

SENATE BILL REPORT

ESHB 1332

As Reported by Senate Committee On:
Environment, Energy & Technology, March 26, 2019

Title: An act relating to updating and streamlining the energy facility site evaluation council operations.

Brief Description: Concerning updating and streamlining energy facility site evaluation council operations.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Wylie, DeBolt, Mead, Doglio, Fitzgibbon and Tharinger; by request of Energy Facility Site Evaluation Council).

Brief History: Passed House: 3/09/19, 88-8.

Committee Activity: Environment, Energy & Technology: 3/14/19, 3/26/19 [DPA, w/oRec, DNP].

Brief Summary of Amended Bill

- Adds new permanent members to the Energy Facility Site Evaluation Council (EFSEC) and removes discretionary members.
- Incorporates EFSEC consideration of land-use laws into the informational public hearing.
- Amends the EFSEC's authority to conduct a preliminary study of potential energy facility projects.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass as amended.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Billig, Das, Hobbs, Liias, McCoy, Nguyen and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senator Fortunato, Assistant Ranking Member, Environment.

Minority Report: Do not pass.

Signed by Senators Erickson, Ranking Member; Brown and Short.

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.

Staff: Kimberly Cushing (786-7421)

Background: Energy Facility Site Evaluation Council. Created in 1970, EFSEC is the permitting and certifying authority for siting major energy facilities in Washington. An EFSEC site certification agreement (SCA) authorizes an applicant to construct and operate an energy facility in lieu of permits or documents required by any other state agency or subdivision. As part of the SCA process, EFSEC issues all state and federal air and water-discharge permits.

Energy Facility Site Evaluation Council Members. EFSEC is comprised of a chair appointed by the Governor, and representatives from five state agencies: the departments of Commerce, Ecology, Fish and Wildlife, and Natural Resources, and the Utilities and Transportation Commission. Four other departments may each choose to participate in EFSEC for a particular project: Agriculture, Health, Transportation, and Military. Local governments must also appoint members to EFSEC to review proposed facilities located in their jurisdictions.

Energy Facility Site Evaluation Council Jurisdiction. EFSEC's siting jurisdiction includes nuclear power plants of any size and thermal electric power plants with a generating capacity of 350 megawatts or greater. Energy facilities of any size that exclusively use alternative energy resources, such as wind power, can also opt into the EFSEC review and certification process.

Summary of Amended Bill: Energy Facility Site Evaluation Council Membership and Staffing. EFSEC membership is expanded to include one member designated by the Washington State Association of Counties and two members designated by federally recognized tribes.

The legislative authority of every city within whose corporate limits an energy facility is proposed to be located must appoint a member or designee as a voting member to the EFSEC, no later than 90 days after notification from EFSEC. The appointed member or designee must sit with EFSEC only at such times as the EFSEC considers the proposed site for the city that the member represents.

A quorum consists of a majority of members appointed for business to be conducted.

Discretionary membership is eliminated. Instead, upon receiving an application for certification for an energy facility, the EFSEC chair must notify the departments of Agriculture, Health, Transportation, and Military, as well as the appropriate federally recognized tribal governments. The EFSEC chair and designated staff must conduct government-to-government meetings to address tribal issues of concern, and a summary of these meetings must be included in the required report to the Governor on energy facility proposals. The discretionary position for a local port district as a nonvoting member is eliminated.

The EFSEC chair, instead of the Utilities and Transportation Commission (UTC), may appoint and supervise staff to the council.

Public Hearings. EFSEC is directed to take public comment on whether or not the proposed site is compliant with current local land-use plans or zoning ordinances at the informational public hearing, instead of conducting a separate hearing.

After holding a hearing to take public comment on the completed environmental impact statement and the completion of tribal consultation, the council may waive the required adjudicative proceeding if it determines genuine issues of fact do not exist with the application for site certification and local land-use laws. Waiving the adjudicative proceeding request a vote of EFSEC.

Pre-application Process. EFSEC may agree to conduct a preliminary study of a potential project prior to a formal application for site certification. A potential applicant must deposit a \$10,000 fee with the UTC, rather than the state treasurer, for each potential project. Payments made for a preliminary study may now be credited toward the application fee of a subsequent application for an energy facility at the same site.

Other Clarifying Changes. EFSEC must develop and apply environmental and ecological guidelines to initial operational conditions of certification as well as ongoing regulatory oversight of energy facilities under its jurisdiction. EFSEC must report its recommendations to approve or reject an application for certification to the Governor within 12 months, once it deems the application is complete.

EFFECT OF ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE AMENDMENT(S):

- Specifies that EFSEC include two members from federally recognized tribes.
- Removes language specifying that the tribal members must be from either a treaty tribe or tribe with a trust resource agreement and the language requiring the two tribal members to have one vote.
- Clarifies that cities are allowed, rather than required, to appoint one member when an energy facility is proposed to be located within its limits.
- Requires the legislative authority of a city to appoint a member no later than 90 days after notification from EFSEC.
- Clarifies that a quorum of EFSEC consists of a majority of the members appointed for business to be conducted.
- Requires the EFSEC chair and designated staff to conduct government-to-government meetings to address tribal issues of concern, and a summary of these meetings to be included in the required report to the Governor on energy facility proposals.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The city of Vancouver had a controversial process with EFSEC. Cities would rather have a voting seat at the table for a real project than have a permanent seat for the association. The goal is to reform the process that was originally intended to site nuclear projects. The purpose of the reform is to make it work better for everyone and more inclusive. Not every word is totally acceptable to all stakeholders. Our energy future is critical. County and tribal members are now standing members of the council that is new, which broadens the regular participation. Standing members have only been state agencies up to now. The bill streamlines the application process. The bill includes tribal consultation. Most people focus on the application process, but EFSEC is a one-stop permit shop.

CON: The original bill is better than this one. It is better without the inclusion of Indian tribes. The bill adds tribal elected members, but they get one-half vote. The city gets one vote. The board can act with a quorum, which is as few as four people. Tribes are going to be in the minority. It is more effective in terms of a good decision to have the tribe sitting in on the process and using the treaty to make sure good environmental decisions are made. A treaty is the best protection of the environment. A federally recognized tribe must have a full vote and not one-half vote. Energy projects impact treaty reserve resources. Tribes need to be involved in all decisions. For example, fences around wind projects prevent access to usual and accustomed areas for food gathering. We appreciate the effort to allow green energy to come to Washington. The language needs to be very clear that these resources should be protected. Streamlining to encourage the building or project green or not green skips a process.

Persons Testifying: PRO: Representative Sharon Wylie, Prime Sponsor; Elyette Weinstein, Washington League of Women Voters; Kathleen Drew, EFSEC.

CON: Jack Fiander, General Counsel, Sauk-Suiattle Indian Tribe; Leland Bill, Yakama Nation Tribal Council; Dawn Vyvyan, Puyallup Tribe.

Persons Signed In To Testify But Not Testifying: No one.