

# SENATE BILL REPORT

## SB 5912

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As Reported By Senate Committee On:  
Environment, Energy & Water, February 27, 2001  
Ways & Means, March 8, 2001

**Title:** An act relating to energy facilities.

**Brief Description:** Siting energy facilities.

**Sponsors:** Senators Fraser, Morton, Regala, Patterson, Oke, Kohl-Welles and Haugen.

**Brief History:**

**Committee Activity:** Environment, Energy & Water: 2/12/01, 2/27/01 [DPS-WM, DNPS].  
Ways & Means: 3/8/01 [DP2S, DNP].

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### SENATE COMMITTEE ON ENVIRONMENT, ENERGY & WATER

**Majority Report:** That Substitute Senate Bill No. 5912 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Fraser, Chair; Regala, Vice Chair; Eide, Hale, Jacobsen, McDonald, Morton and Patterson.

**Minority Report:** Do not pass.

Signed by Senator Honeyford.

**Staff:** William Bridges (786-7424)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5912 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Brown, Chair; Constantine, Vice Chair; Fairley, Vice Chair; Fraser, Hewitt, Kline, Kohl-Welles, Long, Rasmussen, Regala, Rossi, B. Sheldon, Snyder, Spanel, Thibaudeau, Winsley and Zarelli.

**Minority Report:** Do not pass.

Signed by Senator Honeyford.

**Staff:** David Schumacher (786-7474)

**Background:** The Energy Facility Site Evaluation Council (EFSEC) was created in 1970 to provide one stop licensing for large energy projects. It comprises a chair appointed by the Governor and representatives from nine state agencies: the departments of Ecology; Fish and Wildlife; Health; Community, Trade, and Economic Development; Natural Resources; Agriculture; Transportation; as well as the Military Department and the Utilities and

Transportation Commission. The council is augmented by representatives from the particular cities, counties, or port districts where potential projects may be located. EFSEC staff are part of the Energy Division within the Department of Community, Trade, and Economic Development.

EFSEC's jurisdiction includes the siting of large natural gas and oil pipelines, electric power plants above 250 megawatts (MW) and their dedicated transmission lines, new oil refineries or large expansions of existing facilities, and underground natural gas storage fields. EFSEC's jurisdiction does not include geothermal, wind, solar, or hydro power plants, nor does it cover general transmission lines.

The EFSEC siting process takes 12 to 16 months, subject to mutual extensions, and generally involves six steps: (1) a potential site study followed by an application; (2) State Environmental Policy Act review; (3) review for consistency with applicable local land use laws and plans; (4) a formal adjudication on all issues related to the project; (5) certain air and water pollution discharge permitting reviews as delegated by the U.S. Environmental Protection Agency; and (6) a recommendation to the Governor who then decides whether to accept, reject, or remand the application. A certification agreement approved by the Governor preempts any other state or local regulation concerning the location, construction, and operational conditions of an energy facility.

The Legislature created a task force in 2000 to review nine issues relating to the EFSEC process. The task force's work group issued a report in December 2000. The report made three recommendations concerning the timing of public hearings, the administrative record developed during the hearings, and the monitoring of certified facilities.

**Summary of Second Substitute Bill: Modifying EFSEC jurisdiction.** The EFSEC threshold is raised from 250 MW to 350 MW. However, applicants may choose to use the EFSEC process for the following facilities: (1) stationary thermal power plants, and energy facilities that exclusively use renewable resources, with a generating capacity from 100 MW to 349 MW; and (2) energy facilities that exclusively use renewable resources with a generating capacity from 1 MW to 99 MW.

Changing EFSEC membership. The departments of Health, Agriculture, and Transportation, and the Military Department are made optional members of the council. Optional members must elect to participate no later than 60 days after the application is filed. The EFSEC chair receives a salary determined by the State Salary Commission.

Modifying the EFSEC siting process. EFSEC must conduct a public hearing in the county of the proposed site as soon as practicable after receipt of an application. A local land-use consistency hearing does not have to occur at the initial public hearing. The current EFSEC deadlines are shortened subject to mutual extensions. EFSEC's report to the Governor must be based on the record developed in the public hearings and the environmental impact statement prepared under the State Environmental Policy Act.

Modifying the monitoring responsibilities of EFSEC. EFSEC may delegate its authority to determine compliance relative to the monitoring of an energy facility's construction and operation.

Modifying EFSEC's preemption and certification authority. EFSEC certification does not preempt the authority of state agencies or local governments regarding the management or use of public property. Any condition in a draft certification that constitutes a variance to an otherwise applicable state or local standard must be based on a finding that the variance will adequately protect against the harm sought to be prevented by the state or local standard being varied. In addition, if a draft certification recommends the use of public property, the council's report to the Governor must state the views of state agencies or local governments with authority over the property.

Prohibiting the preclusion of energy facilities by local governments. Counties and cities may not preclude the siting of energy facilities in their zoning ordinances and comprehensive plans. EFSEC may adopt standards to guide counties and cities.

**Second Substitute Bill Compared to Substitute Bill:** The second substitute removes the legislative study.

**Substitute Bill Compared to Original Bill:** Substantial changes are made to the original bill. The intent section, siting-process sections, expedited processing sections, monitoring sections, transition-process sections, energy assistance account, appropriation, and repealing sections are removed. The current EFSEC threshold is increased to 350 MW and opt-in provisions are added. Current EFSEC membership provisions, public hearing provisions, preemption provisions and deadlines are modified. A joint select committee to study EFSEC is created.

**Appropriation:** An unspecified appropriation is requested.

**Fiscal Note:** Available.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Testimony For (Environment, Energy & Water):** Provisions requiring compliance with later adopted laws is good. Changes to the intent section are needed for a new energy environment. Opt-in provisions for renewable facilities will help promote power with less environmental impact. Current membership is not functioning as planned because of ex parte communication rules. The concept of a build window is good but should be shortened. The bill would increase communication among all the parties to an adjudication. New siting processes will provide greater accountability for siting outcome and lead to a more orderly, manageable, and transparent siting process. New processes will help identify all the relevant issues at the beginning of the process. This bill attempts to encourage, rather than regulate certain outcomes. CO2 emissions should be considered in any EFSEC process. State energy policy should be considered when siting facilities. Deference to local and state property management responsibilities is good but should be strengthened. Promotion of renewable energy sources like wind is good but should be careful about migratory bird patterns.

**Testimony Against (Environment, Energy & Water):** The expedited process is too short to conduct a full SEPA review and adjudication. A cumulative environmental effects standard should be added. The Governor should be part of process. EFSEC's preemption authority is weakened. Water rights should be part of EFSEC preemption authority. The public should have more time to respond to the final order. Counsel for the Environment should

be returned to the process. The role of advisory groups is unclear. There should not be an exception for on-site generation. The threshold should be lowered even more. The new expedited process is not in the public's interest. Timing of this bill could not be worse because EFSEC is in different stages of siting six turbine facilities. The current process is working well. This new process will bring uncertainty to the siting process. Local jurisdictions authority to transfer applicants to the EFSEC process may be so broad as to include small projects like boiler upgrades. Deadlines for approval should include associated facilities. Deadlines are also uncertain given the long pre-deadline, pre-application process. Deadlines may be ineffective because EFSEC can restart the process by applying a public interest test and energy strategy test at the end of the certification process. State energy strategy should not be given force of law.

**Testified (Environment, Energy & Water):** Collins Sprague, Avista Corp.; Heath Roads-Weaver, Northwest SEED; Dick Little, City of Bellingham; Victoria Lincoln, AWC; Patty McDonald, City of Auburn; Otto Herman, Rebound; Richard King, WA St Bld & Construction Trades Council; Jim King, Citizens for Parks and Recreation (concerns); Kristen Sawin, Assn. of Washington Business; Tim Boyd, Industrial Customers of NW Utilities; Claudia Newman, EFSEC Workgroup participant; Danielle Dixon, NW Energy Coalition (concerns); Deb Ross, EFSEC; Rose Spogen, Critical Issues Council (con); David Spogen, Critical Issues Council; Donna Ewing, League of Women Voters (pro); Ron Shultz, Audubon (pro); Kathleen Collins, Pacific Corp.

**Testimony For (Ways & Means):** Washington is in an energy crisis, and therefore, a business crisis. Raising the threshold to 350 MW is a fast, easy and efficient way to increase generating capacity. **Concerns:** By increasing the threshold, local governments will be faced with new costs to process siting applications. The new timelines are too short and will result in rushed decision making. The 350 MW threshold is too high (at least for new facilities, it might be all right for the expansion of current facilities.)

**Testimony Against (Ways & Means):** None.

**Testified (Ways & Means):** Danielle Dixon, NW Energy Coalition (concerns); Donna Ewing, League of Women Voters (pro w/concerns); Dick Little, City of Bellingham (pro); Craig Engecking, Sierra Club (pro); Tim Boyd, Industrial Customers of NW Utilities (pro w/concerns); William Jolly, WA State Parks and Recreation Commission (pro); Jim King, Citizens for Parks and Recreation (pro); Carol Jolly, Governor's Office (pro w/concerns); Kristen Sawin, AWB (pro w/concerns).