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SECOND ENGROSSED SUBSTITUTE HOUSE BILL 1332

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State of Washington

66th Legislature

2019 Regular Session

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

READ FIRST TIME 02/18/19.

1 AN ACT Relating to updating and streamlining the energy facility  
2 site evaluation council operations; amending RCW 80.50.040,  
3 80.50.060, 80.50.100, and 80.50.175; and reenacting and amending RCW  
4 80.50.030 and 80.50.090.

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

6 **Sec. 1.** RCW 80.50.030 and 2010 c 271 s 601 and 2010 c 152 s 2  
7 are each reenacted and amended to read as follows:

8 (1) There is created and established the energy facility site  
9 evaluation council.

10 (2)(a) The chair of the council shall be appointed by the  
11 governor with the advice and consent of the senate, shall have a vote  
12 on matters before the council, shall serve for a term coextensive  
13 with the term of the governor, and is removable for cause. The chair  
14 may designate a member of the council to serve as acting chair in the  
15 event of the chair's absence. The salary of the chair shall be  
16 determined under RCW 43.03.040. The chair is a "state employee" for  
17 the purposes of chapter 42.52 RCW. As applicable, when attending  
18 meetings of the council, members may receive reimbursement for travel  
19 expenses in accordance with RCW 43.03.050 and 43.03.060, and are  
20 eligible for compensation under RCW 43.03.250.

1 (b) The chair or a designee shall execute all official documents,  
2 contracts, and other materials on behalf of the council. (~~The~~  
3 ~~Washington utilities and transportation commission shall provide all~~  
4 ~~administrative and staff support for the council.~~) The  
5 (~~commission~~) chair is the appointing authority and has supervisory  
6 authority over the staff of the council and shall employ such  
7 personnel as are necessary to implement this chapter. Not more than  
8 three such employees may be exempt from chapter 41.06 RCW. The  
9 Washington utilities and transportation commission shall provide  
10 administrative support for the council. The council shall  
11 (~~otherwise~~) retain its independence in exercising its powers,  
12 functions, and duties and its supervisory control over  
13 (~~nonadministrative~~) council staff (~~support~~). Membership, powers,  
14 functions, and duties of the Washington state utilities and  
15 transportation commission and the council shall otherwise remain as  
16 provided by law.

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

- 20 ~~(i) Department of ecology;~~  
21 ~~(ii) Department of fish and wildlife;~~  
22 ~~(iii) Department of commerce;~~  
23 ~~(iv) Utilities and transportation commission; and~~  
24 ~~(v) Department of natural resources.~~

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

- 30 ~~(i) Department of agriculture;~~  
31 ~~(ii) Department of health;~~  
32 ~~(iii) Military department; and~~  
33 ~~(iv) Department of transportation.~~

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

39 (4) ~~The appropriate county legislative authority of every county~~  
40 ~~wherein an application for a proposed site is filed shall appoint a~~

1 ~~member or designee as a voting member to the council. The member or~~  
2 ~~designee so appointed shall sit with the council only at such times~~  
3 ~~as the council considers the proposed site for the county which he or~~  
4 ~~she represents, and such member or designee shall serve until there~~  
5 ~~has been a final acceptance or rejection of the proposed site.~~

6 ~~(5) The city legislative authority of every city within whose~~  
7 ~~corporate limits an energy facility is proposed to be located shall~~  
8 ~~appoint a member or designee as a voting member to the council. The~~  
9 ~~member or designee so appointed shall sit with the council only at~~  
10 ~~such times as the council considers the proposed site for the city~~  
11 ~~which he or she represents, and such member or designee shall serve~~  
12 ~~until there has been a final acceptance or rejection of the proposed~~  
13 ~~site.~~

14 ~~(6) For any port district wherein an application for a proposed~~  
15 ~~port facility is filed subject to this chapter, the port district~~  
16 ~~shall appoint a member or designee as a nonvoting member to the~~  
17 ~~council. The member or designee so appointed shall sit with the~~  
18 ~~council only at such times as the council considers the proposed site~~  
19 ~~for the port district which he or she represents, and such member or~~  
20 ~~designee shall serve until there has been a final acceptance or~~  
21 ~~rejection of the proposed site. The provisions of this subsection~~  
22 ~~shall not apply if the port district is the applicant, either singly~~  
23 ~~or in partnership or association with any other person)) chair and:~~

24 (a) The director of the department of ecology or the director's  
25 designee;

26 (b) The director of the department of fish and wildlife or the  
27 director's designee;

28 (c) The director of the department of commerce or the director's  
29 designee;

30 (d) The chair of the utilities and transportation commission or  
31 the chair's designee;

32 (e) The commissioner of public lands or the commissioner's  
33 designee;

34 (f) One member designated by the board of directors of the  
35 Washington state association of counties or its successor; and

36 (g) Two members selected by federally recognized tribes within  
37 the state of Washington.

38 (4) The city legislative authority of every city within whose  
39 corporate limits an energy facility is proposed to be located may  
40 appoint a member or designee as a voting member to the council. The

1 city legislative authority must make the appointment no later than  
2 ninety days after notification from the council. The member or  
3 designee so appointed may only sit with the council only at such  
4 times as the council considers the proposed site for the city that  
5 the member represents.

6 (5) A quorum of the council consists of a majority of members  
7 appointed for business to be conducted.

8 **Sec. 2.** RCW 80.50.040 and 2001 c 214 s 6 are each amended to  
9 read as follows:

10 The council shall have the following powers:

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

15 (2) To develop and apply environmental and ecological guidelines  
16 in relation to the type, design, location, construction, ~~((and))~~  
17 initial operational conditions of certification, and ongoing  
18 regulatory oversight of energy facilities subject to this chapter;

19 (3) To establish rules of practice for the conduct of public  
20 hearings pursuant to the provisions of the Administrative Procedure  
21 Act, as found in chapter 34.05 RCW;

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

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

26 (6) To ~~((make and contract, when applicable, for independent~~  
27 ~~studies of sites proposed by the applicant))~~ enter into contracts to  
28 carry out the provisions of this chapter;

29 (7) To conduct hearings on the proposed location and operational  
30 conditions of the energy facilities;

31 (8) To prepare written reports to the governor which shall  
32 include: (a) A statement indicating whether the application is in  
33 compliance with the council's guidelines, (b) criteria specific to  
34 the site and transmission line routing, (c) a council recommendation  
35 as to the disposition of the application, and (d) a draft  
36 certification agreement when the council recommends approval of the  
37 application;

38 (9) To prescribe the means for monitoring of the effects arising  
39 from the construction and the operation of energy facilities to

1 assure continued compliance with terms of certification and/or  
2 permits issued by the council pursuant to chapter 90.48 RCW or  
3 subsection (12) of this section: PROVIDED, That any on-site  
4 inspection required by the council shall be performed by other state  
5 agencies pursuant to interagency agreement: PROVIDED FURTHER, That  
6 the council may retain authority for determining compliance relative  
7 to monitoring;

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

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

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

27 (13) To serve as an interagency coordinating body for energy-  
28 related issues.

29 **Sec. 3.** RCW 80.50.060 and 2007 c 325 s 2 are each amended to  
30 read as follows:

31 (1) The provisions of this chapter apply to the construction of  
32 energy facilities which includes the new construction of energy  
33 facilities and the reconstruction or enlargement of existing energy  
34 facilities where the net increase in physical capacity or dimensions  
35 resulting from such reconstruction or enlargement meets or exceeds  
36 those capacities or dimensions set forth in RCW 80.50.020 (~~((7) and~~  
37 ~~(15))~~) (12) and (21). No construction of such energy facilities may  
38 be undertaken, except as otherwise provided in this chapter, after

1 July 15, 1977, without first obtaining certification in the manner  
2 provided in this chapter.

3 (2) The provisions of this chapter apply to the construction,  
4 reconstruction, or enlargement of a new or existing energy facility  
5 that exclusively uses alternative energy resources and chooses to  
6 receive certification under this chapter, regardless of the  
7 generating capacity of the project.

8 (3) (a) The provisions of this chapter apply to the construction,  
9 reconstruction, or modification of electrical transmission facilities  
10 when:

11 (i) The facilities are located in a national interest electric  
12 transmission corridor as specified in RCW 80.50.045;

13 (ii) An applicant chooses to receive certification under this  
14 chapter, and the facilities are: (A) Of a nominal voltage of at least  
15 one hundred fifteen thousand volts and are located in a completely  
16 new corridor, except for the terminus of the new facility or  
17 interconnection of the new facility with the existing grid, and the  
18 corridor is not otherwise used for electrical transmission  
19 facilities; and (B) located in more than one jurisdiction that has  
20 promulgated land use plans or zoning ordinances; or

21 (iii) An applicant chooses to receive certification under this  
22 chapter, and the facilities are: (A) Of a nominal voltage in excess  
23 of one hundred fifteen thousand volts; and (B) located outside an  
24 electrical transmission corridor identified in (a)(i) and (ii) of  
25 this subsection (3).

26 (b) For the purposes of this subsection, "modify" means a  
27 significant change to an electrical transmission facility and does  
28 not include the following: (i) Minor improvements such as the  
29 replacement of existing transmission line facilities or supporting  
30 structures with equivalent facilities or structures; (ii) the  
31 relocation of existing electrical transmission line facilities; (iii)  
32 the conversion of existing overhead lines to underground; or (iv) the  
33 placing of new or additional conductors, supporting structures,  
34 insulators, or their accessories on or replacement of supporting  
35 structures already built.

36 (4) The provisions of this chapter shall not apply to normal  
37 maintenance and repairs which do not increase the capacity or  
38 dimensions beyond those set forth in RCW 80.50.020 (~~((7) and (15))~~)  
39 (12) and (21).

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

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

10 (7) Upon receipt of an application for certification under this  
11 chapter, the chair shall notify:

12 (a) The department of agriculture;

13 (b) The department of health;

14 (c) The military department;

15 (d) The department of transportation;

16 (e) The appropriate county legislative authority where the  
17 proposed facility is located; and

18 (f) The appropriate federally recognized tribal governments  
19 affected by the proposed facility.

20 (8) The council shall work with local governments where a project  
21 is proposed to be sited in order to ensure meaningful participation  
22 and input during siting review and compliance monitoring.

23 (9) The council must work with all federally recognized tribal  
24 governments affected by a proposed facility in order to ensure  
25 meaningful participation and input during siting review and  
26 compliance monitoring. Consistent with RCW 43.376.020, the chair and  
27 designated staff must conduct government-to-government meetings to  
28 address tribal issues of concern. The chair must provide regular  
29 meeting updates to the council throughout the application review  
30 process. The report required in RCW 80.50.100 must include a summary  
31 of the government-to-government meetings, including the issues and  
32 resolutions.

33 **Sec. 4.** RCW 80.50.090 and 2006 c 205 s 3 and 2006 c 196 s 6 are  
34 each reenacted and amended to read as follows:

35 (1) The council shall conduct an informational public hearing in  
36 the county of the proposed site as soon as practicable but not later  
37 than sixty days after receipt of an application for site  
38 certification. However, the place of such public hearing shall be as  
39 close as practical to the proposed site. (~~(2) Subsequent to the~~

1 ~~informational public))~~ At this hearing, the council ((shall conduct a  
2 ~~public hearing to determine))~~ must take public comment on the  
3 application for site certification, as well as whether or not the  
4 proposed site is consistent and in compliance with city, county, or  
5 regional land use plans or zoning ordinances in effect on the date of  
6 the application. ((If it is determined that the proposed site does  
7 ~~conform with existing land use plans or zoning ordinances in effect~~  
8 ~~as of the date of the application, the city, county, or regional~~  
9 ~~planning authority shall not thereafter change such land use plans or~~  
10 ~~zoning ordinances so as to affect the proposed site.))~~

11 (2) After the completion of tribal consultation and its  
12 environmental review under chapter 43.21C RCW, the council shall  
13 determine whether genuine issues of fact exist on matters the council  
14 deems material to its recommendation to the governor. A council  
15 determination that such issues do not exist may only be made after  
16 holding a hearing to take public comment on the question and after  
17 tribal consultation is complete. If the council determines that such  
18 issues do not exist and that under subsection (1) of this section the  
19 proposed site is consistent and in compliance with city, county, or  
20 regional land use plans or zoning ordinances, the council may waive  
21 the adjudicative proceeding required by subsection (3) of this  
22 section. Waiving the adjudicative proceeding requires a vote of the  
23 council.

24 (3) Prior to the issuance of a council recommendation to the  
25 governor under RCW 80.50.100, a public hearing, conducted as an  
26 adjudicative proceeding under chapter 34.05 RCW, the administrative  
27 procedure act, shall be held unless previously waived in accordance  
28 with subsection (2) of this section. At such a public hearing any  
29 person shall be entitled to be heard in support of or in opposition  
30 to the application for certification.

31 (4) Additional public hearings shall be held as deemed  
32 appropriate by the council in the exercise of its functions under  
33 this chapter.

34 **Sec. 5.** RCW 80.50.100 and 2011 c 180 s 109 are each amended to  
35 read as follows:

36 (1) (a) The council shall report to the governor its  
37 recommendations as to the approval or rejection of an application for  
38 certification within twelve months of receipt by the council of



1 ((such)) an application deemed complete by the council, or such later  
2 time as is mutually agreed by the council 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),  
9 the council shall expedite the processing of the application pursuant  
10 to RCW 80.50.075 and shall report its recommendations to the governor  
11 within one hundred eighty days of receipt by the council of such an  
12 application, or a later time as is mutually agreed by the council and  
13 the applicant.

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

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

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

28 (ii) Reject the application; or

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

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

1 agreement or reject the application. The certification agreement  
2 shall be binding upon execution by the governor and the applicant.

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

7 **Sec. 6.** RCW 80.50.175 and 1983 c 3 s 205 are each amended to  
8 read as follows:

9 (1) In addition to all other powers conferred on the council  
10 under this chapter, the council shall have the powers set forth in  
11 this section.

12 (2) (a) The council, upon ~~((request of))~~ agreement with any  
13 potential applicant, is authorized, as provided in this section, to  
14 conduct a preliminary study of any potential ~~((site))~~ project prior  
15 to receipt of an application for site certification. A fee of ten  
16 thousand dollars for each potential ~~((site))~~ project, to be applied  
17 toward the cost of any study agreed upon pursuant to (b) of this  
18 subsection ~~((3) of this section))~~, shall accompany the ~~((request))~~  
19 agreement and shall be a condition precedent to any action on the  
20 ~~((request))~~ agreement by the council.

21 ~~((3) After receiving a request to study a potential site,))~~ (b)  
22 Upon agreement with the potential applicant, the council ~~((shall))~~  
23 may commission its own independent consultant to study matters  
24 relative to the potential ~~((site))~~ project. The study shall include,  
25 but need not be limited to, the preparation and analysis of  
26 environmental impact information for the ~~((proposed))~~ potential  
27 ~~((site))~~ project and any other matter the council and the potential  
28 applicant deem essential to an adequate appraisal of the potential  
29 ~~((site))~~ project. In conducting the study, the council is authorized  
30 to cooperate and work jointly with the county or counties in which  
31 the potential ~~((site))~~ project is located, any federal, state, ~~((or))~~  
32 local, or tribal governmental agency that might be requested to  
33 comment upon the potential ~~((site))~~ project, and any municipal or  
34 public corporation having an interest in the matter. The full cost of  
35 the study shall be paid by the potential applicant: PROVIDED, That  
36 such costs exceeding a total of ten thousand dollars shall be payable  
37 subject to the potential applicant giving prior approval to such  
38 excess amount.

1       ~~((4) Any study prepared by the council pursuant to subsection~~  
2 ~~(3) of this section may be used in place of the "detailed statement"~~  
3 ~~required by RCW 43.21C.030(2)(c) by any branch of government except~~  
4 ~~the council created pursuant to chapter 80.50 RCW.~~

5       ~~(5))~~ (3) All payments required of the potential applicant under  
6 this section are to be ~~((made to the state treasurer, who in turn~~  
7 ~~shall pay the consultant as instructed by the council))~~ deposited  
8 with the utilities and transportation commission. All such funds  
9 shall be subject to state auditing procedures. Any unexpended  
10 portions thereof shall be returned to the potential applicant.

11       ~~((6) Nothing in this section shall change the requirements for~~  
12 ~~an application for site certification or the requirement of payment~~  
13 ~~of a fee as))~~ (4) If a potential applicant subsequently submits a  
14 formal application for site certification for an energy facility at  
15 the site where a preliminary study was conducted, payments made under  
16 this section for that study may be considered as payment towards the  
17 application fee provided in RCW 80.50.071 ~~((, or change the time for~~  
18 ~~disposition of an application for certification as provided in RCW~~  
19 ~~80.50.100.~~

20       ~~(7) Nothing in this section shall be construed as preventing a~~  
21 ~~city or county from requiring any information it deems appropriate to~~  
22 ~~make a decision approving a particular location)).~~

--- END ---