
SENATE BILL 6410

State of Washington

56th Legislature

2000 Regular Session

By Senators Spanel, Gardner, Brown, Franklin, Haugen, Bauer, Shin, B. Sheldon, Fraser, Kline, Costa, Eide, Fairley, Patterson, Rasmussen, Kohl-Welles, McAuliffe, Jacobsen, Prentice, Thibaudeau and Goings

Read first time 01/14/2000. Referred to Committee on Energy, Technology & Telecommunications.

1 AN ACT Relating to siting of pipelines and other energy facilities;
2 amending RCW 80.50.010, 80.50.040, 80.50.060, 80.50.071, 80.50.090,
3 80.50.105, and 80.50.110; reenacting and amending RCW 80.50.150; adding
4 new sections to chapter 80.50 RCW; creating a new section; providing an
5 effective date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The intent of this act is to adopt interim
8 measures concerning the siting of pipelines and other energy facilities
9 by the Washington state energy facility site evaluation council. The
10 legislature finds that these measures are necessary to protect the
11 public and the environment pending a complete review of the current
12 siting process for energy facilities.

13 **Sec. 2.** RCW 80.50.010 and 1996 c 4 s 1 are each amended to read as
14 follows:

15 The legislature finds that the present and predicted growth in
16 energy demands in the state of Washington requires the development of
17 a procedure for the selection and utilization of sites for energy
18 facilities and the identification of a state position with respect to

1 each proposed site. The legislature recognizes that the selection of
2 sites will have a significant impact upon the health, safety, and
3 welfare of the population, the location and growth of industry, the
4 ability to protect the environment, and the use of the natural
5 resources of the state.

6 It is the policy of the state of Washington to recognize the
7 pressing need for increased energy facilities, and to ensure through
8 available and reasonable methods, that the location and operation of
9 such facilities will produce minimal adverse effects on the
10 environment, ecology of the land and its wildlife, and the ecology of
11 state waters and their aquatic life.

12 It is the intent to seek courses of action that will balance the
13 increasing demands for energy facility location and operation in
14 conjunction with the broad interests of the public. Such action will
15 be based on these premises:

16 (1) To assure Washington state citizens that the need for such
17 facilities within the state is established prior to beginning the
18 siting process.

19 (2) To assure, where applicable, operational safeguards are at
20 least as stringent as the criteria established by the federal
21 government and are technically sufficient for their welfare and
22 protection.

23 ~~((+2))~~ (3) To assure that local siting and land use standards are
24 considered in the siting process, and that local franchise agreements
25 are not preempted in the process.

26 (4) To preserve and protect the quality of the environment; to
27 enhance the public's opportunity to enjoy the esthetic and recreational
28 benefits of the air, water and land resources; to promote air
29 cleanliness; and to pursue beneficial changes in the environment.

30 ~~((+3))~~ (5) To assure that applicants provide funding for the local
31 government participation in the siting process and the cost of the
32 associated environmental studies.

33 (6) To provide abundant energy at reasonable cost.

34 ~~((+4))~~ (7) To avoid costs of complete site restoration and
35 demolition of improvements and infrastructure at unfinished nuclear
36 energy sites, and to use unfinished nuclear energy facilities for
37 public uses, including economic development, under the regulatory and
38 management control of local governments and port districts.

1 **Sec. 3.** RCW 80.50.040 and 1990 c 12 s 4 are each amended to read
2 as follows:

3 The council shall have the following powers:

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

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

12 (3) To establish rules of practice for the conduct of public
13 hearings pursuant to the provisions of the Administrative Procedure
14 Act, as found in chapter 34.05 RCW;

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

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

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

21 (7) To conduct hearings on the proposed location of the energy
22 facilities;

23 (8) To prepare written reports to the governor which shall include:
24 (a) A statement indicating whether the application is in compliance
25 with the council's guidelines, (b) criteria specific to the site and
26 transmission line routing, (c) a council recommendation as to the
27 disposition of the application, and (d) a draft certification agreement
28 when the council recommends approval of the application;

29 (9) To prescribe the means for monitoring of the effects arising
30 from the construction and the operation of energy facilities to assure
31 continued compliance with terms of certification and/or permits issued
32 by the council pursuant to chapter 90.48 RCW or subsection (12) of this
33 section: PROVIDED, That any on-site inspection required by the council
34 shall be performed by other state agencies pursuant to interagency
35 agreement: PROVIDED FURTHER, That the council shall retain authority
36 for determining compliance relative to monitoring;

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

1 (11) To present state concerns and interests to other states,
2 regional organizations, and the federal government on the location,
3 construction, and operation of any energy facility which may affect the
4 environment, health, or safety of the citizens of the state of
5 Washington;

6 (12) To issue permits in compliance with applicable provisions of
7 the federally approved state implementation plan adopted in accordance
8 with the Federal Clean Air Act, as (~~now existing or hereafter~~
9 ~~amended~~) it exists on January 1, 2000, for the new construction,
10 reconstruction, or enlargement or operation of energy facilities:
11 PROVIDED, That such permits shall become effective only if the governor
12 approves an application for certification and executes a certification
13 agreement pursuant to this chapter: AND PROVIDED FURTHER, That all
14 such permits be conditioned upon compliance with all provisions of the
15 federally approved state implementation plan which apply to energy
16 facilities covered within the provisions of this chapter; and

17 (13) To serve as an interagency coordinating body for energy-
18 related issues.

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

21 The council shall adopt rules which describe the process for
22 determining whether the energy facility is needed within the state.
23 The process must include an opportunity for public participation.

24 NEW SECTION. **Sec. 5.** A new section is added to chapter 80.50 RCW
25 to read as follows:

26 Once the council determines that the applicant has demonstrated the
27 facility is needed within the state, the council may begin an informal
28 proceeding to determine whether the project is consistent with the
29 state environmental policy act under chapter 43.21C RCW.

30 **Sec. 6.** RCW 80.50.060 and 1977 ex.s. c 371 s 5 are each amended to
31 read as follows:

32 (1) The provisions of this chapter shall apply to the construction
33 of energy facilities which includes the new construction of energy
34 facilities and the reconstruction or enlargement of existing energy
35 facilities where the net increase in physical capacity or dimensions
36 resulting from such reconstruction or enlargement meets or exceeds

1 those capacities or dimensions set forth in RCW 80.50.020 (7) and
2 (~~((17), as now or hereafter amended))~~ (14). No construction of such
3 energy facilities may be undertaken, except as otherwise provided in
4 this chapter, (~~((after July 15, 1977,))~~) without first obtaining
5 certification in the manner provided in this chapter.

6 (2) The provisions of this chapter shall not apply to normal
7 maintenance and repairs which do not increase the capacity or
8 dimensions beyond those set forth in RCW 80.50.020 (7) and (~~((17), as
9 now or hereafter amended))~~ (14).

10 (3) Applications for certification of energy facilities made
11 (~~((prior to July 15, 1977 shall continue to be governed by the
12 applicable provisions of law in effect on the day immediately preceding
13 July 15, 1977 with the exceptions of RCW 80.50.190 and 80.50.071 which
14 shall apply to such prior applications and to site certifications
15 prospectively from July 15, 1977))~~) after January 1, 2000, and prior to
16 August 1, 2001, shall vest to any standards or requirements in effect
17 on August 1, 2001, or upon the issuance of a certificate by the
18 council, whichever comes first.

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

22 **Sec. 7.** RCW 80.50.071 and 1977 ex.s. c 371 s 16 are each amended
23 to read as follows:

24 (1) The council shall receive all applications for energy facility
25 site certification. The following fees or charges for application
26 processing or certification monitoring shall be paid by the applicant
27 or certificate holder:

28 (a) A fee of twenty-five thousand dollars for each proposed site,
29 to be applied toward the cost of the independent consultant study
30 authorized in this subsection, shall accompany the application and
31 shall be a condition precedent to any further consideration or action
32 on the application by the council. The council shall commission its
33 own independent consultant study to measure the consequences of the
34 proposed energy facility on the environment for each site application.
35 The council shall direct the consultant to study any matter which it
36 deems essential to an adequate appraisal of the site. The full cost of
37 the study shall be paid by the applicant: PROVIDED, That said costs
38 exceeding a total of the twenty-five thousand dollars paid pursuant to

1 subsection (1)(a) of this section shall be payable (~~subject to~~) by
2 the applicant (~~giving prior approval to such excess amount~~) as
3 provided in this section.

4 (b)(i) Each applicant shall, in addition to the costs of the
5 independent consultant provided by subsection (1)(a) of this section,
6 pay such reasonable costs as are actually and necessarily incurred by
7 the council in processing the application. Such costs shall include,
8 but are not limited to, costs of a hearing examiner, a court reporter,
9 additional staff salaries, wages and employee benefits, goods and
10 services, travel expenses within the state and miscellaneous expenses,
11 as arise directly from processing such application.

12 (ii) Each applicant shall, at the time of application submission,
13 deposit twenty thousand dollars, or such lesser amount as may be
14 specified by council rule, to cover costs provided for by subsection
15 (1)(b)(i) of this section. Reasonable and necessary costs of the
16 council directly attributable to application processing shall be
17 charged against such deposit.

18 (iii) The council shall submit to each applicant a statement of
19 such expenditures actually made during the preceding calendar quarter
20 which shall be in sufficient detail to explain such expenditures. The
21 applicant shall pay the state treasurer the amount of such statement to
22 restore the total amount on deposit to the originally established
23 level: PROVIDED, That such applicant may, at the request of the
24 council, increase the amount of funds on deposit to cover anticipated
25 expenses during peak periods of application processing. Any funds
26 remaining unexpended at the conclusion of application processing shall
27 be refunded to the applicant, or at the applicant's option, credited
28 against required deposits of certificate holders.

29 (c)(i) Each certificate holder shall pay such reasonable costs as
30 are actually and necessarily incurred by the council for inspection and
31 determination of compliance by the certificate holder with the terms of
32 the certification relative to monitoring the effects of construction
33 and operation of the facility.

34 (ii) Each certificate holder, within thirty days of execution of
35 the site certification agreement, shall deposit twenty thousand
36 dollars, or such other amount as may be specified by council rule, to
37 cover costs provided for by subsection (1)(c)(i) of this section.
38 Reasonable and necessary costs of the council directly attributable to
39 inspection and determination of compliance by the certificate holder

1 with the terms of the certification relative to monitoring the effects
2 of construction and operation of the facility shall be charged against
3 such deposit.

4 (iii) The council shall submit to each certificate holder a
5 statement of such expenditures actually made during the preceding
6 calendar quarter which shall be in sufficient detail to explain such
7 expenditures. The certificate holder shall pay the state treasurer the
8 amount of such statement to restore the total amount on deposit to the
9 originally established level: PROVIDED, That if the actual,
10 reasonable, and necessary expenditures for inspection and determination
11 of compliance in the preceding calendar quarter have exceeded the
12 amount of funds on deposit, such excess costs shall be paid by the
13 certificate holder.

14 (d) A fee of twenty-five thousand dollars, or such greater amount
15 that may be specified by council rule, for each county in which the
16 facility will be sited. The fee shall accompany the application and
17 shall be a condition precedent to any further consideration or action
18 on the application by the council. The fee shall be applied toward the
19 cost of the county's independent environmental studies and the county's
20 actual cost of participating in the council's proceedings. The fee
21 shall be deposited with the state treasurer and dispersed upon the
22 request of the council after its approval of the county's billings.

23 (2) If an applicant or certificate holder fails to provide the
24 initial deposit, or if subsequently required payments are not received
25 within thirty days following receipt of the statement from the council,
26 the council may (a) in the case of the applicant, suspend processing of
27 the application until payment is received; or (b) in the case of a
28 certificate holder, suspend the certification.

29 (3) All payments required of the applicant or certificate holder
30 under this section are to be made to the state treasurer who shall make
31 payments as instructed by the council from the funds submitted. All
32 such funds shall be subject to state auditing procedures. Any
33 unexpended portions thereof shall be returned to the applicant or
34 certificate holder.

35 **Sec. 8.** RCW 80.50.090 and 1989 c 175 s 173 are each amended to
36 read as follows:

37 (1) The council shall conduct a public hearing in the county of the
38 proposed site within sixty days of receipt of an application for site

1 certification: PROVIDED, That the place of such public hearing shall
2 be as close as practical to the proposed site.

3 (2) The council must determine at the initial public hearing
4 whether ~~((or not))~~: (a) The facility is needed within the state and
5 county; and (b) the proposed site is consistent and in compliance with
6 county or regional land use plans or zoning ordinances. If it is
7 determined that the proposed site does conform with existing land use
8 plans or zoning ordinances in effect as of the date of the application,
9 the county or regional planning authority shall not thereafter change
10 such land use plans or zoning ordinances so as to affect the proposed
11 site.

12 (3) Prior to the issuance of a council recommendation to the
13 governor under RCW 80.50.100 a public hearing, conducted as an
14 adjudicative proceeding under chapter 34.05 RCW, the Administrative
15 Procedure Act, shall be held. At such public hearing any person shall
16 be entitled to be heard in support of or in opposition to the
17 application for certification.

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

20 **Sec. 9.** RCW 80.50.105 and 1991 c 200 s 1112 are each amended to
21 read as follows:

22 In making its recommendations to the governor under this chapter
23 regarding an application that includes transmission facilities for
24 petroleum products, the council shall give ~~((appropriate))~~ great weight
25 to city or county facility siting and land use standards ~~((adopted for~~
26 ~~the protection of sole source aquifers))~~.

27 **Sec. 10.** RCW 80.50.110 and 1975-'76 2nd ex.s. c 108 s 37 are each
28 amended to read as follows:

29 (1) If any provision of this chapter is in conflict with any other
30 provision, limitation, or restriction which is now in effect under any
31 other law of this state, or any rule or regulation promulgated
32 thereunder, this chapter shall govern and control and such other law or
33 rule or regulation promulgated thereunder shall be deemed superseded
34 for the purposes of this chapter.

35 (2) The state hereby preempts, with the exception of local
36 franchise agreements, the regulation and certification of the location,
37 construction, and operational conditions of certification of the energy

1 facilities included under RCW 80.50.060 ((as now or hereafter
2 amended)).

3 **Sec. 11.** RCW 80.50.150 and 1979 ex.s. c 254 s 2 and 1979 c 41 s 1
4 are each reenacted and amended to read as follows:

5 (1) The courts are authorized to grant such restraining orders, and
6 such temporary and permanent injunctive relief as is necessary to
7 secure compliance with this chapter and/or with a site certification
8 agreement issued pursuant to this chapter or a National Pollutant
9 Discharge Elimination System (hereafter in this section, NPDES) permit
10 issued by the council pursuant to chapter 90.48 RCW or any permit
11 issued pursuant to RCW 80.50.040(14). The court may assess civil
12 penalties in an amount not less than one thousand dollars per day nor
13 more than twenty-five thousand dollars per day for each day of
14 construction or operation in material violation of this chapter, or in
15 material violation of any site certification agreement issued pursuant
16 to this chapter, or in violation of any NPDES permit issued by the
17 council pursuant to chapter 90.48 RCW, or in violation of any permit
18 issued pursuant to RCW 80.50.040(14). The court may charge the
19 expenses of an enforcement action relating to a site certification
20 agreement under this section, including, but not limited to, expenses
21 incurred for legal services and expert testimony, against any person
22 found to be in material violation of the provisions of such
23 certification: PROVIDED, That the expenses of a person found not to be
24 in material violation of the provisions of such certification,
25 including, but not limited to, expenses incurred for legal services and
26 expert testimony, may be charged against the person or persons bringing
27 an enforcement action or other action under this section.

28 (2) Wilful violation of any provision of this chapter shall be a
29 gross misdemeanor.

30 (3) Wilful or criminally negligent, as defined in RCW
31 ((~~9A.08.010(1)(d)~~)) 9A.08.010(1)(d), violation of any provision of an
32 NPDES permit issued by the council pursuant to chapter 90.48 RCW or any
33 permit issued by the council pursuant to RCW 80.50.040(14) or any
34 emission standards promulgated by the council in order to implement the
35 Federal Clean Air Act and the state implementation plan with respect to
36 energy facilities under the jurisdiction provisions of this chapter
37 shall be deemed a crime, and upon conviction thereof shall be punished
38 by a fine of up to twenty-five thousand dollars per day and costs of

1 prosecution. Any violation of this subsection shall be a gross
2 misdemeanor.

3 (4) Any person knowingly making any false statement,
4 representation, or certification in any document in any NPDES form,
5 notice, or report required by an NPDES permit or in any form, notice,
6 or report required for or by any permit issued pursuant to RCW
7 (~~(80.50.090(14))~~) 80.50.040(14) shall be deemed guilty of a crime, and
8 upon conviction thereof shall be punished by a fine of up to ten
9 thousand dollars and costs of prosecution.

10 (5) Every person who violates the provisions of certificates and
11 permits issued or administered by the council shall incur, in addition
12 to any other penalty as provided by law, a penalty in an amount of up
13 to five thousand dollars a day for every such violation. Each and
14 every such violation shall be a separate and distinct offense, and in
15 case of a continuing violation, every day's continuance shall be and be
16 deemed to be a separate and distinct violation. Every act of
17 commission or omission which procures, aids, or abets in the violation
18 shall be considered a violation under the provisions of this section
19 and subject to the penalty provided in this section. The penalty
20 provided in this section shall be imposed by a notice in writing,
21 either by certified mail with return receipt requested or by personal
22 service, to the person incurring the same from the council describing
23 such violation with reasonable particularity. The council may, upon
24 written application therefor received within fifteen days after notice
25 imposing any penalty is received by the person incurring the penalty,
26 and when deemed in the best interest to carry out the purposes of this
27 chapter, remit or mitigate any penalty provided in this section upon
28 such terms as the council shall deem proper, and shall have authority
29 to ascertain the facts upon all such applications in such manner and
30 under such regulations as it may deem proper. Any person incurring any
31 penalty under this section may appeal the same to the council. Such
32 appeals shall be filed within thirty days of receipt of notice imposing
33 any penalty unless an application for remission or mitigation is made
34 to the council. When an application for remission or mitigation is
35 made, such appeals shall be filed within thirty days of receipt of
36 notice from the council setting forth the disposition of the
37 application. Any penalty imposed under this section shall become due
38 and payable thirty days after receipt of a notice imposing the same
39 unless application for remission or mitigation is made or an appeal is

1 filed. When an application for remission or mitigation is made, any
2 penalty incurred hereunder shall become due and payable thirty days
3 after receipt of notice setting forth the disposition of the
4 application unless an appeal is filed from such disposition. Whenever
5 an appeal of any penalty incurred hereunder is filed, the penalty shall
6 become due and payable only upon completion of all review proceedings
7 and the issuance of a final order confirming the penalty in whole or in
8 part. If the amount of any penalty is not paid to the council within
9 thirty days after it becomes due and payable, the attorney general,
10 upon the request of the council, shall bring an action in the name of
11 the state of Washington in the superior court of Thurston county or of
12 any county in which such violator may do business, to recover such
13 penalty. In all such actions the procedure and rules of evidence shall
14 be the same as an ordinary civil action except as otherwise provided in
15 this chapter. All penalties recovered under this section shall be paid
16 into the state treasury and credited to the general fund.

17 (6) Civil proceedings to enforce this chapter may be brought by the
18 attorney general or the prosecuting attorney of any county affected by
19 the violation on his own motion or at the request of the council.
20 Criminal proceedings to enforce this chapter may be brought by the
21 prosecuting attorney of any county affected by the violation on his own
22 motion or at the request of the council.

23 (7) The remedies and penalties in this section, both civil and
24 criminal, shall be cumulative and shall be in addition to any other
25 penalties and remedies available at law, or in equity, to any person.

26 NEW SECTION. **Sec. 12.** Sections 1 through 5 and 7 through 11 of
27 this act take effect July 1, 2000.

28 NEW SECTION. **Sec. 13.** Section 6 of this act is necessary for the
29 immediate preservation of the public peace, health, or safety, or
30 support of the state government and its existing public institutions,
31 and takes effect immediately.

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