**1812-S2 AMH FITZ H2677.2 - NOT FOR FLOOR USE**

**2SHB 1812** - H AMD **1016**

By Representative Fitzgibbon

**ADOPTED AS AMENDED 02/13/2022**

Strike everything after the enacting clause and insert the following:

"**Sec.**  RCW 80.50.010 and 2001 c 214 s 1 are each amended to read as follows:

The legislature finds that the present and predicted growth in energy demands in the state of Washington requires ((~~the development of~~)) a procedure for the selection and ((~~utilization~~)) 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 ((~~such~~)) 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; ((~~and~~)) 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.

((~~(4)~~)) (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.

((~~(5)~~)) (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.

**Sec.**  RCW 80.50.020 and 2021 c 317 s 17 are each amended to read as follows:

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) ((~~landfill~~)) renewable natural gas; (e) wave or tidal action; ((~~or~~)) (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 ((~~intended for use as a transportation fuel~~)) 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) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars.

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

(9) "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.

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

(11) "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.

(12) "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;

(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; and

(g) Facilities capable of producing more than one thousand five hundred barrels per day of refined biofuel but less than twenty-five thousand barrels of refined biofuel.

(13) "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.

(14) "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.

(15) "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.

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

(17) "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 ((~~all transmission facilities~~)) any facility.

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

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

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

(21) "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 ((~~power~~)) energy regulatory commission.

(22) "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.

(23) "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;

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

(e) Equipment and products used at storage facilities.

(24) "Director" means the director of the energy facility site evaluation council appointed by the chair of the council in accordance with section 4 of this act.

(25)(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.

(26) "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.

(27) "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.

(28) "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.

(29) "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 or green electrolytic hydrogen for subsequent delivery or consumption.

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

(1) ((~~There is created and established the~~)) The energy facility site evaluation council is created and established.

(2)((~~(a)~~)) 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.

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

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

~~(i) Department of ecology;~~

~~(ii) Department of fish and wildlife;~~

~~(iii) Department of commerce;~~

~~(iv) Utilities and transportation commission; and~~

~~(v) Department of natural resources~~)) 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.

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

(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.

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

(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.

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

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, ((~~and~~)) 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 ((~~make and contract, when applicable, for independent studies of sites proposed by the applicant~~)) 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.

**Sec.**  RCW 80.50.060 and 2021 c 317 s 18 are each amended to read as follows:

(1) ((~~Except for biofuel refineries specified in RCW 80.50.020(12)(g), the~~)) (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 (12) and (21). No construction or reconstruction of such energy facilities may be undertaken, except as otherwise provided in this chapter, ((~~after July 15, 1977,~~)) without first obtaining certification in the manner provided in this chapter.

((~~(2) The provisions of this chapter apply to the construction, reconstruction, or enlargement of a new or existing biofuel refinery specified in RCW 80.50.020(12)(g) or a new or existing energy facility that exclusively uses alternative energy resources and chooses to receive certification under this chapter, regardless of the generating capacity of the project.~~

~~(3)~~)) (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) Biofuel refineries specified in RCW 80.50.020(12)(g);

(ii) Alternative energy resource facilities;

(iii) Electrical transmission facilities: (A) Of a nominal voltage of at least 150,000 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 the construction, reconstruction, or modification of electrical transmission facilities when((~~:~~

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

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

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

(b) For the purposes of this subsection, ((~~"modify"~~)) "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.

((~~(4)~~)) (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 (12) and (21).

((~~(5)~~)) (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 ((~~80.50.190 and~~)) 80.50.071 which shall apply to such prior applications and to site certifications prospectively from July 15, 1977.

((~~(6)~~)) (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.

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

(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.

**Sec.**  RCW 80.50.071 and 2016 sp.s. c 10 s 1 are each amended to read as follows:

(1) The council shall receive all applications for energy facility site certification. Each applicant shall pay actual costs incurred by the council ((~~and the utilities and transportation commission~~)) in processing an application.

(a) Each applicant shall, at the time of application submission, ((~~deposit with the utilities and transportation commission~~)) pay to the council for deposit into the energy facility site evaluation council account created in section 15 of this act an amount up to fifty thousand dollars, or such greater amount as specified by the council after consultation with the applicant. The council ((~~and the utilities and transportation commission~~)) shall charge costs against the deposit if the applicant withdraws its application and has not reimbursed ((~~the commission, on behalf of~~)) 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((~~, after consultation with the utilities and transportation commission,~~)) 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 utilities and transportation commission, on behalf of~~)) the council((~~,~~)) for actual expenditures that arise in considering the application, including the cost of any independent consultant study. The ((~~utilities and transportation commission, on behalf of 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 ((~~utilities and transportation commission~~)) council the amount of the invoice by the due date.

(2) Each certificate holder shall pay ((~~to the utilities and transportation commission~~)) 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, ((~~deposit with the utilities and transportation commission~~)) pay to the council for deposit into the energy facility site evaluation council account created in section 15 of this act an amount up to fifty thousand dollars, or such greater amount as specified by the council after consultation with the certificate holder. The council ((~~and the utilities and transportation commission~~)) shall charge costs against the deposit if the certificate holder ceases operations and has not reimbursed ((~~the commission, on behalf of~~)) 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 utilities and transportation commission, on behalf of~~)) the council((~~,~~)) for actual expenditures that arise in administering this chapter and determining compliance. The council((~~, after consultation with the utilities and transportation commission,~~)) 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 utilities and transportation commission~~)) 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 ((~~utilities and transportation commission who shall make payments as instructed by the council from the funds submitted~~)) council for deposit into the energy facility site evaluation council account created in section 15 of this act. 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, clean energy product manufacturing facility, 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.

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

(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((~~. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the city, county, or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site~~)) 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.

((~~(3)~~)) (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.

((~~(4)~~)) (6) Additional public hearings shall be held as deemed appropriate by the council in the exercise of its functions under this chapter.

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

(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 ((~~such~~)) 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 ((~~generating [generation]~~)) 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 or local governmental or community interests affected by the construction or operation of the ((~~energy~~)) 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 ((~~sixty~~)) 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 ((~~sixty~~)) 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.

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

(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) ((~~The council, upon request of any potential applicant, is authorized, as provided in this section, to conduct a preliminary study of any potential site prior to receipt of an application for site certification. A fee of ten thousand dollars for each potential site, to be applied toward the cost of any study agreed upon pursuant to subsection (3) of this section, shall accompany the request and shall be a condition precedent to any action on the request by the council.~~

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

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

~~(5) All payments required of the potential applicant under this section are to be made to the state treasurer, who in turn shall pay the consultant as instructed by the council. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the potential applicant.~~

~~(6) Nothing in this section shall change the requirements for an application for site certification or the requirement of payment of a fee as provided in RCW 80.50.071, or change the time for disposition of an application for certification as provided in RCW 80.50.100.~~

~~(7) Nothing in this section shall be construed as preventing a city or county from requiring any information it deems appropriate to make a decision approving a particular location.~~)) (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 section 15 of this act. 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.

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

(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.

**Sec.**  RCW 80.50.340 and 2007 c 325 s 4 are each amended to read as follows:

(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 ((~~sixty~~)) 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 section 15 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 41.06 RCW to read as follows:

In addition to the exemptions provided under RCW 41.06.070, the provisions of this chapter do not apply to the following positions at the energy facility site evaluation council: The director; the personal secretary to the director and the council chair; and up to two professional staff members.

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

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.

**Sec.**  RCW 43.79A.040 and 2021 c 175 s 10 and 2021 c 108 s 5 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments must occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Gina Grant Bull memorial legislative page scholarship account, the Rosa Franklin legislative internship program scholarship ((~~[account]~~)) account, the Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the county road administration board emergency loan account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the energy facility site evaluation council account, the fair fund, the family and medical leave insurance account, the fish and wildlife federal lands revolving account, the natural resources federal lands revolving account, the food animal veterinarian conditional scholarship account, the forest health revolving account, the fruit and vegetable inspection account, the educator conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the Washington history day account, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the low-income home rehabilitation revolving loan program account, the multiagency permitting team account, the northeast Washington wolf-livestock management account, the produce railcar pool account, the public use general aviation airport loan revolving account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state library-archives building account, the reduced cigarette ignition propensity account, the center for deaf and hard of hearing youth account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, the school employees' benefits board insurance reserve fund, the public employees' and retirees' insurance account, the school employees' insurance account, the long-term services and supports trust account, the radiation perpetual maintenance fund, the Indian health improvement reinvestment account, the department of licensing tuition recovery trust fund, the student achievement council tuition recovery trust fund, the tuition recovery trust fund, the industrial insurance premium refund account, the mobile home park relocation fund, the natural resources deposit fund, the Washington state health insurance pool account, the federal forest revolving account, and the library operations account.

(c) The following accounts and funds must receive ((~~eighty~~)) 80 percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advance right-of-way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

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

(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 the effective date of this section are transferred to the council as set forth in this act.

(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 section 15 of this act.

(b) Any appropriations made to the utilities and transportation commission for the council to carrying out its powers, functions, and duties transferred must, on the effective date of this section, 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 section 15 of this act.

(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 the effective date of this section.

(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.

**Sec.**  RCW 80.50.075 and 2006 c 205 s 2 are each amended to read as follows:

(1) Any person filing an application for certification of ((~~an energy facility or an alternative energy resource~~)) 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 ((~~energy~~)) 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 ((~~energy facility or alternative energy resource~~)) 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.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2022, in the omnibus appropriations act, this act is null and void.

NEW SECTION. **Sec.**  This act takes effect June 30, 2022.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 80.50.190 (Disposition of receipts from applicants) and 1977 ex.s. c 371 s 15; and

(2)RCW 80.50.904 (Effective date—1996 c 4) and 1996 c 4 s 6."

Correct the title.

EFFECT: Retains the underlying second substitute bill except makes the following changes: Removes the option for up to two federally recognized tribes to appoint voting members to the Energy Facility Site Evaluation Council (EFSEC); requires the Chair of EFSEC to notify the Department of Archaeology and Historic Preservation (DAHP), among other required entities, when an application for project certification is received, and requires the DAHP to coordinate with affected federally recognized tribes and the applicant; includes a goal for the government-to-government consultation process; removes clean fuel from the definition of clean energy product manufacturing facilities; and clarifies that EFSEC's siting laws apply to facilities that choose to opt-into EFSEC's siting process.