

Chapter 80.50 RCW
ENERGY FACILITIES—SITE LOCATIONS

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Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Energy supply emergencies: Chapter 43.21G RCW.

Regulation of dangerous wastes associated with energy facilities: RCW 70A.300.170.

State energy office: Chapter 43.21F RCW.

Water pollution control, energy facilities, permits, etc., duties of energy facility site evaluation council: RCW 90.48.262.

RCW 80.50.010 Legislative finding—Policy—Intent. The legislature finds that the present and predicted growth in energy demands in the state of Washington requires a procedure for the selection and use of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

It is the policy of the state of Washington to reduce dependence on fossil fuels by recognizing the need for clean energy in order to strengthen the state's economy, meet the state's greenhouse gas reduction obligations, and mitigate the significant near-term and long-term impacts from climate change while conducting a public process that is transparent and inclusive to all with particular attention to overburdened communities.

The legislature finds that the in-state manufacture of industrial products that enable a clean energy economy is critical to advancing the state's objectives in providing affordable electricity, promoting renewable energy, strengthening the state's economy, and reducing greenhouse gas emissions. Therefore, the legislature intends to provide the council with additional authority regarding the siting of clean energy product manufacturing facilities.

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods that the location and operation of all energy facilities and certain clean energy product manufacturing facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. In addition, it is the intent of the legislature to streamline application review for energy facilities to meet the state's energy goals and to authorize applications for review of certain clean energy product manufacturing facilities to be considered under the provisions of this chapter.

Such action will be based on these premises:

(1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.

(2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; to pursue beneficial changes in the environment; and to promote environmental justice for overburdened communities.

(3) To encourage the development and integration of clean energy sources.

(4) To provide abundant clean energy at reasonable cost.

(5) To avoid costs of complete site restoration and demolition of improvements and infrastructure at unfinished nuclear energy sites, and to use unfinished nuclear energy facilities for public uses, including economic development, under the regulatory and management control of local governments and port districts.

(6) To avoid costly duplication in the siting process and ensure that decisions are made timely and without unnecessary delay while also encouraging meaningful public comment and participation in energy facility decisions. [2022 c 183 § 1; 2001 c 214 § 1; 1996 c 4 § 1; 1975-'76 2nd ex.s. c 108 § 29; 1970 ex.s. c 45 § 1.]

Effective date—2022 c 183: "This act takes effect June 30, 2022." [2022 c 183 § 24.]

Severability—2001 c 214: "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." [2001 c 214 § 33.]

Effective date—2001 c 214: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 8, 2001]." [2001 c 214 § 34.]

Findings—2001 c 214: See note following RCW 39.35.010.

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

Nuclear power facilities, joint operation: Chapter 54.44 RCW.

State energy office: Chapter 43.21F RCW.

RCW 80.50.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Alternative energy resource" includes energy facilities of the following types: (a) Wind; (b) solar energy; (c) geothermal energy; (d) renewable natural gas; (e) wave or tidal action; (f) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as

creosote, pentachlorophenol, or copper-chrome-arsenic; or (g) renewable or green electrolytic hydrogen.

(2) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter.

(3) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires.

(4) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages of at least 115,000 volts to connect a thermal power plant or alternative energy facilities to the northwest power grid. However, common carrier railroads or motor vehicles shall not be included.

(5) "Biofuel" means a liquid or gaseous fuel derived from organic matter including, but not limited to, biodiesel, renewable diesel, ethanol, renewable natural gas, and renewable propane.

(6) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility.

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

(a) Vehicles, vessels, and other modes of transportation 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, or converting it to a green hydrogen carrier;

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

(e) Equipment and products used at storage facilities.

(8) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars.

(9) "Council" means the energy facility site evaluation council created by RCW 80.50.030.

(10) "Counsel for the environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080.

(11) "Director" means the director of the energy facility site evaluation council appointed by the chair of the council in accordance with RCW 80.50.360.

(12) "Electrical transmission facilities" means electrical power lines and related equipment.

(13) "Energy facility" means an energy plant or transmission facilities: PROVIDED, That the following are excluded from the provisions of this chapter:

(a) Facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes; and

(b) Facilities operated by and for the armed services for military purposes or by other federal authority for the national defense.

(14) "Energy plant" means the following facilities together with their associated facilities:

(a) Any nuclear power facility where the primary purpose is to produce and sell electricity;

(b) Any nonnuclear stationary thermal power plant with generating capacity of three hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of one hundred thousand kilowatts or more suspended on the surface of water by means of a barge, vessel, or other floating platform;

(c) Facilities which will have the capacity to receive liquefied natural gas in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;

(d) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquefied petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

(e) Any underground reservoir for receipt and storage of natural gas as defined in RCW 80.40.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and

(f) Facilities capable of processing more than twenty-five thousand barrels per day of petroleum or biofuel into refined products except where such biofuel production is undertaken at existing industrial facilities.

(15)(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.

(16) "Green hydrogen carrier" means a chemical compound, created using electricity or renewable resources as energy input and without use of fossil fuel as a feedstock, from renewable hydrogen or green electrolytic hydrogen for the purposes of transportation, storage, and dispensing of hydrogen.

(17) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies.

(18) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to

chapter 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by chapter 325, Laws of 2007.

(19) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

(20) "Preapplicant" means a person considering applying for a site certificate agreement for any facility.

(21) "Preapplication process" means the process which is initiated by written correspondence from the preapplicant to the council, and includes the process adopted by the council for consulting with the preapplicant and with federally recognized tribes, cities, towns, and counties prior to accepting applications for any facility.

(22) "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.

(23) "Renewable natural gas" means a gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters.

(24) "Renewable resource" means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) renewable natural gas; (f) renewable hydrogen; (g) wave, ocean, or tidal power; (h) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests; or (i) biomass energy.

(25) "Secretary" means the secretary of the United States department of energy.

(26) "Site" means any proposed or approved location of an energy facility, alternative energy resource, clean energy product manufacturing facility, or electrical transmission facility.

(27) "Storage facility" means a plant that: (a) Accepts electricity as an energy source and uses a chemical, thermal, mechanical, or other process to store energy for subsequent delivery or consumption in the form of electricity; or (b) stores renewable hydrogen, green electrolytic hydrogen, or a green hydrogen carrier for subsequent delivery or consumption.

(28) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel for distribution of electricity by electric utilities.

(29) "Transmission facility" means any of the following together with their associated facilities:

(a) Crude or refined petroleum or liquid petroleum product transmission pipeline of the following dimensions: A pipeline larger than six inches minimum inside diameter between valves for the transmission of these products with a total length of at least fifteen miles;

(b) Natural gas, synthetic fuel gas, or liquefied petroleum gas transmission pipeline of the following dimensions: A pipeline larger than fourteen inches minimum inside diameter between valves, for the transmission of these products, with a total length of at least fifteen miles for the purpose of delivering gas to a distribution facility, except an interstate natural gas pipeline regulated by the United States federal energy regulatory commission.

(30) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapter

35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state Constitution, or as otherwise designated by chapter 325, Laws of 2007. [2022 c 183 § 2; 2021 c 317 § 17. Prior: 2010 c 152 § 1; 2007 c 325 § 1; prior: 2006 c 205 § 1; 2006 c 196 § 1; 2001 c 214 § 3; 1995 c 69 § 1; 1977 ex.s. c 371 § 2; 1975-'76 2nd ex.s. c 108 § 30; 1970 ex.s. c 45 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2022 c 183: See note following RCW 80.50.010.

Severability—2021 c 317: See note following RCW 70A.535.005.

Rule-making costs proportionately divided—2010 c 152: See note following RCW 80.50.071.

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.030 Energy facility site evaluation council—Created—Membership—Quorum. (1) The energy facility site evaluation council is created and established.

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

(3) (a) The council shall consist of the chair of the council and:

(i) The director of the department of ecology or the director's designee;

(ii) The director of the department of fish and wildlife or the director's designee;

(iii) The director of the department of commerce or the director's designee;

(iv) The chair of the utilities and transportation commission or the chair's designee; and

(v) The commissioner of public lands or the commissioner's designee.

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

- (i) Department of agriculture;
- (ii) Department of health;
- (iii) Military department; and
- (iv) Department of transportation.

(4) The appropriate county legislative authority of every county wherein an application for a proposed site is filed shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the county which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

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

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

(7) A quorum of the council consists of a majority of members appointed for business to be conducted. [2022 c 183 § 3. Prior: 2010 c 271 § 601; 2010 c 152 § 2; 2001 c 214 § 4; 1996 c 186 § 108; prior: 1994 c 264 § 75; 1994 c 154 § 315; 1990 c 12 § 3; 1988 c 36 § 60; 1986 c 266 § 51; prior: 1985 c 466 § 71; 1985 c 67 § 1; 1985 c 7 § 151; prior: 1984 c 125 § 18; 1984 c 7 § 372; 1977 ex.s. c 371 § 3; 1975-'76 2nd ex.s. c 108 § 31; 1974 ex.s. c 171 § 46; 1970 ex.s. c 45 § 3.]

Effective date—2022 c 183: See note following RCW 80.50.010.

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

Rule-making costs proportionately divided—2010 c 152: See note following RCW 80.50.071.

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Effective date—1994 c 154: See RCW 42.52.904.

Effective date—1990 c 12: "This act shall take effect July 1, 1990." [1990 c 12 § 12.]

Severability—1986 c 266: See note following RCW 38.52.005.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.040 Energy facility site evaluation council—Powers enumerated. The council shall have the following powers:

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

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

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

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

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

(6) To enter into contracts to carry out the provisions of this chapter;

(7) To conduct hearings on the proposed location and operational conditions of the energy facilities under the regulatory authority established in this chapter;

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

(9) To prescribe the means for monitoring of the effects arising from the construction and the operation of energy facilities to assure continued compliance with terms of certification and/or permits issued by the council pursuant to chapter 90.48 RCW or subsection (12) of this section: PROVIDED, That any on-site inspection required by the council shall be performed by other state agencies pursuant to interagency agreement: PROVIDED FURTHER, That the council may retain authority for determining compliance relative to monitoring;

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

(11) To present state concerns and interests to other states, regional organizations, and the federal government on the location, construction, and operation of any energy facility which may affect

the environment, health, or safety of the citizens of the state of Washington;

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

(13) To serve as an interagency coordinating body for energy-related issues. [2022 c 183 § 5; 2001 c 214 § 6; 1990 c 12 § 4; 1985 c 67 § 2; 1979 ex.s. c 254 § 1; 1977 ex.s. c 371 § 4; 1975-'76 2nd ex.s. c 108 § 32; 1970 ex.s. c 45 § 4.]

Effective date—2022 c 183: See note following RCW 80.50.010.

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

Effective date—1990 c 12: See note following RCW 80.50.030.

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.045 Recommendations to secretary, federal energy regulatory commission—Siting electrical transmission corridors—Council designated as state authority for siting transmission facilities—Review under national environmental policy act. (1) The council shall consult with other state agencies, utilities, local municipal governments, public interest groups, tribes, and other interested persons to convey their views to the secretary and the federal energy regulatory commission regarding appropriate limits on federal regulatory authority in the siting of electrical transmission corridors in the state of Washington.

(2) The council is designated as the state authority for purposes of siting transmission facilities under Title 16 U.S.C. Sec. 824p and for purposes of other such rules or regulations adopted by the secretary. The council's authority regarding transmission facilities under this subsection is limited to those transmission facilities that are the subject of Title 16 U.S.C. Sec. 824p and this chapter.

(3) For the construction and modification of transmission facilities that are the subject of Title 16 U.S.C. Sec. 824p, the council may: (a) Approve the siting of the facilities; and (b) consider the interstate benefits expected to be achieved by the proposed construction or modification of the facilities in the state.

(4) When developing recommendations as to the disposition of an application for the construction or modification of transmission facilities under this chapter, the fuel source of the electricity carried by the transmission facilities shall not be considered.

(5) For electrical transmission projects proposed or sited by a federal agency, the director must coordinate state agency participation in environmental review under the national environmental policy act. [2023 c 229 § 5; 2006 c 196 § 3.]

Finding—Intent—2023 c 229: See note following RCW 19.280.030.

RCW 80.50.060 Energy facilities to which chapter applies—Applications for certification—Forms—Council's duties—Potential effects to tribal cultural resources. (1) (a) The provisions of this chapter apply to the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of existing energy facilities where the net increase in physical capacity or dimensions resulting from such reconstruction or enlargement meets or exceeds those capacities or dimensions set forth in RCW 80.50.020 (14) and (29). No construction or reconstruction of such energy facilities may be undertaken, except as otherwise provided in this chapter, without first obtaining certification in the manner provided in this chapter.

(b) If applicants proposing the following types of facilities choose to receive certification under this chapter, the provisions of this chapter apply to the construction, reconstruction, or enlargement of these new or existing facilities:

(i) Facilities that produce refined biofuel, but which are not capable of producing 25,000 barrels or more per day;

(ii) Alternative energy resource facilities;

(iii) Electrical transmission facilities: (A) Of a nominal voltage of at least 115,000 volts; and (B) located in more than one jurisdiction that has promulgated land use plans or zoning ordinances;

(iv) Clean energy product manufacturing facilities; and

(v) Storage facilities.

(c) All of the council's powers with regard to energy facilities apply to all of the facilities in (b) of this subsection and these facilities are subject to all provisions of this chapter that apply to an energy facility.

(2) (a) The provisions of this chapter must apply to:

(i) The construction, reconstruction, or enlargement of new or existing electrical transmission facilities: (A) Of a nominal voltage of at least 500,000 volts alternating current or at least 300,000 volts direct current; (B) located in more than one county; and (C) located in the Washington service area of more than one retail electric utility; and

(ii) The construction, reconstruction, or modification of electrical transmission facilities when the facilities are located in a national interest electric transmission corridor as specified in RCW 80.50.045.

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

(3) The provisions of this chapter shall not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those set forth in RCW 80.50.020 (14) and (29).

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

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

(6) Upon receipt of an application for certification under this chapter, the chair of the council shall notify:

(a) The appropriate county legislative authority or authorities where the proposed facility is located;

(b) The appropriate city legislative authority or authorities where the proposed facility is located;

(c) The department of archaeology and historic preservation; and

(d) The appropriate federally recognized tribal governments that may be affected by the proposed facility.

(7) The council must work with local governments where a project is proposed to be sited in order to provide for meaningful participation and input during siting review and compliance monitoring.

(8) The council must consult with all federally recognized tribes that possess resources, rights, or interests reserved or protected by federal treaty, statute, or executive order in the area where an energy facility is proposed to be located to provide early and meaningful participation and input during siting review and compliance monitoring. The chair and designated staff must offer to conduct government-to-government consultation to address issues of concern raised by such a tribe. The goal of the consultation process is to identify tribal resources or rights potentially affected by the proposed energy facility and to seek ways to avoid, minimize, or mitigate any adverse effects on tribal resources or rights. The chair must provide regular updates on the consultation to the council throughout the application review process. The report from the council to the governor required in RCW 80.50.100 must include a summary of the government-to-government consultation process that complies with RCW 42.56.300, including the issues and proposed resolutions.

(9) The department of archaeology and historic preservation shall coordinate with the affected federally recognized tribes and the applicant in order to assess potential effects to tribal cultural resources, archaeological sites, and sacred sites. [2023 c 229 § 4; 2022 c 183 § 6; 2021 c 317 § 18; 2007 c 325 § 2; 2006 c 196 § 4; 2001 c 214 § 2; 1977 ex.s. c 371 § 5; 1975-'76 2nd ex.s. c 108 § 34; 1970 ex.s. c 45 § 6.]

Finding—Intent—2023 c 229: See note following RCW 19.280.030.

Effective date—2022 c 183: See note following RCW 80.50.010.

Severability—2021 c 317: See note following RCW 70A.535.005.

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.065 Use of fully coordinated permitting process.

Applicants utilizing the fully coordinated permitting process under chapter 43.158 RCW are not eligible for permitting under this chapter unless a substantial change is made to the proposed project. Prior to considering an application under this chapter from a project applicant that has previously used the fully coordinated permitting process under chapter 43.158 RCW for that project, the council must determine that the project applicant has made a substantial change to the project, relative to the project as it was proposed under the fully coordinated permitting process. [2023 c 230 § 211.]

Findings—Intent—2023 c 230: See note following RCW 43.394.010.

RCW 80.50.071 Council to receive applications—Payment of costs incurred by the council—Notification requirements. (1) The council shall receive all applications for energy facility site certification. Each applicant shall pay actual costs incurred by the council in processing an application.

(a) Each applicant shall, at the time of application submission, pay to the council for deposit into the energy facility site evaluation council account created in RCW 80.50.390 an amount up to fifty thousand dollars, or such greater amount as specified by the council after consultation with the applicant. The council shall charge costs against the deposit if the applicant withdraws its application and has not reimbursed the council for all actual expenditures incurred in considering the application.

(b) The council may commission its own independent consultant study to measure the consequences of the proposed energy facility on the environment or any matter that it deems essential to an adequate appraisal of the site. The council shall provide an estimate of the cost of the study to the applicant and consider applicant comments.

(c) In addition to the deposit required under (a) of this subsection, applicants must reimburse the council for actual expenditures that arise in considering the application, including the cost of any independent consultant study. The council shall submit to each applicant an invoice of actual expenditures made during the preceding calendar quarter in sufficient detail to explain the expenditures. The applicant shall pay the council the amount of the invoice by the due date.

(2) Each certificate holder shall pay the actual costs incurred by the council for inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction, operation, and site restoration of the facility.

(a) Each certificate holder shall, within thirty days of execution of the site certification agreement, pay to the council for

deposit into the energy facility site evaluation council account created in RCW 80.50.390 an amount up to fifty thousand dollars, or such greater amount as specified by the council after consultation with the certificate holder. The council shall charge costs against the deposit if the certificate holder ceases operations and has not reimbursed the council for all actual expenditures incurred in conducting inspections and determining compliance with the terms of the certification.

(b) In addition to the deposit required under (a) of this subsection, certificate holders must reimburse the council for actual expenditures that arise in administering this chapter and determining compliance. The council shall submit to each certificate holder an invoice of the expenditures actually made during the preceding calendar quarter in sufficient detail to explain the expenditures. The certificate holder shall pay the amount of the invoice by the due date.

(3) If an applicant or certificate holder fails to provide the initial deposit, or if subsequently required payments are not received within thirty days following receipt of the invoice from the council, the council may (a) in the case of the applicant, suspend processing of the application until payment is received; or (b) in the case of a certificate holder, suspend the certification.

(4) All payments required of the applicant or certificate holder under this section are to be made to the council for deposit into the energy facility site evaluation council account created in RCW 80.50.390. All such funds shall be subject to state auditing procedures. Any unexpended portions of the deposit shall be returned to the applicant within sixty days following the conclusion of the application process or to the certificate holder within sixty days after a determination by the council that the certificate is no longer required and there is no continuing need for compliance with its terms. For purposes of this section, "conclusion of the application process" means after the governor's decision granting or denying a certificate and the expiration of any opportunities for judicial review.

(5) (a) Upon receipt of an application for an energy facility site certification proposing an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least one hundred fifteen thousand volts, the council shall notify in writing the United States department of defense. The notification shall include, but not be limited to, the following:

(i) A description of the proposed energy plant or alternative energy resource;

(ii) The location of the site;

(iii) The placement of the energy plant or alternative energy resource on the site;

(iv) The date and time by which comments must be received by the council; and

(v) Contact information of the council and the applicant.

(b) The purpose of the written notification is to provide an opportunity for the United States department of defense to comment upon the application, and to identify potential issues relating to the placement and operations of the energy plant or alternative energy resource, before a site certification application is approved. The time period set forth by the council for receipt of such comments shall not extend the time period for the council's processing of the application.

(c) In order to assist local governments required to notify the United States department of defense under RCW 35.63.270, 35A.63.290, and 36.01.320, the council shall post on its website the appropriate information for contacting the United States department of defense. [2022 c 183 § 8; 2016 sp.s. c 10 § 1; 2011 c 261 § 1; 2010 c 152 § 3; 2006 c 196 § 5; 1977 ex.s. c 371 § 16.]

Effective date—2022 c 183: See note following RCW 80.50.010.

Construction—2016 sp.s. c 10: "Nothing in this act extends or modifies the jurisdiction of the energy facility site evaluation council or the utilities and transportation commission with respect to any energy facility that is not subject to the jurisdiction of the energy facility site evaluation council or the utility [utilities] and transportation commission as of June 28, 2016." [2016 sp.s. c 10 § 2.]

Rule-making costs proportionately divided—2010 c 152: "Rule-making costs incurred by the energy facility site evaluation council in implementing and administering this act shall be proportionately divided among the certificate holders and applicants directly affected by this act." [2010 c 152 § 4.]

RCW 80.50.075 Expedited processing of applications. (1) Any person filing an application for certification of any facility pursuant to this chapter may apply to the council for an expedited processing of such an application. The application for expedited processing shall be submitted to the council in such form and manner and accompanied by such information as may be prescribed by council rule. The council may grant an applicant expedited processing of an application for certification upon finding that the environmental impact of the proposed facility is not significant or will be mitigated to a nonsignificant level under RCW 43.21C.031 and the project is found under RCW 80.50.090(2) to be consistent and in compliance with city, county, or regional land use plans or zoning ordinances.

(2) Upon granting an applicant expedited processing of an application for certification, the council shall not be required to:

(a) Commission an independent study to further measure the consequences of the proposed facility on the environment, notwithstanding the other provisions of RCW 80.50.071; nor

(b) Hold an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, on the application.

(3) The council shall adopt rules governing the expedited processing of an application for certification pursuant to this section. [2022 c 183 § 18; 2006 c 205 § 2; 1989 c 175 § 172; 1977 ex.s. c 371 § 17.]

Effective date—2022 c 183: See note following RCW 80.50.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 80.50.080 Counsel for the environment. After the council has received a site application, the attorney general shall appoint an assistant attorney general as a counsel for the environment. The

counsel for the environment shall represent the public and its interest in protecting the quality of the environment. Costs incurred by the counsel for the environment in the performance of these duties shall be charged to the office of the attorney general, and shall not be a charge against the appropriation to the energy facility site evaluation council. He or she shall be accorded all the rights, privileges, and responsibilities of an attorney representing a party in a formal action. This section shall not be construed to prevent any person from being heard or represented by counsel in accordance with the other provisions of this chapter. [2013 c 23 § 282; 1977 ex.s. c 371 § 6; 1970 ex.s. c 45 § 8.]

RCW 80.50.085 Council staff to assist applicants, make recommendations. (1) After the council has received a site application, council staff shall assist applicants in identifying issues presented by the application.

(2) Council staff shall review all information submitted and recommend resolutions to issues in dispute that would allow site approval.

(3) Council staff may make recommendations to the council on conditions that would allow site approval. [2001 c 214 § 5.]

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

RCW 80.50.090 Public hearings—Opportunity for public comment.

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

(2) Subsequent to the informational public hearing, the council shall conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances on the date of the application.

(3) (a) After the submission of an environmental checklist and prior to issuing a threshold determination that a facility is likely to cause a significant adverse environmental impact under chapter 43.21C RCW, the director 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 director 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 director's anticipated determination of significance. The director shall make the threshold determination based upon the changed or clarified proposal following the applicant's submittal. The director must provide an opportunity for public comment on a project for which a project applicant has withdrawn and revised the application and environmental checklist and subsequently received a

threshold determination of nonsignificance or mitigated determination of nonsignificance.

(b) The notification required under (a) of this subsection is not an official determination by the director and is not subject to appeal under chapter 43.21C RCW.

(4) Prior to the issuance of a council recommendation to the governor under RCW 80.50.100 a public hearing, conducted as an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, shall be held.

(a) At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification by raising one or more specific issues, provided that the person has raised the issue or issues in writing with specificity during the application review process or during the public comment period that will be held prior to the start of the adjudicative hearing.

(b) If the environmental impact of the proposed facility in an application for certification is not significant or will be mitigated to a nonsignificant level under RCW 43.21C.031, the council may limit the topic of the public hearing conducted as an adjudicative proceeding under this section to whether any land use plans or zoning ordinances with which the proposed site is determined to be inconsistent under subsection (2) of this section should be preempted.

(5) After expedited processing is granted under RCW 80.50.075, the council must hold a public meeting to take comments on the proposed application prior to issuing a council recommendation to the governor.

(6) Additional public hearings shall be held as deemed appropriate by the council in the exercise of its functions under this chapter. [2022 c 183 § 9. Prior: 2006 c 205 § 3; 2006 c 196 § 6; 2001 c 214 § 7; 1989 c 175 § 173; 1970 ex.s. c 45 § 9.]

Effective date—2022 c 183: See note following RCW 80.50.010.

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 80.50.100 Recommendations to governor—Expedited processing—Approval or rejection of certification—Reconsideration. (1)(a) The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt by the council of an application deemed complete by the director, or such later time as is mutually agreed by the council and the applicant.

(b) The council shall review and consider comments received during the application process in making its recommendation.

(c) In the case of an application filed prior to December 31, 2025, for certification of an energy facility proposed for construction, modification, or expansion for the purpose of providing generating facilities that meet the requirements of RCW 80.80.040 and are located in a county with a coal-fired electric generation facility

subject to RCW 80.80.040(3)(c), the council shall expedite the processing of the application pursuant to RCW 80.50.075 and shall report its recommendations to the governor within one hundred eighty days of receipt by the council of such an application, or a later time as is mutually agreed by the council and the applicant.

(2) If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter including, but not limited to, conditions to protect state, local governmental, or community interests, or overburdened communities as defined in RCW 70A.02.010 affected by the construction or operation of the facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

(3)(a) Within 60 days of receipt of the council's report the governor shall take one of the following actions:

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

(ii) Reject the application; or

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

(b) The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the adjudicative proceeding for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within 60 days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

(4) The rejection of an application for certification by the governor shall be final as to that application but shall not preclude submission of a subsequent application for the same site on the basis of changed conditions or new information. [2022 c 183 § 10; 2011 c 180 § 109; 1989 c 175 § 174; 1977 ex.s. c 371 § 8; 1975-'76 2nd ex.s. c 108 § 36; 1970 ex.s. c 45 § 10.]

Effective date—2022 c 183: See note following RCW 80.50.010.

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.105 Transmission facilities for petroleum products—Recommendations to governor. In making its recommendations to the governor under this chapter regarding an application that includes transmission facilities for petroleum products, the council shall give

appropriate weight to city or county facility siting standards adopted for the protection of sole source aquifers. [1991 c 200 § 1112.]

Effective dates—1991 c 200: See RCW 90.56.901.

RCW 80.50.110 Chapter governs and supersedes other law or regulations—Preemption of regulation and certification by state. (1) If any provision of this chapter is in conflict with any other provision, limitation, or restriction which is now in effect under any other law of this state, or any rule or regulation promulgated thereunder, this chapter shall govern and control and such other law or rule or regulation promulgated thereunder shall be deemed superseded for the purposes of this chapter.

(2) The state hereby preempts the regulation and certification of the location, construction, and operational conditions of certification of the energy facilities included under RCW 80.50.060 as now or hereafter amended. [1975-'76 2nd ex.s. c 108 § 37; 1970 ex.s. c 45 § 11.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.120 Effect of certification. (1) Subject to the conditions set forth therein any certification shall bind the state and each of its departments, agencies, divisions, bureaus, commissions, boards, and political subdivisions, whether a member of the council or not, as to the approval of the site and the construction and operation of the proposed energy facility.

(2) The certification shall authorize the person named therein to construct and operate the proposed energy facility subject only to the conditions set forth in such certification.

(3) The issuance of a certification shall be in lieu of any permit, certificate or similar document required by any department, agency, division, bureau, commission, board, or political subdivision of this state, whether a member of the council or not. [1977 ex.s. c 371 § 10; 1975-'76 2nd ex.s. c 108 § 38; 1970 ex.s. c 45 § 12.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.130 Revocation or suspension of certification—Grounds. Any certification may be revoked or suspended:

(1) For any material false statement in the application or in the supplemental or additional statements of fact or studies required of the applicant when a true answer would have warranted the council's refusal to recommend certification in the first instance; or

(2) For failure to comply with the terms or conditions of the original certification; or

(3) For violation of the provisions of this chapter, regulations issued thereunder or order of the council. [1970 ex.s. c 45 § 13.]

RCW 80.50.140 Review. (1) A final decision pursuant to RCW 80.50.100 on an application for certification shall be subject to judicial review pursuant to provisions of chapter 34.05 RCW and this section. Petitions for review of such a decision shall be filed in the Thurston county superior court. All petitions for review of a decision under RCW 80.50.100 shall be consolidated into a single proceeding before the Thurston county superior court. The Thurston county superior court shall certify the petition for review to the supreme court upon the following conditions:

- (a) Review can be made on the administrative record;
- (b) Fundamental and urgent interests affecting the public interest and development of energy facilities are involved which require a prompt determination;
- (c) Review by the supreme court would likely be sought regardless of the determination of the Thurston county superior court; and
- (d) The record is complete for review.

The Thurston county superior court shall assign a petition for review of a decision under RCW 80.50.100 for hearing at the earliest possible date and shall expedite such petition in every way possible. If the court finds that review cannot be limited to the administrative record as set forth in subparagraph (a) of this subsection because there are alleged irregularities in the procedure before the council not found in the record, but finds that the standards set forth in subparagraphs (b), (c), and (d) of this subsection are met, the court shall proceed to take testimony and determine such factual issues raised by the alleged irregularities and certify the petition and its determination of such factual issues to the supreme court. Upon certification, the supreme court shall assign the petition for hearing at the earliest possible date, and it shall expedite its review and decision in every way possible.

(2) Objections raised by any party in interest concerning procedural error by the council shall be filed with the council within sixty days of the commission of such error, or within thirty days of the first public hearing or meeting of the council at which the general subject matter to which the error is related is discussed, whichever comes later, or such objection shall be deemed waived for purposes of judicial review as provided in this section.

(3) The rules and regulations adopted by the council shall be subject to judicial review pursuant to the provisions of chapter 34.05 RCW. [1988 c 202 § 62; 1981 c 64 § 3; 1977 ex.s. c 371 § 11; 1970 ex.s. c 45 § 14.]

Severability—1988 c 202: See note following RCW 2.24.050.

RCW 80.50.150 Enforcement of compliance—Penalties. (1) The courts are authorized to grant such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with this chapter, rules adopted under this chapter, a site certification agreement issued pursuant to this chapter, a national pollutant discharge elimination system (hereafter in this section, NPDES) permit or waste discharge permit issued by the council under chapter 90.48 RCW, any air permit issued under RCW 80.50.040(12), or any other permit issued by the council.

(2) The court may assess civil penalties in an amount not less than one thousand dollars per day nor more than twenty-five thousand

dollars per day for each day of construction or operation in material violation of this chapter, or in violation of any rules adopted under this chapter, or in material violation of any site certification agreement issued pursuant to this chapter, or in violation of any NPDES permit or waste discharge permit issued by the council pursuant to chapter 90.48 RCW, or in violation of any air permit issued pursuant to RCW 80.50.040(12), or in violation of any other permit issued by the council.

(3) Willful violation of any provision of this chapter is a gross misdemeanor.

(4) Willful or criminally negligent, as defined in RCW 9A.08.010(1)(d), violation of any provision of a NPDES permit or waste discharge permit issued by the council pursuant to chapter 90.48 RCW, or any air permit issued by the council pursuant to RCW 80.50.040(12) or any emission standards promulgated by the council in order to implement the federal clean air act and the state implementation plan with respect to energy facilities under the jurisdiction provisions of this chapter, or any other permit issued by the council, is a gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to twenty-five thousand dollars per day and costs of prosecution.

(5) Any person knowingly making any false statement, representation, or certification in any document in any form, notice, or report required by a NPDES or waste discharge permit, or in any form, notice, or report required for or by any air permit issued pursuant to RCW 80.50.040(12), or any other permit issued by the council, is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution.

(6) Civil proceedings to enforce this chapter may be brought by the attorney general or the prosecuting attorney of any county affected by the violation on his or her own motion or at the request of the council. Criminal proceedings to enforce this chapter may be brought by the prosecuting attorney of any county affected by the violation on his or her own motion or at the request of the council.

(7) The remedies and penalties in this chapter, both civil and criminal, are cumulative and are in addition to any other penalties and remedies available at law, or in equity, to any person. [2015 3rd sp.s. c 39 § 2; 2013 c 23 § 283. Prior: 1979 ex.s. c 254 § 2; 1979 c 41 § 1; 1977 ex.s. c 371 § 12; 1970 ex.s. c 45 § 15.]

Findings—Intent—2015 3rd sp.s. c 39: "The legislature recognizes that the energy facility site evaluation council is responsible for enforcing compliance with this chapter, rules adopted pursuant to this chapter, and site certification agreements and any permits it issues to energy facilities under its jurisdiction. The statutes related to enforcement by the energy facility site evaluation council have not been amended to reflect the increased penalty amounts that both the department of ecology and local air pollution control authorities may impose for similar violations of environmental laws. In addition, it is not altogether clear whether the department of ecology has authority to issue additional penalties under RCW 90.56.330 for oil spills at facilities under the jurisdiction of the energy facility site evaluation council. Furthermore, the legislature recently eliminated the mitigation process from certain environmental appeals because it represented an unnecessary step in the penalty process. The

legislature did not amend the enforcement statutes of the energy facility site evaluation council to eliminate the mitigation process for penalties issued by the council.

The legislature intends to amend the energy facility site evaluation council's enforcement statutes to make them more consistent with similar enforcement statutes of the department of ecology and local air pollution control authorities, and to clarify the appeal process. The legislature also intends to clarify that additional penalties under RCW 90.56.330 for oil spills may be imposed by the department of ecology at energy facilities under the jurisdiction of the energy facility site evaluation council. Nothing in RCW 80.50.150 and 80.50.155 limits the department of ecology's ability to impose natural resource damage assessments pursuant to RCW 90.56.370, regardless of whether or not the energy facility is under the jurisdiction of the energy facility site evaluation council." [2015 3rd sp.s. c 39 § 1.]

RCW 80.50.155 Additional penalties—Appeal procedures. (1)

Every person who violates the provisions of site certification agreements or permits issued or administered by the council shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars a day for every such violation. Each and every such violation is a separate and distinct offense, and in case of a continuing violation, every day's continuance is deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids, or abets in the violation is considered a violation under the provisions of this section and subject to the penalty provided in this section. The penalty provided in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the council describing such violation with reasonable particularity.

(2) Any person incurring any penalty under this section must appeal the same to the council before the person may appeal the penalty to superior court. Such appeals with the council shall be filed within thirty days of the date of receipt of notice imposing any penalty. Any penalty imposed under this section shall become due and payable thirty days after the date of receipt of a notice imposing the same unless an appeal is filed with the council. Whenever an appeal of any penalty incurred hereunder is filed with the council, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Judicial review of any final decision of the council is governed by chapter 34.05 RCW. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.

(3) For purposes of this subsection, "date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The date of actual receipt, however, may not exceed forty-five days from the date of mailing. [2015 3rd sp.s. c 39 § 3.]

Findings—Intent—2015 3rd sp.s. c 39: See note following RCW 80.50.150.

RCW 80.50.160 Availability of information. The council shall make available for public inspection and copying during regular office hours at the expense of any person requesting copies, any information filed or submitted pursuant to this chapter. [1970 ex.s. c 45 § 16.]

RCW 80.50.175 Council's powers. (1) In addition to all other powers conferred on the council under this chapter, the council shall have the powers set forth in this section.

(2) (a) The council, upon agreement with any potential applicant, is authorized as provided in this section to conduct a preliminary study of any potential project prior to receipt of an application for site certification. This preliminary study must be completed before any environmental review or process under RCW 43.21C.031 is initiated. A fee of \$10,000 for each potential project, to be applied toward the cost of any study agreed upon pursuant to (b) of this subsection, must accompany the agreement and is a condition precedent to any action on the agreement by the council.

(b) Upon agreement with the potential applicant, the council may commission its own independent consultant to study matters relative to the potential project. In conducting the study, the council is authorized to cooperate and work jointly with the county or counties in which the potential project is located, any federal, state, local, or tribal governmental agency that might be requested to comment on the potential project, and any municipal or public corporation having an interest in the matter. The full cost of the study must be paid by the potential applicant. However, costs exceeding a total of \$10,000 are payable subject to the potential applicant giving prior approval to such an excess amount.

(3) All payments required of the potential applicant under this section must be deposited into the energy facility site evaluation council account created in RCW 80.50.390. All of these funds are subject to state auditing procedures. Any unexpended portions of the funds must be returned to the potential applicant.

(4) If a potential applicant subsequently submits a formal application for site certification to the council for a site where a preliminary study was conducted, payments made under this section for that study may be considered as payment towards the application fee provided in RCW 80.50.071. [2022 c 183 § 11; 1983 c 3 § 205; 1977 ex.s. c 371 § 13; 1975-'76 2nd ex.s. c 108 § 40; 1974 ex.s. c 110 § 2.]

Effective date—2022 c 183: See note following RCW 80.50.010.

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.180 Proposals and actions by other state agencies and local political subdivisions pertaining to energy facilities exempt from "detailed statement" required by RCW 43.21C.030. Except for actions of the council under chapter 80.50 RCW, all proposals for legislation and other actions of any branch of government of this state, including state agencies, municipal and public corporations, and counties, to the extent the legislation or other action involved approves, authorizes, permits, or establishes procedures solely for

approving, authorizing or permitting, the location, financing or construction of any energy facility subject to certification under chapter 80.50 RCW, shall be exempt from the "detailed statement" required by RCW 43.21C.030. Nothing in this section shall be construed as exempting any action of the council from any provision of chapter 43.21C RCW. [1977 ex.s. c 371 § 14.]

RCW 80.50.300 Unfinished nuclear power projects—Transfer of all or a portion of a site to a political subdivision or subdivisions of the state—Water rights. (1) This section applies only to unfinished nuclear power projects. If a certificate holder stops construction of a nuclear energy facility before completion, terminates the project or otherwise resolves not to complete construction, never introduces or stores fuel for the energy facility on the site, and never operates the energy facility as designed to produce energy, the certificate holder may contract, establish interlocal agreements, or use other formal means to effect the transfer of site restoration responsibilities, which may include economic development activities, to any political subdivision or subdivisions of the state composed of elected officials. The contracts, interlocal agreements, or other formal means of cooperation may include, but are not limited to provisions effecting the transfer or conveyance of interests in the site and energy facilities from the certificate holder to other political subdivisions of the state, including costs of maintenance and security, capital improvements, and demolition and salvage of the unused energy facilities and infrastructure.

(2) If a certificate holder transfers all or a portion of the site to a political subdivision or subdivisions of the state composed of elected officials and located in the same county as the site, the council shall amend the site certification agreement to release those portions of the site that it finds are no longer intended for the development of an energy facility.

Immediately upon release of all or a portion of the site pursuant to this section, all responsibilities for maintaining the public welfare for portions of the site transferred, including but not limited to health and safety, are transferred to the political subdivision or subdivisions of the state. For sites located on federal land, all responsibilities for maintaining the public welfare for all of the site, including but not limited to health and safety, must be transferred to the political subdivision or subdivisions of the state irrespective of whether all or a portion of the site is released.

(3) The legislature finds that for all or a portion of sites that have been transferred to a political subdivision or subdivisions of the state prior to September 1, 1999, ensuring water for site restoration including economic development, completed pursuant to this section can best be accomplished by a transfer of existing surface water rights, and that such a transfer is best accomplished administratively through procedures set forth in existing statutes and rules. However, if a transfer of water rights is not possible, the department of ecology shall, within six months of the transfer of the site or portion thereof pursuant to subsection (1) of this section, create a trust water right under chapter 90.42 RCW containing between ten and twenty cubic feet per second for the benefit of the appropriate political subdivision or subdivisions of the state. The trust water right shall be used in fulfilling site restoration

responsibilities, including economic development. The trust water right shall be from existing valid water rights within the basin where the site is located.

(4) For purposes of this section, "political subdivision or subdivisions of the state" means a city, town, county, public utility district, port district, or joint operating agency. [2000 c 243 § 1; 1996 c 4 § 2.]

RCW 80.50.310 Council actions—Exemption from chapter 43.21C

RCW. Council actions pursuant to the transfer of the site or portions of the site under RCW 80.50.300 are exempt from the provisions of chapter 43.21C RCW. [1996 c 4 § 3.]

RCW 80.50.320 Governor to evaluate council efficiency, make recommendations. The governor shall undertake an evaluation of the operations of the council to assess means to enhance its efficiency. The assessment must include whether the efficiency of the siting process would be improved by conducting the process under the state environmental policy act in a particular sequence relative to the adjudicative proceeding. The results of this assessment may include recommendations for administrative changes, statutory changes, or expanded staffing levels. [2001 c 214 § 8.]

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

RCW 80.50.330 Preapplication—Siting electrical transmission facilities—Corridors. (1) For applications to site electrical transmission facilities, the council shall conduct a preapplication process pursuant to rules adopted by the council to govern such process, receive applications as prescribed in RCW 80.50.071, and conduct public meetings pursuant to RCW 80.50.090.

(2) The council shall consider and may recommend certification of electrical transmission facilities in corridors designated for this purpose by affected cities, towns, or counties:

(a) Where the jurisdictions have identified electrical transmission facility corridors as part of their land use plans and zoning maps based on policies adopted in their plans;

(b) Where the proposed electrical transmission facility is consistent with any adopted development regulations that govern the siting of electrical transmission facilities in such corridors; and

(c) Where contiguous jurisdictions and jurisdictions in which related regional electrical transmission facilities are located have either prior to or during the preapplication process undertaken good faith efforts to coordinate the locations of their corridors consistent with RCW 36.70A.100.

(3) (a) In the absence of a corridor designation in the manner prescribed in subsection (2) of this section, the council shall as part of the preapplication process require the preapplicant to negotiate, as provided by rule adopted by the council, for a reasonable time with affected cities, towns, and counties to attempt

to reach agreement about a corridor plan. The application for certification shall identify only the corridor agreed to by the applicant and cities, towns, and counties within the proposed corridor pursuant to the preapplication process.

(b) If no corridor plan is agreed to by the applicant and cities, towns, and counties pursuant to (a) of this subsection, the applicant shall propose a recommended corridor and electrical transmission facilities to be included within the proposed corridor.

(c) The council shall consider the applicant's proposed corridor and electrical transmission facilities as provided in *RCW 80.50.090 (2) and (4), and shall make a recommendation consistent with RCW 80.50.090 and 80.50.100. [2007 c 325 § 3.]

***Reviser's note:** RCW 80.50.090 was amended by 2022 c 183 § 9, changing subsection (4) to subsection (6).

RCW 80.50.340 Preapplication—Fees—Plans. (1) A preapplicant applying under RCW 80.50.330 shall pay to the council a fee of ten thousand dollars to be applied to the cost of the preapplication process as a condition precedent to any action by the council, provided that costs in excess of this amount shall be paid only upon prior approval by the preapplicant, and provided further that any unexpended portions thereof shall be returned to the preapplicant.

(2) The council shall consult with the preapplicant and prepare a plan for the preapplication process which shall commence with an informational public hearing within 60 days after the receipt of the preapplication fee as provided in RCW 80.50.090.

(3) The preapplication plan shall include but need not be limited to:

(a) An initial consultation to explain the proposal and request input from council staff, federal and state agencies, cities, towns, counties, port districts, tribal governments, property owners, and interested individuals;

(b) Where applicable, a process to guide negotiations between the preapplicant and cities, towns, and counties within the corridor proposed pursuant to RCW 80.50.330.

(4) Fees paid under this section must be deposited in the energy facility site evaluation council account created in RCW 80.50.390. [2022 c 183 § 13; 2007 c 325 § 4.]

Effective date—2022 c 183: See note following RCW 80.50.010.

RCW 80.50.360 Duties of chair and director. (1) The chair of the council or the chair's designee shall execute all official documents, contracts, and other materials on behalf of the council.

(2) The chair of the council shall appoint a director to oversee the operations of the council and carry out the duties of this chapter as delegated by the chair. The chair of the council may delegate to the director its status as appointing authority for the council.

(3) The director shall employ such administrative and professional personnel as may be necessary to perform the administrative work of the council and implement this chapter. The director has supervisory authority over all staff of the council. Not more than four employees may be exempt from chapter 41.06 RCW. [2022 c 183 § 4.]

Effective date—2022 c 183: See note following RCW 80.50.010.

RCW 80.50.370 Clean energy product manufacturing facilities.

(1) A person proposing to construct, reconstruct, or enlarge a clean energy product manufacturing facility may choose to receive certification under this chapter.

(2) All of the council's powers with regard to energy facilities apply to clean energy product manufacturing facilities, and such a facility is subject to all provisions of this chapter that apply to an energy facility. [2022 c 183 § 7.]

Effective date—2022 c 183: See note following RCW 80.50.010.

RCW 80.50.380 Preapplication review of a proposed project—Fees.

(1) Except for the siting of electrical transmission facilities, any potential applicant may request a preapplication review of a proposed project. Council staff must review the preapplicant's draft application materials and provide comments on either additional studies or stakeholder and tribal input, or both, that should be included in the formal application for site certification. Council staff must inform affected federally recognized tribes under RCW 80.50.060 of the preapplication review. The department of archaeology and historic preservation shall coordinate with the affected federally recognized tribes and the applicant in order to assess potential effects to tribal cultural resources, archaeological sites, and sacred sites.

(2) After initial review, the director and the applicant may agree on fees to be paid by the applicant so that council staff may conduct further review and consultation, including contracting for review by other parties. [2022 c 183 § 12.]

Effective date—2022 c 183: See note following RCW 80.50.010.

RCW 80.50.390 Energy facility site evaluation council account.

The energy facility site evaluation council account is created in the custody of the state treasurer. All receipts from funds received by the council for all payments, including fees, deposits, and reimbursements received under this chapter must be deposited into the account. Expenditures from the account may be used for purposes set forth in this chapter. Only the chair of the council or the chair's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2022 c 183 § 15.]

Effective date—2022 c 183: See note following RCW 80.50.010.

RCW 80.50.400 Transfer of authority from the utilities and transportation commission to the council. (1) Those administrative powers, duties, and functions of the utilities and transportation commission that were performed under the provisions of this chapter for the council prior to June 30, 2022, are transferred to the council as set forth in chapter 183, Laws of 2022.

(2) (a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the utilities and transportation commission pertaining to the powers, duties, and functions transferred must be delivered to the custody of the council. All cabinets, furniture, office equipment, motor vehicles, and other tangible property under the inventory of the utilities and transportation commission for the council must be transferred to the council. All funds, credits, or other assets held by the utilities and transportation commission for the benefit of the council, of which were paid to the utilities and transportation commission pursuant to this chapter must be assigned to the council and transferred to the energy facility site evaluation council account created in RCW 80.50.390.

(b) Any appropriations made to the utilities and transportation commission for the council to carrying out its powers, functions, and duties transferred must, on June 30, 2022, be transferred and credited to the council. Any funds received pursuant to payment made under this chapter must be credited to the council and deposited in the energy facility site evaluation council account created in RCW 80.50.390.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall decide as to the proper allocation and certify the same to the state agencies concerned.

(3) All pending business before the utilities and transportation commission pertaining to the powers, duties, and functions transferred must be continued and acted upon by the council. All existing contracts and obligations remain in full force and must be performed by the council.

(4) The transfer of the powers, duties, functions, and personnel of the utilities and transportation commission does not affect the validity of any act performed before June 30, 2022.

(5) If apportionments of budgeted or nonbudgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(6) All employees of the utilities and transportation commission that are engaged in performing the powers, functions, and duties of the council, are transferred to the council. All employees classified under chapter 41.06 RCW, the state civil service law, assigned to the council shall continue to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service law. [2022 c 183 § 17.]

Effective date—2022 c 183: See note following RCW 80.50.010.