

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1020

Chapter 196, Laws of 2006

59th Legislature
2006 Regular Session

ENERGY FACILITY SITE EVALUATION COUNCIL

EFFECTIVE DATE: 6/7/06

Passed by the House March 4, 2006
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate February 28, 2006
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved March 24, 2006.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1020** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

March 24, 2006 - 2:00 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1020

AS AMENDED BY THE SENATE

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By House Committee on Technology, Energy & Communications
(originally sponsored by Representatives Morris and B. Sullivan)

READ FIRST TIME 01/31/05.

1 AN ACT Relating to the energy facility site evaluation council;
2 amending RCW 80.50.020, 80.50.060, 80.50.071, and 80.50.090; adding a
3 new section to chapter 80.50 RCW; and creating a new section.

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

5 **Sec. 1.** RCW 80.50.020 and 2001 c 214 s 3 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Applicant" means any person who makes application for a site
10 certification pursuant to the provisions of this chapter.

11 (2) "Application" means any request for approval of a particular
12 site or sites filed in accordance with the procedures established
13 pursuant to this chapter, unless the context otherwise requires.

14 (3) "Person" means an individual, partnership, joint venture,
15 private or public corporation, association, firm, public service
16 company, political subdivision, municipal corporation, government
17 agency, public utility district, or any other entity, public or
18 private, however organized.

1 (4) "Site" means any proposed or approved location of an energy
2 facility.

3 (5) "Certification" means a binding agreement between an applicant
4 and the state which shall embody compliance to the siting guidelines,
5 in effect as of the date of certification, which have been adopted
6 pursuant to RCW 80.50.040 as now or hereafter amended as conditions to
7 be met prior to or concurrent with the construction or operation of any
8 energy facility.

9 (6) "Associated facilities" means storage, transmission, handling,
10 or other related and supporting facilities connecting an energy plant
11 with the existing energy supply, processing, or distribution system,
12 including, but not limited to, communications, controls, mobilizing or
13 maintenance equipment, instrumentation, and other types of ancillary
14 transmission equipment, off-line storage or venting required for
15 efficient operation or safety of the transmission system and overhead,
16 and surface or subsurface lines of physical access for the inspection,
17 maintenance, and safe operations of the transmission facility and new
18 transmission lines constructed to operate at nominal voltages in excess
19 of ~~((200,000))~~ 115,000 volts to connect a thermal power plant or
20 alternative energy facilities to the northwest power grid(~~(+—PROVIDED,~~
21 ~~That)~~). However, common carrier railroads or motor vehicles shall not
22 be included.

23 (7) "Transmission facility" means any of the following together
24 with their associated facilities:

25 (a) Crude or refined petroleum or liquid petroleum product
26 transmission pipeline of the following dimensions: A pipeline larger
27 than six inches minimum inside diameter between valves for the
28 transmission of these products with a total length of at least fifteen
29 miles;

30 (b) Natural gas, synthetic fuel gas, or ~~((liquified))~~ liquefied
31 petroleum gas transmission pipeline of the following dimensions: A
32 pipeline larger than fourteen inches minimum inside diameter between
33 valves, for the transmission of these products, with a total length of
34 at least fifteen miles for the purpose of delivering gas to a
35 distribution facility, except an interstate natural gas pipeline
36 regulated by the United States federal power commission;

37 (c) Electrical transmission facilities in excess of 115,000 volts
38 in national interest electric transmission corridors as designated by

1 the United States secretary of the department of energy or the federal
2 energy regulatory commission pursuant to section 1221 of the national
3 energy policy act, and such rules and regulations as the secretary or
4 the federal energy regulatory commission adopts to implement the act.

5 (8) "Independent consultants" means those persons who have no
6 financial interest in the applicant's proposals and who are retained by
7 the council to evaluate the applicant's proposals, supporting studies,
8 or to conduct additional studies.

9 (9) "Thermal power plant" means, for the purpose of certification,
10 any electrical generating facility using any fuel, including nuclear
11 materials, for distribution of electricity by electric utilities.

12 (10) "Energy facility" means an energy plant or transmission
13 facilities: PROVIDED, That the following are excluded from the
14 provisions of this chapter:

15 (a) Facilities for the extraction, conversion, transmission or
16 storage of water, other than water specifically consumed or discharged
17 by energy production or conversion for energy purposes; and

18 (b) Facilities operated by and for the armed services for military
19 purposes or by other federal authority for the national defense.

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

22 (12) "Counsel for the environment" means an assistant attorney
23 general or a special assistant attorney general who shall represent the
24 public in accordance with RCW 80.50.080.

25 (13) "Construction" means on-site improvements, excluding
26 exploratory work, which cost in excess of two hundred fifty thousand
27 dollars.

28 (14) "Energy plant" means the following facilities together with
29 their associated facilities:

30 (a) Any stationary thermal power plant with generating capacity of
31 three hundred fifty thousand kilowatts or more, measured using maximum
32 continuous electric generating capacity, less minimum auxiliary load,
33 at average ambient temperature and pressure, and floating thermal power
34 plants of one hundred thousand kilowatts or more, including associated
35 facilities. For the purposes of this subsection, "floating thermal
36 power plants" means a thermal power plant that is suspended on the
37 surface of water by means of a barge, vessel, or other floating
38 platform;

1 (b) Facilities which will have the capacity to receive
2 (~~liquefied~~) liquefied natural gas in the equivalent of more than one
3 hundred million standard cubic feet of natural gas per day, which has
4 been transported over marine waters;

5 (c) Facilities which will have the capacity to receive more than an
6 average of fifty thousand barrels per day of crude or refined petroleum
7 or (~~liquefied~~) liquefied petroleum gas which has been or will be
8 transported over marine waters, except that the provisions of this
9 chapter shall not apply to storage facilities unless occasioned by such
10 new facility construction;

11 (d) Any underground reservoir for receipt and storage of natural
12 gas as defined in RCW 80.40.010 capable of delivering an average of
13 more than one hundred million standard cubic feet of natural gas per
14 day; and

15 (e) Facilities capable of processing more than twenty-five thousand
16 barrels per day of petroleum into refined products.

17 (15) "Land use plan" means a comprehensive plan or land use element
18 thereof adopted by a unit of local government pursuant to chapter(~~s~~)
19 35.63, 35A.63, (~~or~~) 36.70, or 36.70A RCW.

20 (16) "Zoning ordinance" means an ordinance of a unit of local
21 government regulating the use of land and adopted pursuant to
22 chapter(~~s~~) 35.63, 35A.63, (~~or~~) 36.70, or 36.70A RCW or Article XI
23 of the state Constitution.

24 (17) "Alternative energy resource" means: (a) Wind; (b) solar
25 energy; (c) geothermal energy; (d) landfill gas; (e) wave or tidal
26 action; or (f) biomass energy based on solid organic fuels from wood,
27 forest, or field residues, or dedicated energy crops that do not
28 include wood pieces that have been treated with chemical preservatives
29 such as creosote, pentachlorophenol, or copper-chrome-arsenic.

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

32 NEW SECTION. Sec. 2. (1) Section 1221 of the national energy
33 policy act also authorizes a state siting authority, in those instances
34 where applicants seek a federal construction permit otherwise
35 authorized pursuant to section 1221 of the act, to assert jurisdiction
36 on the basis of existing state regulatory authority.

1 (2) Section 1221 of the national energy policy act further
2 authorizes a state siting authority to approve the siting of facilities
3 or consider the interstate benefits to be achieved by proposed
4 construction or modification as provided for in section
5 1221(b)(1)(A)(i)-(ii) of the act or other provisions of the act, or
6 rules and regulations implementing the act, and to convey the views and
7 recommendations regarding the need for and impact of a transmission
8 facility where the federal energy regulatory commission is determined
9 to have jurisdiction.

10 (3) Because the types of transmission facilities subject to section
11 1221 of the national energy policy act are not defined, and because the
12 legislature recognizes that the siting of electric transmission lines
13 at or below 115,000 volts has historically been regulated by local
14 governments in the state, the legislature finds that the 115,000 volt
15 threshold established in this act is appropriate to satisfy the
16 requirements of section 1221.

17 NEW SECTION. **Sec. 3.** A new section is added to chapter 80.50 RCW
18 to read as follows:

19 (1) The council shall consult with other state agencies, utilities,
20 local municipal governments, public interest groups, tribes, and other
21 interested persons to convey their views to the secretary and the
22 federal energy regulatory commission regarding appropriate limits on
23 federal regulatory authority in the siting of electrical transmission
24 corridors in the state of Washington.

25 (2) The council is designated as the state authority for purposes
26 of siting transmission facilities under the national energy policy act
27 of 2005 and for purposes of other such rules or regulations adopted by
28 the secretary. The council's authority regarding transmission
29 facilities is limited to those transmission facilities that are the
30 subject of section 1221 of the national energy policy act and this
31 chapter.

32 (3) For the construction and modification of transmission
33 facilities that are the subject of section 1221 of the national energy
34 policy act, the council may: (a) Approve the siting of the facilities;
35 and (b) consider the interstate benefits expected to be achieved by the
36 proposed construction or modification of the facilities in the state.

1 (4) When developing recommendations as to the disposition of an
2 application for the construction or modification of transmission
3 facilities under this chapter, the fuel source of the electricity
4 carried by the transmission facilities shall not be considered.

5 **Sec. 4.** RCW 80.50.060 and 2001 c 214 s 2 are each amended to read
6 as follows:

7 (1) The provisions of this chapter shall apply to the construction
8 of energy facilities which includes the new construction of energy
9 facilities and the reconstruction or enlargement of existing energy
10 facilities where the net increase in physical capacity or dimensions
11 resulting from such reconstruction or enlargement meets or exceeds
12 those capacities or dimensions set forth in RCW 80.50.020 (7) and (14).
13 No construction of such energy facilities may be undertaken, except as
14 otherwise provided in this chapter, after July 15, 1977, without first
15 obtaining certification in the manner provided in this chapter.

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

21 (3) The provisions of this chapter apply to the construction of new
22 electrical transmission facilities or the modification of existing
23 electrical transmission facilities in a national interest electric
24 transmission corridor designated by the secretary.

25 (4) The provisions of this chapter shall not apply to normal
26 maintenance and repairs which do not increase the capacity or
27 dimensions beyond those set forth in RCW 80.50.020 (7) and (14).

28 ((+4)) (5) Applications for certification of energy facilities
29 made prior to July 15, 1977 shall continue to be governed by the
30 applicable provisions of law in effect on the day immediately preceding
31 July 15, 1977 with the exceptions of RCW 80.50.190 and 80.50.071 which
32 shall apply to such prior applications and to site certifications
33 prospectively from July 15, 1977.

34 ((+5)) (6) Applications for certification shall be upon forms
35 prescribed by the council and shall be supported by such information
36 and technical studies as the council may require.

1 **Sec. 5.** RCW 80.50.071 and 1977 ex.s. c 371 s 16 are each amended
2 to read as follows:

3 (1) The council shall receive all applications for energy facility
4 site certification. The following fees or charges for application
5 processing or certification monitoring shall be paid by the applicant
6 or certificate holder:

7 (a) A fee of twenty-five thousand dollars for each proposed site,
8 to be applied toward the cost of the independent consultant study
9 authorized in this subsection, shall accompany the application and
10 shall be a condition precedent to any further consideration or action
11 on the application by the council. The council shall commission its
12 own independent consultant study to measure the consequences of the
13 proposed energy facility on the environment for each site application.
14 The council shall direct the consultant to study any matter which it
15 deems essential to an adequate appraisal of the site. The full cost of
16 the study shall be paid by the applicant: PROVIDED, That said costs
17 exceeding a total of the twenty-five thousand dollars paid pursuant to
18 subsection (1)(a) of this section shall be payable subject to the
19 applicant giving prior approval to such excess amount.

20 (b) Each applicant shall, in addition to the costs of the
21 independent consultant provided by subsection (1)(a) of this section,
22 pay such reasonable costs as are actually and necessarily incurred by
23 the council and its members as designated in RCW 80.50.030 in
24 processing the application. Such costs shall include, but are not
25 limited to, council member's wages, employee benefits, costs of a
26 hearing examiner, a court reporter, additional staff salaries, wages
27 and employee benefits, goods and services, travel expenses within the
28 state and miscellaneous expenses, as arise directly from processing
29 such application.

30 Each applicant shall, at the time of application submission,
31 deposit twenty thousand dollars, or such lesser amount as may be
32 specified by council rule, to cover costs provided for by subsection
33 (1)(b) of this section. Reasonable and necessary costs of the council
34 directly attributable to application processing shall be charged
35 against such deposit.

36 The council shall submit to each applicant a statement of such
37 expenditures actually made during the preceding calendar quarter which
38 shall be in sufficient detail to explain such expenditures. The

1 applicant shall pay the state treasurer the amount of such statement to
2 restore the total amount on deposit to the originally established
3 level: PROVIDED, That such applicant may, at the request of the
4 council, increase the amount of funds on deposit to cover anticipated
5 expenses during peak periods of application processing. Any funds
6 remaining unexpended at the conclusion of application processing shall
7 be refunded to the applicant, or at the applicant's option, credited
8 against required deposits of certificate holders.

9 (c) Each certificate holder shall pay such reasonable costs as are
10 actually and necessarily incurred by the council for inspection and
11 determination of compliance by the certificate holder with the terms of
12 the certification relative to monitoring the effects of construction
13 and operation of the facility.

14 Each certificate holder, within thirty days of execution of the
15 site certification agreement, shall deposit twenty thousand dollars, or
16 such other amount as may be specified by council rule, to cover costs
17 provided for by subsection (1)(c) of this section. Reasonable and
18 necessary costs of the council directly attributable to inspection and
19 determination of compliance by the certificate holder with the terms of
20 the certification relative to monitoring the effects of construction
21 and operation of the facility shall be charged against such deposit.

22 The council shall submit to each certificate holder a statement of
23 such expenditures actually made during the preceding calendar quarter
24 which shall be in sufficient detail to explain such expenditures. The
25 certificate holder shall pay the state treasurer the amount of such
26 statement to restore the total amount on deposit to the originally
27 established level: PROVIDED, That if the actual, reasonable, and
28 necessary expenditures for inspection and determination of compliance
29 in the preceding calendar quarter have exceeded the amount of funds on
30 deposit, such excess costs shall be paid by the certificate holder.

31 (2) If an applicant or certificate holder fails to provide the
32 initial deposit, or if subsequently required payments are not received
33 within thirty days following receipt of the statement from the council,
34 the council may (a) in the case of the applicant, suspend processing of
35 the application until payment is received; or (b) in the case of a
36 certificate holder, suspend the certification.

37 (3) All payments required of the applicant or certificate holder
38 under this section are to be made to the state treasurer who shall make

1 payments as instructed by the council from the funds submitted. All
2 such funds shall be subject to state auditing procedures. Any
3 unexpended portions thereof shall be returned to the applicant or
4 certificate holder.

5 **Sec. 6.** RCW 80.50.090 and 2001 c 214 s 7 are each amended to read
6 as follows:

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

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

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

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

Passed by the House March 4, 2006.
Passed by the Senate February 28, 2006.
Approved by the Governor March 24, 2006.
Filed in Office of Secretary of State March 24, 2006.