authorized under subsections (1) and (2) of this section within ((~~one hundred eighty~~)) 180 days after the date the petition is filed with the board or a petition to intervene is filed by the department or the attorney general, whichever is later. The time period may be extended by the board for a period of ((~~thirty~~)) 30 days upon a showing of good cause or may be waived by the parties.

(4) Any person may appeal any rules, regulations, or guidelines adopted or approved by the department within ((~~thirty~~)) 30 days of the date of the adoption or approval. The board shall make a final decision within ((~~sixty~~)) 60 days following the hearing held thereon.

(5) The board shall find the rule, regulation, or guideline to be valid and enter a final decision to that effect unless it determines that the rule, regulation, or guideline:

(a) Is clearly erroneous in light of the policy of this chapter; or

(b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or

(c) Is arbitrary and capricious; or

(d) Was developed without fully considering and evaluating all material submitted to the department during public review and comment; or

(e) Was not adopted in accordance with required procedures.

(6) If the board makes a determination under subsection (5)(a) through (e) of this section, it shall enter a final decision declaring the rule, regulation, or guideline invalid, remanding the rule, regulation, or guideline to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government and any other interested party, a new rule, regulation, or guideline consistent with the board's decision.

(7) A decision of the board on the validity of a rule, regulation, or guideline shall be subject to review in superior court, if authorized pursuant to chapter 34.05 RCW. A petition for review of the decision of the shorelines hearings board on a rule, regulation, or guideline shall be filed within ((~~thirty~~)) 30 days after the date of final decision by the shorelines hearings board.

**Sec.**  RCW 90.58.190 and 2012 c 172 s 1 are each amended to read as follows:

(1) The appeal of the department's decision to adopt a master program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is governed by RCW 34.05.510 through 34.05.598.

(2)(a) The department's final decision to approve or reject a proposed master program or master program amendment by a local government planning under RCW 36.70A.040 shall be appealed to the growth management hearings board by filing a petition as provided in RCW 36.70A.290.

(b) If the appeal to the growth management hearings board concerns shorelines, the growth management hearings board shall review the proposed master program or amendment solely for compliance with the requirements of this chapter, the policy of RCW 90.58.020 and the applicable guidelines, the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under chapter 90.58 RCW.

(c) If the appeal to the growth management hearings board concerns a shoreline of statewide significance, the board shall uphold the decision by the department unless the board, by clear and convincing evidence, determines that the decision of the department is noncompliant with the policy of RCW 90.58.020 or the applicable guidelines, or chapter 43.21C RCW as it relates to the adoption of master programs and amendments under this chapter.

(d) The appellant has the burden of proof in all appeals to the growth management hearings board under this subsection.

(e) Any party aggrieved by a final decision of the growth management hearings board under this subsection may appeal the decision to superior court as provided in RCW 36.70A.300.

(3)(a) The department's final decision to approve or reject a proposed master program or master program amendment by a local government not planning under RCW 36.70A.040 shall be appealed to the shorelines hearings board by filing a petition within ((~~thirty~~)) 30 days of the date that the department publishes notice of its final decision under RCW 90.58.090(8).

(b) In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program amendment and, after full consideration of the presentations of the parties, shall determine the validity of the local government's master program or amendment in light of the policy of RCW 90.58.020 and the applicable guidelines, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under this chapter.

(c) In an appeal relating to shorelines of statewide significance, the shorelines hearings board shall uphold the decision by the department unless the board determines, by clear and convincing evidence that the decision of the department is noncompliant with the policy of RCW 90.58.020 or the applicable guidelines, or chapter 43.21C RCW as it relates to the adoption of master programs and amendments under this chapter.

(d) Review by the shorelines hearings board shall be considered an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, except that for clean energy projects as defined in RCW 43.21C.033(2)(c), the hearings board may consider new issues only to the same extent as courts when reviewing agency decisions as specified in RCW 34.05.554 and may consider new evidence only to the same extent as courts may consider new evidence as specified in RCW 34.05.562. The appellant shall have the burden of proof in all such reviews.

(e) Whenever possible, the review by the shorelines hearings board shall be heard within the county where the land subject to the proposed master program or master program amendment is primarily located. The department and any party aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in chapter 34.05 RCW.

(4) A master program amendment shall become effective after the approval of the department or after the decision of the growth management hearings board or shorelines hearings board to uphold the master program or master program amendment, provided that either the growth management hearings board or the shorelines hearings board may remand the master program or master program amendment to the local government or the department for modification prior to the final adoption of the master program or master program amendment.

NEW SECTION. **Sec.**  A new section is added to chapter 36.70B RCW to read as follows:

During project review of a project proposed by an electric utility, as defined in RCW 19.405.020, a local government may not require a project applicant to demonstrate the necessity or utility of the project other than to require, as part of a completed application under RCW 36.70B.070(2), submission of documents demonstrating a utility's performance of required assessments or approvals from the federal energy regulatory commission or its delegees or the utilities and transportation commission or its delegees, or from any other federal or state agency with regulatory authority over the assessment of a utility's infrastructure needs as applicable.

**Sec.**  RCW 42.56.420 and 2021 c 26 s 1 are each amended to read as follows:

The following information relating to security is exempt from disclosure under this chapter:

(1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism;

(2) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, or secure facility for persons civilly confined under chapter 71.09 RCW, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility, secure facility for persons civilly confined under chapter 71.09 RCW, or any individual's safety;

(3) Information compiled by school districts or schools in the development of their comprehensive safe school plans under RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school;

(4) Information regarding the public and private infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities, and other such information the release of which may increase risk to the confidentiality, integrity, or availability of security, information technology infrastructure, or assets;

(5) The system security and emergency preparedness plan required under RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180;

(6) Personally identifiable information of employees, and other security information, of a private cloud service provider that has entered into a criminal justice information services agreement as contemplated by the United States department of justice criminal justice information services security policy, as authorized by 28 C.F.R. Part 20; ((~~and~~))

(7) In addition to the information in subsection (4) of this section, the following related to election security:

(a)(i) The continuity of operations plan for election operations and any security audits, security risk assessments, or security test results, relating to physical security or cybersecurity of election operations or infrastructure. These records are exempt from disclosure in their entirety; and

(ii) Those portions of records containing information about election infrastructure, election security, or potential threats to election security, the public disclosure of which may increase risk to the integrity of election operations or infrastructure.

(b) The exemptions specified in (a) of this subsection do not include information or records pertaining to security breaches, except as prohibited from disclosure pursuant to RCW 29A.12.200.

(c) The exemptions specified in (a) of this subsection do not prohibit an audit authorized or required under Title 29A RCW from being conducted; and

(8) Information that has been designated as critical electric infrastructure information by the federal energy regulatory commission or the secretary of the department of energy pursuant to section 215A(d) of the federal power act (16 U.S.C. Sec. 791 et seq.).

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**