

SENATE BILL REPORT

SB 5329

As Reported by Senate Committee On:
Environment, Energy & Technology, January 31, 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: Senators Nguyen, Palumbo, Wellman, Carlyle and Sheldon; by request of Energy Facilities Siting and Evaluation Council.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/31/19 [DP, w/oRec].

Brief Summary of Bill

- Adds three 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.
- Adds clean energy as an additional objective for EFSEC to pursue and balance in legislative findings.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Sheldon, Assistant Ranking Member, Energy & Technology; Billig, Das, Hobbs, Lias, McCoy, Nguyen and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators Fortunato, Assistant Ranking Member, Environment; Brown and Short.

Staff: Kimberly Cushing (786-7421)

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.

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. Finally, 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 Bill: Adds to Legislative Findings. In balancing the demands for energy facility location and operation in conjunction with the interests of the public, EFSEC will also encourage the development and integration of cleaner energy sources. Additionally, the Legislature intends to streamline application review for energy facilities that use alternative energy resources to meet the state's energy goals.

Changes Energy Facility Site Evaluation Council Membership and Staffing. EFSEC membership is expanded to include one member each designated by the Washington State Association of Counties, the Association of Washington Cities, and sovereign tribal governments. A quorum consists of a majority of members.

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 appropriate local governments where the proposed facility is located, and affected tribal governments. 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.

Streamlines 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, the council may waive the required adjudicative proceeding if it determines that

genuine issues of fact do not exist with the application for site certification and local land-use laws.

Amends the 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 fee of \$10,000 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.

Makes 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.

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 Draft Bill: PRO: This bill makes the process faster and requires less duplication. Counties like it because it creates stronger and more consistent government with local authorities. The bill adds language to the intent section to bring EFSEC into the 21st century with clean energy language. We appreciate a permanent member for counties. We remain concerned about EFSEC's preemptive authority. The streamlined approach is appreciated. Previous versions had language that stated if a facility had previously been denied application it cannot apply to EFSEC again. We would like to see this again because it eliminates two bites to the apple.

CON: Cities are largely supportive, but the expertise of site-specific membership cannot be matched by an overall city representative. Local knowledge was incredibly valuable during oil terminal siting. We appreciate objectives regarding streamlining and clean energy. We would prefer a full-time member in lieu of a site-specific member. EFSEC will not have local information. We are trading executive function for a legislative function. The statement in the intent section about reducing dependence on fossil fuels is inappropriate because the statute is about siting processes. Washington relies on natural gas for energy. The substantive language is okay, but intent language should be removed.

Persons Testifying: PRO: Kathleen Drew, EFSEC; Paul Jewell, Washington State Association of Counties.

CON: Brian Enslow, City of Vancouver; Logan Barr, Association of Washington Cities; Gerry O'Keefe, Washington Public Ports Association; Charlie Brown, Cascade Natural Gas.

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