

SHB 1081 - S COMM AMD

By Committee on Energy, Natural Resources & Marine Waters

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 80.50.040 and 2001 c 214 s 6 are each amended to read  
4 as follows:

5 The council shall have the following powers:

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

10 (2) To develop and apply environmental and ecological guidelines in  
11 relation to the type, design, location, construction, and operational  
12 conditions of certification of energy facilities subject to this  
13 chapter;

14 (3) To establish rules of practice for the conduct of public  
15 hearings pursuant to the provisions of the administrative procedure  
16 act, as found in chapter 34.05 RCW;

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

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

21 (6) To make and contract, when applicable, for independent studies  
22 of sites proposed by the applicant;

23 (7) To conduct hearings on the proposed location of the energy  
24 facilities;

25 (8) To prepare written reports to the governor which shall include:

26 (a) A statement indicating whether the application is in compliance  
27 with the council's guidelines, (b) criteria specific to the site and  
28 transmission line routing, (c) a council recommendation as to the  
29 disposition of the application, and (d) a draft certification agreement  
30 when the council recommends approval of the application;

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

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

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

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

31 (13) To serve as an interagency coordinating body for energy-  
32 related issues; and

33 (14) To issue site permits, using generally established safety  
34 standards, mitigation requirements, environmental regulations, and  
35 building code standards as provided under section 6 of this act, for  
36 the construction, reconstruction, or enlargement of small alternative  
37 energy resource facilities.

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

3       (1) The provisions of this chapter apply to the construction of  
4 energy facilities which includes the new construction of energy  
5 facilities and the reconstruction or enlargement of existing energy  
6 facilities where the net increase in physical capacity or dimensions  
7 resulting from such reconstruction or enlargement meets or exceeds  
8 those capacities or dimensions set forth in RCW 80.50.020 (~~((7) and~~  
9 ~~(15))~~) (12) and (21). No construction of such energy facilities may be  
10 undertaken, except as otherwise provided in this chapter, after July  
11 15, 1977, without first obtaining certification in the manner provided  
12 in this chapter.

13       (2) The provisions of this chapter apply to the construction,  
14 reconstruction, or enlargement of a new or existing energy facility  
15 that exclusively uses alternative energy resources and chooses to  
16 receive certification under this chapter, regardless of the generating  
17 capacity of the project.

18       (3)(a) The provisions of this chapter apply to the construction,  
19 reconstruction, or modification of electrical transmission facilities  
20 when:

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

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

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

36       (b) For the purposes of this subsection, "modify" means a  
37 significant change to an electrical transmission facility and does not  
38 include the following: (i) Minor improvements such as the replacement

1 of existing transmission line facilities or supporting structures with  
2 equivalent facilities or structures; (ii) the relocation of existing  
3 electrical transmission line facilities; (iii) the conversion of  
4 existing overhead lines to underground; or (iv) the placing of new or  
5 additional conductors, supporting structures, insulators, or their  
6 accessories on or replacement of supporting structures already built.

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

11 (5) Applications for certification of energy facilities made prior  
12 to July 15, 1977, shall continue to be governed by the applicable  
13 provisions of law in effect on the day immediately preceding July 15,  
14 1977, with the exceptions of RCW 80.50.190 and 80.50.071 which shall  
15 apply to such prior applications and to site certifications  
16 prospectively from July 15, 1977.

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

20 (7) The provisions of this chapter apply to the installation of a  
21 small alternative energy resource facility if a person applies to the  
22 council in order to receive site certification for a small alternative  
23 energy resource facility under this chapter.

24 **Sec. 3.** RCW 80.50.071 and 2011 c 261 s 1 are each amended to read  
25 as follows:

26 (1) The council shall receive all applications for energy facility  
27 site certification. Except as provided under sections 6 and 7 of this  
28 act, each applicant shall pay such reasonable costs as are actually and  
29 necessarily incurred by the council in processing an application.

30 (a) Each applicant shall, at the time of application submission,  
31 deposit fifty thousand dollars, or such greater amount as may be  
32 specified by the council after consultation with the applicant. Costs  
33 that may be charged against the deposit include, but are not limited  
34 to, independent consultants' costs, councilmember's wages, employee  
35 benefits, costs of a hearing examiner, costs of a court reporter, staff  
36 salaries, wages and employee benefits, goods and services, travel

1 expenses, and miscellaneous direct expenses as arise directly from  
2 processing an application.

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

8 (c) The council shall submit to each applicant a statement of such  
9 expenditures made during the preceding calendar quarter which shall be  
10 in sufficient detail to explain such expenditures. The applicant shall  
11 pay the state treasurer the amount of such statement to restore the  
12 total amount on deposit to the originally established level: PROVIDED,  
13 That such applicant may, at the request of the council, increase the  
14 amount of funds on deposit to cover anticipated expenses during peak  
15 periods of application processing. Any funds remaining unexpended at  
16 the conclusion of application processing shall be refunded to the  
17 applicant, or at the applicant's option, credited against required  
18 deposits of certificate holders.

19 (2) Each certificate holder shall pay such reasonable costs as are  
20 actually and necessarily incurred by the council for inspection and  
21 determination of compliance by the certificate holder with the terms of  
22 the certification relative to monitoring the effects of construction,  
23 operation, and site restoration of the facility.

24 (a) Each certificate holder, within thirty days of execution of the  
25 site certification agreement, shall have on deposit fifty thousand  
26 dollars, or such greater amount as may be specified by the council  
27 after consultation with the certificate holder. Costs that may be  
28 charged against the deposit include, but are not limited to, those  
29 specified in subsection (1)(a) of this section as arise from inspection  
30 and determination of compliance by the certificate holder with the  
31 terms of the certification.

32 (b) The council shall submit to each certificate holder a statement  
33 of such expenditures actually made during the preceding calendar  
34 quarter which shall be in sufficient detail to explain such  
35 expenditures. The certificate holder shall pay the state treasurer the  
36 amount of such statement to restore the total amount on deposit to the  
37 originally established level: PROVIDED, That if the actual

1 expenditures for inspection and determination of compliance in the  
2 preceding calendar quarter have exceeded the amount of funds on  
3 deposit, such excess costs shall be paid by the certificate holder.

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

10 (4) All payments required of the applicant or certificate holder  
11 under this section are to be made to the state treasurer who shall make  
12 payments as instructed by the council from the funds submitted. All  
13 such funds shall be subject to state auditing procedures. Any  
14 unexpended portions thereof shall be returned to the applicant or  
15 certificate holder.

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

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

24 (ii) The location of the site;

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

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

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

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

1 (c) In order to assist local governments required to notify the  
2 United States department of defense under RCW 35.63.270, 35A.63.290,  
3 and 36.01.320, the council shall post on its web site the appropriate  
4 information for contacting the United States department of defense.

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

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

12 (2) Subsequent to the informational public hearing, the council  
13 shall conduct a public hearing to determine whether or not the proposed  
14 site is consistent and in compliance with city, county, or regional  
15 land use plans or zoning ordinances. If it is determined that the  
16 proposed site does conform with existing land use plans or zoning  
17 ordinances in effect as of the date of the application, the city,  
18 county, or regional planning authority shall not thereafter change such  
19 land use plans or zoning ordinances so as to affect the proposed site.

20 (3) Prior to the issuance of a council recommendation to the  
21 governor under RCW 80.50.100 a public hearing, conducted as an  
22 adjudicative proceeding under chapter 34.05 RCW, the administrative  
23 procedure act, shall be held. At such public hearing any person shall  
24 be entitled to be heard in support of or in opposition to the  
25 application for certification.

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

28 (5) This section does not apply to sections 6 and 7 of this act.

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

31 (1)(a) The council shall report to the governor its recommendations  
32 as to the approval or rejection of an application for certification  
33 within twelve months of receipt by the council of such an application,  
34 or such later time as is mutually agreed by the council and the  
35 applicant.

1 (b) In the case of an application filed prior to December 31, 2025,  
2 for certification of an energy facility proposed for construction,  
3 modification, or expansion for the purpose of providing generating  
4 facilities that meet the requirements of RCW 80.80.040 and are located  
5 in a county with a coal-fired electric (~~(generating [generation])~~)  
6 generation facility subject to RCW 80.80.040(3)(c), the council shall  
7 expedite the processing of the application pursuant to RCW 80.50.075  
8 and shall report its recommendations to the governor within one hundred  
9 eighty days of receipt by the council of such an application, or a  
10 later time as is mutually agreed by the council and the applicant.

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

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

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

25 (ii) Reject the application; or

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

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



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

5 (5) This section does not apply to sections 6 and 7 of this act.

6 NEW SECTION. **Sec. 6.** A new section is added to chapter 80.50 RCW  
7 to read as follows:

8 (1) A person may apply to the council for a site permit for a small  
9 alternative energy resource facility if one or more of the following  
10 conditions is met:

11 (a) The facility is located in a county or municipality that has  
12 not adopted ordinances for the permitting of small alternative energy  
13 resource facilities;

14 (b) The facility is located in a county or municipality that has  
15 not updated its ordinances for the permitting of small alternative  
16 energy resource facilities in over ten years from the effective date of  
17 this section; or

18 (c) The county or municipal permitting process for a proposed small  
19 alternative energy resource facility exceeds one year from time of  
20 application and the proposed facility meets generally established  
21 standards, requirements, and regulations as determined under this  
22 section.

23 (2) A site permit issued under this section may not preempt the  
24 following: (a) Any provision of chapter 80.60 RCW; (b) any law, rule,  
25 or standard governing the reliability or safety of an electric  
26 utility's distribution or transmission system; or (c) any condition of  
27 interconnection required by an electric utility.

28 (3) The application for small alternative energy resource facility  
29 processing must be submitted to the council in the form and manner as  
30 may be determined by motion and vote of the council.

31 (4)(a) Any person, before submitting an application for a small  
32 alternative energy resource facility site permit, may submit a letter  
33 to the council to inquire as to whether a proposed small alternative  
34 energy resource facility would require mitigation and receive a written  
35 estimate from the council of the cost of processing the application.

36 (b) Within thirty days of receiving such a letter of inquiry, the

1 council must provide a response to what mitigation, at a minimum, might  
2 be required and a written estimate of the cost of processing the site  
3 permit application.

4 (5) The council shall develop a site permitting process for small  
5 alternative energy resource facilities.

6 (6)(a) The council must survey for and determine generally  
7 established safety standards, mitigation requirements, environmental  
8 regulations, and building code standards for each type of small  
9 alternative energy resource facility and adopt site permitting  
10 standards based on the council's review of these standards.

11 (b)(i) In surveying for and determining generally established  
12 standards, requirements, and regulations, the council must use existing  
13 local municipal and county small alternative energy resource facility  
14 ordinances in Washington adopted in the last ten years giving  
15 preference to ordinances established in neighboring jurisdictions to  
16 the jurisdiction where the small alternative energy resource facility  
17 is proposed.

18 (ii) If there are no existing local municipal and county ordinances  
19 in Washington relating to small alternative energy resource facilities  
20 adopted in the last ten years, then the council must use existing  
21 state, local, or municipal ordinances in the western electric  
22 coordinating council geographic area adopted in the last ten years.

23 (iii) If there are no existing state, local, or municipal  
24 ordinances relating to small alternative energy resource facilities in  
25 the western electric coordinating council geographic area adopted in  
26 the last ten years, then the council must use existing state, local, or  
27 municipal ordinances adopted in the United States in the last ten  
28 years.

29 (7) The council may charge a fee that covers the costs incurred by  
30 the council in reviewing a small alternative energy resource facility  
31 site permit and of compliance inspection costs delegated to local  
32 governments where compliance is not preempted by other state agencies  
33 by statute. The council must develop and charge a fee that provides  
34 the lowest possible cost to the applicant.

35 (8) The council may delegate authority to council staff, as deemed  
36 necessary by the council, to issue small alternative energy resource  
37 facility site permits.

1 (9) A small alternative energy resource facility site permit issued  
2 by the council under this section may not be revoked or superseded by  
3 any local ordinance adopted by the local jurisdiction after the permit  
4 is issued, even if the small alternative energy resource facility  
5 permitted under this section is inconsistent with the newly adopted  
6 local ordinance.

7 (10) For the purposes of this chapter, "small alternative energy  
8 resource facility" means an alternative energy resource that has an  
9 electrical generating capacity of not more than one hundred kilowatts.

10 NEW SECTION. **Sec. 7.** A new section is added to chapter 80.50 RCW  
11 to read as follows:

12 The council and any local government in the state may enter into,  
13 and are encouraged to enter into, an interlocal agreement as provided  
14 under chapter 39.34 RCW for the purpose of authorizing the council to  
15 issue permits for small alternative energy resource facilities within  
16 the geographic jurisdiction of the local government. The council may  
17 serve as the permitting authority for a local government if the local  
18 government determines that it would be more cost-effective for the  
19 council to permit small alternative energy resource facilities within  
20 their jurisdiction. Such an agreement supersedes the provisions  
21 provided under section 6(1) of this act.

22 NEW SECTION. **Sec. 8.** A new section is added to chapter 80.50 RCW  
23 to read as follows:

24 A permitting decision regarding a small alternative energy resource  
25 facility under section 6 of this act is subject to judicial review  
26 under chapter 34.05 RCW. A petition for a review of a permitting  
27 decision by the council must be filed within thirty days after the date  
28 of the permitting decision by the council.

29 NEW SECTION. **Sec. 9.** A new section is added to chapter 80.50 RCW  
30 to read as follows:

31 By December 31st of each year, the council must report to the  
32 appropriate energy committees of the legislature the number of small  
33 alternative energy resource facilities the council has sited. The  
34 report must specify the following information for each sited facility:  
35 Type, generating capacity, location, and total cost of the permit fee."

**SHB 1081** - S COMM AMD

By Committee on Energy, Natural Resources & Marine Waters

1        On page 1, line 1 of the title, after "siting;" strike the  
2 remainder of the title and insert "amending RCW 80.50.040, 80.50.060,  
3 80.50.071, and 80.50.100; reenacting and amending RCW 80.50.090; and  
4 adding new sections to chapter 80.50 RCW."

--- END ---