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SENATE BILL 5998

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State of Washington

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By Senators Hale, T. Sheldon, Hewitt, Morton, McDonald, Hochstatter and Honeyford

Read first time 02/12/2001. Referred to Committee on Environment, Energy & Water.

1 AN ACT Relating to energy facility siting; amending RCW 80.50.020,  
2 80.50.030, 80.50.060, and 80.50.100; adding new sections to chapter  
3 80.50 RCW; and declaring an emergency.

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

5 **Sec. 1.** RCW 80.50.020 and 1995 c 69 s 1 are each amended to read  
6 as follows:

7 The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

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

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

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

1 (4) "Site" means any proposed or approved location of an energy  
2 facility((?)).

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

9 (6) "Associated facilities" means storage, transmission, handling,  
10 or other related and supporting facilities connecting an energy plant  
11 with the existing energy supply, processing, or distribution system,  
12 including, but not limited to, communications, controls, mobilizing or  
13 maintenance equipment, instrumentation, and other types of ancillary  
14 transmission equipment, off-line storage or venting required for  
15 efficient operation or safety of the transmission system and overhead,  
16 and surface or subsurface lines of physical access for the inspection,  
17 maintenance, and safe operations of the transmission facility and new  
18 transmission lines constructed to operate at nominal voltages in excess  
19 of 200,000 volts to connect a thermal power plant to the northwest  
20 power grid: PROVIDED, That common carrier railroads or motor vehicles  
21 shall not be included((?)).

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

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

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

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

1 (9) "Thermal power plant" means, for the purpose of certification,  
2 any electrical generating facility using any fuel, including nuclear  
3 materials, for distribution of electricity by electric utilities((?)).  
4

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

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

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

13 (11) "Council" means the energy facility site evaluation council  
14 created by RCW 80.50.030((?)).

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

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

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

23 (a) Any stationary (~~thermal power plant with generating capacity~~  
24 ~~of two hundred fifty thousand kilowatts or more, measured using maximum~~  
25 ~~continuous electric generating capacity, less minimum auxiliary load,~~  
26 ~~at average ambient temperature and pressure, and)) or floating thermal  
27 power plants ((~~of fifty thousand kilowatts or more~~)), including  
28 associated facilities;~~

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

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

39 (d) Any underground reservoir for receipt and storage of natural  
gas as defined in RCW 80.40.010 capable of delivering an average of

1 more than one hundred million standard cubic feet of natural gas per  
2 day; and

3 (e) Facilities capable of processing more than twenty-five thousand  
4 barrels per day of petroleum into refined products((~~+~~)).

5 (15) "Land use plan" means a comprehensive plan or land use element  
6 thereof adopted by a unit of local government pursuant to chapters  
7 35.63, 35A.63, or 36.70 RCW((~~+~~)).

8 (16) "Zoning ordinance" means an ordinance of a unit of local  
9 government regulating the use of land and adopted pursuant to chapters  
10 35.63, 35A.63, or 36.70 RCW or Article XI of the state Constitution.

11 **Sec. 2.** RCW 80.50.030 and 1996 c 186 s 108 are each amended to  
12 read as follows:

13 (1) There is created and established the energy facility site  
14 evaluation council.

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

26 (b) The ((~~chairman~~)) chair or a designee shall execute all official  
27 documents, contracts, and other materials on behalf of the council.  
28 The Washington state department of community, trade, and economic  
29 development shall provide all administrative and staff support for the  
30 council. The director of the department of community, trade, and  
31 economic development has supervisory authority over the staff of the  
32 council and shall employ such personnel as are necessary to implement  
33 this chapter. Not more than three such employees may be exempt from  
34 chapter 41.06 RCW.

35 (3) The council shall consist of the directors, administrators, or  
36 their designees, of the following departments, agencies, commissions,  
37 and committees or their statutory successors:

38 (a) Department of ecology;

1 (b) Department of fish and wildlife;  
2 (c) Department of health;  
3 (d) ~~((Military department;~~  
4 ~~(e))~~) Department of community, trade, and economic development;  
5 ~~((f))~~ (e) Utilities and transportation commission(~~(~~  
6 ~~(g) Department of natural resources;~~  
7 ~~(h) Department of agriculture;~~  
8 ~~(i) Department of transportation))~~.

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

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

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

33 NEW SECTION. **Sec. 3.** A new section is added to chapter 80.50 RCW  
34 to read as follows:

35 The council shall actively seek to implement the intent of this  
36 chapter as set forth in RCW 80.50.010 by diligently and expediently  
37 facilitating the siting of energy facilities to meet present and  
38 emergent energy supply needs.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 80.50 RCW  
2 to read as follows:

3        The council may only develop rules, policies, procedures,  
4 guidelines, or operating protocols that are based directly on, and no  
5 more stringent than state statutory or administrative code authority,  
6 and the standards and criteria set forth therein. A site certification  
7 agreement may not require compliance with air quality, water quality,  
8 or health protection measures unless such compliance is based on and no  
9 more stringent than standards adopted into state statute or the  
10 Washington Administrative Code.

11        **Sec. 5.**    RCW 80.50.060 and 1977 ex.s. c 371 s 5 are each amended to  
12 read as follows:

13        (1) The provisions of this chapter shall apply to the construction  
14 of energy facilities which includes the new construction of energy  
15 facilities and the reconstruction or enlargement of existing energy  
16 facilities where the net increase in physical capacity or dimensions  
17 resulting from such reconstruction or enlargement meets or exceeds  
18 those capacities or dimensions set forth in RCW 80.50.020 (7) and  
19 (~~((+17))~~) (14), as now or hereafter amended. No construction of such  
20 energy facilities may be undertaken, except as otherwise provided in  
21 this chapter, after July 15, 1977, without first obtaining  
22 certification in the manner provided in this chapter.

23        (2) However, this chapter does not apply to the new construction of  
24 electrical generating facilities that opt not to be sited under the  
25 provisions of this chapter.

26        (3) The provisions of this chapter shall not apply to normal  
27 maintenance and repairs which do not increase the capacity or  
28 dimensions beyond those set forth in RCW 80.50.020 (7) and (~~((+17))~~)  
29 (14), as now or hereafter amended.

30        (~~((+3))~~) (4) Applications for certification of energy facilities  
31 made prior to July 15, 1977, shall continue to be governed by the  
32 applicable provisions of law in effect on the day immediately preceding  
33 July 15, 1977, with the exceptions of RCW 80.50.190 and 80.50.071 which  
34 shall apply to such prior applications and to site certifications  
35 prospectively from July 15, 1977.

36        (~~((+4))~~) (5) Applications for certification shall be upon forms  
37 prescribed by the council and shall be supported by such information  
38 and technical studies as the council may require.

1       **Sec. 6.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to  
2 read as follows:

3       (1) The council shall report to the governor its recommendations as  
4 to the approval or rejection of an application for certification within  
5 (~~twelve~~) six months of receipt by the council of such an application,  
6 or such later time as is mutually agreed by the council and the  
7 applicant. If the council recommends approval of an application for  
8 certification, it shall also submit a draft certification agreement  
9 with the report. The council shall include conditions in the draft  
10 certification agreement to implement the provisions of this chapter,  
11 including, but not limited to, conditions to protect state or local  
12 governmental or community interests affected by the construction or  
13 operation of the energy facility, and conditions designed to recognize  
14 the purpose of laws or ordinances, or rules or regulations promulgated  
15 thereunder, that are preempted or superseded pursuant to RCW 80.50.110  
16 as now or hereafter amended.

17       (2) Within (~~sixty~~) thirty days of receipt of the council's report  
18 the governor shall take one of the following actions:

19       (a) Approve the application and execute the draft certification  
20 agreement; or

21       (b) Reject the application; or

22       (c) Direct the council to reconsider certain aspects of the draft  
23 certification agreement.

24       The council shall reconsider such aspects of the draft  
25 certification agreement by reviewing the existing record of the  
26 application or, as necessary, by reopening the adjudicative proceeding  
27 for the purposes of receiving additional evidence. Such  
28 reconsideration shall be conducted expeditiously. The council shall  
29 resubmit the draft certification to the governor incorporating any  
30 amendments deemed necessary upon reconsideration within ninety days of  
31 receipt of such direction for reconsideration. Within (~~sixty~~)  
32 fifteen days of receipt of such draft certification agreement, the  
33 governor shall either approve the application and execute the  
34 certification agreement or reject the application. The certification  
35 agreement shall be binding upon execution by the governor and the  
36 applicant.

37       (3) The rejection of an application for certification by the  
38 governor shall be final as to that application but shall not preclude

1 submission of a subsequent application for the same site on the basis  
2 of changed conditions or new information.

3 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
4 preservation of the public peace, health, or safety, or support of the  
5 state government and its existing public institutions, and takes effect  
6 immediately.

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