
Environment & Energy Committee

HB 2429

Brief Description: Concerning the process to make recommendations for a project by the energy facility site evaluation council.

Sponsors: Representatives Ramel and Pollet.

<p>Brief Summary of Bill</p> <ul style="list-style-type: none">• Changes requirements for how the Energy Facility Site Evaluation Council must conduct its business, review energy facility site certification applications, and hold adjudicative proceedings.
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Hearing Date: 1/29/24

Staff: Megan McPhaden (786-7114).

Background:

The Energy Facility Site Evaluation Council.

The Energy Facility Site Evaluation Council (EFSEC) was established in 1970 to provide a single siting process for major energy facilities located in the state. The EFSEC coordinates all evaluation and licensing steps for siting certain energy facilities, as well as specifies the conditions of construction and operation. The EFSEC review and certification process must apply to the construction, reconstruction, and enlargement of certain energy facilities, such as nuclear power facilities, biorefineries, and certain electrical transmission facilities, with many specifications. Certain energy facilities, including those that use alternative energy resources such as wind or solar energy and clean energy product manufacturing facilities, may opt into the EFSEC process.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Members Needed to Conduct Business.

For the EFSEC to conduct business, a majority of members, which is a quorum, is needed. Along with the chair, the permanent membership of the EFSEC consists of representatives from five state agencies: the departments of Commerce, Ecology, Fish and Wildlife, and Natural Resources, and the Utilities and Transportation Commission. Four other departments—Agriculture, Health, Transportation, and Military—may each choose to participate in the EFSEC for a particular project. Cities, counties, and port districts must also appoint members to the EFSEC to review proposed facilities located in their jurisdictions.

Review of Applications and Report to the Governor.

The EFSEC must receive all applications for energy facility site certification. After evaluating an application, the EFSEC submits a recommendation either approving or rejecting an application to the Governor, who makes the final decision on site certification. This recommendation must be reported to the Governor within 12 months of receipt of an application deemed complete by the Director, or at a later time if agreed to by the applicant and the EFSEC. The recommendation must include a draft certification agreement, which must include various conditions including conditions to protect state, local, community interests, and overburdened communities affected by the construction or operation of the energy facility. If approved by the Governor, a site certification agreement is issued in lieu of any other individual state or local agency permits.

Any person filing an application for certification may apply for expedited processing, but there are certain facility applications that the EFSEC must automatically expedite the processing of and report recommendations to the Governor within 180 days of application receipt. These certain facilities are those that: (1) meet the state's greenhouse gas emissions performance standard for electric generation plants, (2) are to be sited in a county where a coal-fired baseload electric generation facility that emitted more than 1 million tons of greenhouse gas in any calendar year prior to 2008 is located, and (3) have an application filed before December 31, 2025.

After the EFSEC receives an application the Attorney General must appoint an Assistant Attorney General to represent the public as a Counsel for the Environment.

Public Hearings.

In reviewing an application for site certification and before issuing a certification recommendation to the Governor, the EFSEC must hold three sequential public hearings: (1) an informational hearing, (2) a land use and zoning ordinance hearing, and (3) a public hearing conducted as an adjudicative proceeding.

There will be a public comment period before the adjudicative proceeding. During the adjudicative proceeding, anyone may raise one or more specific issues but only as long as they

raised the issue or issues in writing with specificity during the application review process or during the public comment period prior to the start of this hearing.

State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. If an initial review of the checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact, known as a threshold determination, the proposal must undergo a more comprehensive environmental analysis in the form of an Environmental Impact Statement (EIS). If the SEPA review process identifies significant adverse environmental impacts, the lead agency may deny a government decision or may require mitigation for identified environmental impacts.

Summary of Bill:

Members Needed to Conduct Business.

The Energy Facility Site Evaluation Council's (EFSEC) business may be conducted only by a majority consensus by a quorum of the EFSEC members, and no single member of the EFSEC may unilaterally conduct the EFSEC's businesses.

Review of Applications and Report to the Governor.

Applications received by the EFSEC must contain sufficient information for the EFSEC to complete an evaluation of all potential impacts under the State Environmental Policy Act (SEPA). If an application does not contain enough information for the EFSEC to make a threshold determination, EFSEC must reject and not process the application until sufficient information is submitted.

The timeline by which the EFSEC must report recommendations to the Governor is extended by 12 months to 24 months after receipt of an application.

If an applicant makes substantive changes to the scope or design of an energy facility under review for certification, the time limits processing an application and reporting recommendations to the Governor must restart, both for regular processing of applications and expedited processing of applications.

Adjudicative Proceedings.

The EFSEC must complete its SEPA environmental analysis, including final environmental

impact statements when applicable, before any adjudicative proceeding may be held.

If the EFSEC conducts an adjudicative proceeding, the Counsel for the Environment must take a position on the application for site certification in the adjudication's final briefing. The position must be one of full support, qualified support with recommended modifications, or opposition.

A person who may raise issues at the adjudicative proceeding may call on any witness with relevant information, without limitation by the witness's personal or professional affiliation or employment, except for the EFSEC members or the EFSEC staff.

Appropriation: None.

Fiscal Note: Requested on January 23, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.