
HOUSE BILL 1123

State of Washington

68th Legislature

2023 Regular Session

By Representatives Dye, Klicker, Walsh, and Schmick

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1 AN ACT Relating to supporting local and tribal control of clean
2 energy facility siting by altering the authority of the energy
3 facility site evaluation council; amending RCW 80.50.060 and
4 80.50.100; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes that the
7 national environmental policy act set a goal that government actions
8 affecting the environment should assure for all Americans safe,
9 healthful, productive, and esthetically and culturally pleasing
10 surroundings and should seek to preserve important historic,
11 cultural, and natural aspects of our national heritage, as found in
12 42 U.S.C. Sec. 4331(b)(2) and (4). The legislature finds that it is
13 fully in keeping with this tradition of environmentalism for counties
14 and tribes to express positions of concern about the local impacts of
15 siting of utility-scale wind and solar facilities, either
16 individually or in their overall cumulative impact. The legislature
17 recognizes that in many cases these counties and tribes may support
18 the siting of carbon-free clean energy facilities and the state's
19 decarbonization goals, but seek to achieve that outcome in a manner
20 that is less disruptive to land use, custom, culture, esthetics, and
21 the economic stability of the local community.

1 The legislature finds that there are multiple viable paths to
2 decarbonization, for example, through energy efficiency,
3 conservation, green hydrogen, and carbon-free nuclear energy. The
4 legislature also recognizes that there are limits to the land use
5 impact one part of the state that is abundant in solar and wind
6 resources should be asked to bear to support the energy needs of
7 another part of the state that does not experience that land use
8 impact. Nuclear energy facilities use dramatically less acreage to
9 produce dramatically more reliable, safe, and affordable energy with
10 less impact to wildlife and can be a reasonable alternative to land-
11 use intensive intermittent energy facilities that provide little in
12 the way of full-time, on-site employment after construction.

13 Therefore, to properly balance the state interest in
14 decarbonizing the economy with our heritage of local control of land-
15 use decisions, when a local tribe or county adopts a resolution
16 supporting the siting of an equal or greater amount of carbon-free
17 energy from nuclear energy in lieu of a specific solar or wind
18 project that has submitted an application for siting at the energy
19 facility site evaluation council, the state shall respect that
20 decision and be barred from overriding local concerns on that
21 specific project.

22 **Sec. 2.** RCW 80.50.060 and 2022 c 183 s 6 are each amended to
23 read as follows:

24 (1)(a) The provisions of this chapter apply to the construction
25 of energy facilities which includes the new construction of energy
26 facilities and the reconstruction or enlargement of existing energy
27 facilities where the net increase in physical capacity or dimensions
28 resulting from such reconstruction or enlargement meets or exceeds
29 those capacities or dimensions set forth in RCW 80.50.020 (14) and
30 (29). No construction or reconstruction of such energy facilities may
31 be undertaken, except as otherwise provided in this chapter, without
32 first obtaining certification in the manner provided in this chapter.

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

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

39 (ii) Alternative energy resource facilities;

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

5 (iv) Clean energy product manufacturing facilities; and

6 (v) Storage facilities.

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

11 (2)(a) The provisions of this chapter must apply to the
12 construction, reconstruction, or modification of electrical
13 transmission facilities when the facilities are located in a national
14 interest electric transmission corridor as specified in RCW
15 80.50.045.

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

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

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

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

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

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

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

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

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

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

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

29 (9) The department of archaeology and historic preservation shall
30 coordinate with the affected federally recognized tribes and the
31 applicant in order to assess potential effects to tribal cultural
32 resources, archaeological sites, and sacred sites.

33 (10)(a) If the legislative authority of a county, or an affected
34 federally recognized tribe as described in subsection (8) of this
35 section, has adopted a resolution expressing that the community or
36 tribe prefers to support a transition to a clean energy future by
37 welcoming the siting of a nuclear energy facility of equal or greater
38 generating capacity than a wind or solar energy facility, then the
39 council may not recommend that a proposed wind or solar energy
40 facility be sited in that county or affected tribal area.

1 (b) For the purposes of this subsection, a resolution must be
2 adopted no later than 120 days after the council receives an
3 application for certification under this chapter.

4 **Sec. 3.** RCW 80.50.100 and 2022 c 183 s 10 are each amended to
5 read as follows:

6 (1)(a) The council shall report to the governor its
7 recommendations as to the approval or rejection of an application for
8 certification within (~~twelve~~) 12 months of receipt by the council
9 of an application deemed complete by the director, or such later time
10 as is mutually agreed by the council and the applicant.

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

13 (c) In the case of an application filed prior to December 31,
14 2025, for certification of an energy facility proposed for
15 construction, modification, or expansion for the purpose of providing
16 generating facilities that meet the requirements of RCW 80.80.040 and
17 are located in a county with a coal-fired electric generation
18 facility subject to RCW 80.80.040(3)(c), the council shall expedite
19 the processing of the application pursuant to RCW 80.50.075 and shall
20 report its recommendations to the governor within (~~one hundred~~
21 ~~eighty~~) 180 days of receipt by the council of such an application,
22 or a later time as is mutually agreed by the council and the
23 applicant.

24 (d) The council may not recommend approval of an application for
25 certification of a wind or solar energy facility to the governor if
26 the legislative authority of a county or an affected federally
27 recognized tribe objects in accordance with the requirements of RCW
28 80.50.060(10).

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

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

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

5 (ii) Reject the application; or

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

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

19 (c) The governor may not approve an application for certification
20 of a wind or solar energy facility if the legislative authority of a
21 county or an affected federally recognized tribe objects in
22 accordance with the requirements of RCW 80.50.060(10).

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

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