

SHB 2527 - H AMD 1185

By Representatives Morris, Crouse

WITHDRAWN 02/15/2010

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 80.50.020 and 2007 c 325 s 1 are each amended to read
4 as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

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

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

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

17 (4) "Site" means any proposed or approved location of an energy
18 facility, alternative energy resource, or electrical transmission
19 facility.

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

26 (6) "Associated facilities" means storage, transmission, handling,
27 or other related and supporting facilities connecting an energy plant
28 with the existing energy supply, processing, or distribution system,
29 including, but not limited to, communications, controls, mobilizing or
30 maintenance equipment, instrumentation, and other types of ancillary

1 transmission equipment, off-line storage or venting required for
2 efficient operation or safety of the transmission system and overhead,
3 and surface or subsurface lines of physical access for the inspection,
4 maintenance, and safe operations of the transmission facility and new
5 transmission lines constructed to operate at nominal voltages of at
6 least 115,000 volts to connect a thermal power plant or alternative
7 energy facilities to the northwest power grid. However, common carrier
8 railroads or motor vehicles shall not be included.

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

11 (a) Crude or refined petroleum or liquid petroleum product
12 transmission pipeline of the following dimensions: A pipeline larger
13 than six inches minimum inside diameter between valves for the
14 transmission of these products with a total length of at least fifteen
15 miles;

16 (b) Natural gas, synthetic fuel gas, or liquefied petroleum gas
17 transmission pipeline of the following dimensions: A pipeline larger
18 than fourteen inches minimum inside diameter between valves, for the
19 transmission of these products, with a total length of at least fifteen
20 miles for the purpose of delivering gas to a distribution facility,
21 except an interstate natural gas pipeline regulated by the United
22 States federal power commission.

23 (8) "Electrical transmission facilities" means electrical power
24 lines and related equipment.

25 (9) "Independent consultants" means those persons who have no
26 financial interest in the applicant's proposals and who are retained by
27 the council to evaluate the applicant's proposals, supporting studies,
28 or to conduct additional studies.

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

32 (11) "Energy facility" means an energy plant or transmission
33 facilities: PROVIDED, That the following are excluded from the
34 provisions of this chapter:

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

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

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

5 (13) "Counsel for the environment" means an assistant attorney
6 general or a special assistant attorney general who shall represent the
7 public in accordance with RCW 80.50.080.

8 (14) "Construction" means on-site improvements, excluding
9 exploratory work, which cost in excess of two hundred fifty thousand
10 dollars.

11 (15) "Energy plant" means the following facilities together with
12 their associated facilities:

13 (a) Any stationary thermal power plant with generating capacity of
14 three hundred fifty thousand kilowatts or more, and any commercially
15 operated nuclear power facility, measured using maximum continuous
16 electric generating capacity, less minimum auxiliary load, at average
17 ambient temperature and pressure, and floating thermal power plants of
18 one hundred thousand kilowatts or more, including associated
19 facilities. For the purposes of this subsection, "floating thermal
20 power plants" means a thermal power plant that is suspended on the
21 surface of water by means of a barge, vessel, or other floating
22 platform;

23 (b) Facilities which will have the capacity to receive liquefied
24 natural gas in the equivalent of more than one hundred million standard
25 cubic feet of natural gas per day, which has been transported over
26 marine waters;

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

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

37 (e) Facilities capable of processing more than twenty-five thousand
38 barrels per day of petroleum or biofuel into refined products.

1 (16) "Land use plan" means a comprehensive plan or land use element
2 thereof adopted by a unit of local government pursuant to chapter
3 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by
4 chapter 325, Laws of 2007.

5 (17) "Zoning ordinance" means an ordinance of a unit of local
6 government regulating the use of land and adopted pursuant to chapter
7 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state
8 Constitution, or as otherwise designated by chapter 325, Laws of 2007.

9 (18) "Alternative energy resource" (~~means~~) includes energy
10 facilities of the following types: (a) Wind; (b) solar energy; (c)
11 geothermal energy; (d) landfill gas; (e) wave or tidal action; or (f)
12 biomass energy based on solid organic fuels from wood, forest, or field
13 residues, or dedicated energy crops that do not include wood pieces
14 that have been treated with chemical preservatives such as creosote,
15 pentachlorophenol, or copper-chrome-arsenic.

16 (19) "Secretary" means the secretary of the United States
17 department of energy.

18 (20) "Preapplication process" means the process which is initiated
19 by written correspondence from the preapplicant to the council, and
20 includes the process adopted by the council for consulting with the
21 preapplicant and with cities, towns, and counties prior to accepting
22 applications for all transmission facilities.

23 (21) "Preapplicant" means a person considering applying for a site
24 certificate agreement for any transmission facility.

25 (22) "Biofuel" has the same meaning as defined in RCW 43.325.010.

26 **Sec. 2.** RCW 80.50.030 and 2001 c 214 s 4 are each amended to read
27 as follows:

28 (1) There is created and established the energy facility site
29 evaluation council.

30 (2)(a) The chair of the council shall be appointed by the governor
31 with the advice and consent of the senate, shall have a vote on matters
32 before the council, shall serve for a term coextensive with the term of
33 the governor, and is removable for cause. The chair may designate a
34 member of the council to serve as acting chair in the event of the
35 chair's absence. The salary of the chair shall be determined under RCW
36 43.03.040. The chair is a "state employee" for the purposes of chapter
37 42.52 RCW. As applicable, when attending meetings of the council,

1 members may receive reimbursement for travel expenses in accordance
2 with RCW 43.03.050 and 43.03.060, and are eligible for compensation
3 under RCW 43.03.250.

4 (b) The chair or a designee shall execute all official documents,
5 contracts, and other materials on behalf of the council. ((The
6 Washington state department of community, trade, and economic
7 development shall provide all administrative and staff support for the
8 council. The director of the department of community, trade, and
9 economic development has supervisory authority over the staff of the
10 council and shall employ such personnel as are necessary to implement
11 this chapter.)) The Washington state utilities and transportation
12 commission shall provide all administrative and staff support for the
13 council. The Washington state utilities and transportation commission
14 has supervisory authority over the staff of the council and shall
15 employ such personnel as are necessary to implement this chapter. Not
16 more than three such employees may be exempt from chapter 41.06 RCW.

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

- 20 (i) Department of ecology;
- 21 (ii) Department of fish and wildlife;
- 22 (iii) Department of community, trade, and economic development;
- 23 (iv) Utilities and transportation commission; and
- 24 (v) Department of natural resources.

25 (b) The directors, administrators, or their designees, of the
26 following departments, agencies, and commissions, or their statutory
27 successors, may participate as councilmembers at their own discretion
28 provided they elect to participate no later than sixty days after an
29 application is filed:

- 30 (i) Department of agriculture;
- 31 (ii) Department of health;
- 32 (iii) Military department; and
- 33 (iv) Department of transportation.

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

1 (4) The appropriate county legislative authority of every county
2 wherein an application for a proposed site is filed shall appoint a
3 member or designee as a voting member to the council. The member or
4 designee so appointed shall sit with the council only at such times as
5 the council considers the proposed site for the county which he or she
6 represents, and such member or designee shall serve until there has
7 been a final acceptance or rejection of the proposed site.

8 (5) The city legislative authority of every city within whose
9 corporate limits an energy (~~(plant)~~) facility is proposed to be located
10 shall appoint a member or designee as a voting member to the council.
11 The member or designee so appointed shall sit with the council only at
12 such times as the council considers the proposed site for the city
13 which he or she represents, and such member or designee shall serve
14 until there has been a final acceptance or rejection of the proposed
15 site.

16 (6) For any port district wherein an application for a proposed
17 port facility is filed subject to this chapter, the port district shall
18 appoint a member or designee as a nonvoting member to the council. The
19 member or designee so appointed shall sit with the council only at such
20 times as the council considers the proposed site for the port district
21 which he or she represents, and such member or designee shall serve
22 until there has been a final acceptance or rejection of the proposed
23 site. The provisions of this subsection shall not apply if the port
24 district is the applicant, either singly or in partnership or
25 association with any other person.

26 **Sec. 3.** RCW 80.50.071 and 2006 c 196 s 5 are each amended to read
27 as follows:

28 (1) The council shall receive all applications for energy facility
29 site certification. (~~(The following fees or charges for application~~
30 ~~processing or certification monitoring shall be paid by the applicant~~
31 ~~or certificate holder:)~~) Each applicant shall pay reasonable costs as
32 are actually and necessarily incurred by the council in processing an
33 application.

34 (a) (~~(A fee of twenty five thousand dollars for each proposed site,~~
35 ~~to be applied toward the cost of the independent consultant study~~
36 ~~authorized in this subsection, shall accompany the application and~~
37 ~~shall be a condition precedent to any further consideration or action~~

1 ~~on the application by the council))~~ Each applicant shall, at the time
2 of application submission, deposit fifty thousand dollars, or such
3 greater amount as may be specified by the council after consultation
4 with the applicant. Costs that may be charged against the deposit
5 include, but are not limited to, independent consultants costs,
6 councilmember's wages, employee benefits, costs of a hearing examiner,
7 costs of a court reporter, staff salaries, wages and employee benefits,
8 goods and services, travel expenses, and miscellaneous direct expenses
9 as arise directly from processing an application.

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

19 (b) ~~((Each applicant shall, in addition to the costs of the~~
20 ~~independent consultant provided by subsection (1)(a) of this section,~~
21 ~~pay such reasonable costs as are actually and necessarily incurred by~~
22 ~~the council and its members as designated in RCW 80.50.030 in~~
23 ~~processing the application. Such costs shall include, but are not~~
24 ~~limited to, council member's wages, employee benefits, costs of a~~
25 ~~hearing examiner, a court reporter, additional staff salaries, wages~~
26 ~~and employee benefits, goods and services, travel expenses within the~~
27 ~~state and miscellaneous expenses, as arise directly from processing~~
28 ~~such application))~~ The council may commission its own independent
29 consultant study to measure the consequences of the proposed energy
30 facility on the environment or any matter that it deems essential to an
31 adequate appraisal of the site. The council shall provide an estimate
32 of the cost of the study to the applicant and is payable subject to the
33 applicant giving prior approval.

34 ~~((Each applicant shall, at the time of application submission,~~
35 ~~deposit twenty thousand dollars, or such lesser amount as may be~~
36 ~~specified by council rule, to cover costs provided for by subsection~~
37 ~~(1)(b) of this section. Reasonable and necessary costs of the council~~

1 ~~directly attributable to application processing shall be charged~~
2 ~~against such deposit.))~~

3 (c) The council shall submit to each applicant a statement of such
4 expenditures actually made during the preceding calendar quarter which
5 shall be in sufficient detail to explain such expenditures. The
6 applicant shall pay the state treasurer the amount of such statement to
7 restore the total amount on deposit to the originally established
8 level: PROVIDED, That such applicant may, at the request of the
9 council, increase the amount of funds on deposit to cover anticipated
10 expenses during peak periods of application processing. Any funds
11 remaining unexpended at the conclusion of application processing shall
12 be refunded to the applicant, or at the applicant's option, credited
13 against required deposits of certificate holders.

14 ~~((+e))~~ (2) Each certificate holder shall pay such reasonable costs
15 as are actually and necessarily incurred by the council for inspection
16 and determination of compliance by the certificate holder with the
17 terms of the certification relative to monitoring the effects of
18 construction ~~((and))~~, operation, and site restoration of the facility.

19 (a) Each certificate holder, within thirty days of execution of the
20 site certification agreement, shall have on deposit ~~((twenty))~~ fifty
21 thousand dollars, or such ~~((other))~~ greater amount as may be specified
22 by the council ~~((rule, to cover costs provided for by subsection (1)(c)~~
23 ~~of this section))~~ after consultation with the certificate holder.
24 ~~((Reasonable and necessary costs of the council directly attributable~~
25 ~~to))~~ Costs that may be charged against the deposit include, but are not
26 limited to, councilmember's wages, employee benefits, costs of a
27 hearing examiner, costs of a court reporter, staff salaries, wages and
28 employee benefits, contracts, goods and services, travel expenses, and
29 miscellaneous direct expenses as arise directly from inspection and
30 determination of compliance by the certificate holder with the terms of
31 the certification ~~((relative to monitoring the effects of construction~~
32 ~~and operation of the facility shall be charged against such deposit))~~.

33 (b) The council shall submit to each certificate holder a statement
34 of such expenditures actually made during the preceding calendar
35 quarter which shall be in sufficient detail to explain such
36 expenditures. The certificate holder shall pay the state treasurer the
37 amount of such statement to restore the total amount on deposit to the
38 originally established level: PROVIDED, That if the actual(~~(-~~

1 reasonable, ~~and necessary~~) expenditures for inspection and
2 determination of compliance in the preceding calendar quarter have
3 exceeded the amount of funds on deposit, such excess costs shall be
4 paid by the certificate holder.

5 ~~((+2))~~ (3) If an applicant or certificate holder fails to provide
6 the initial deposit, or if subsequently required payments are not
7 received within thirty days following receipt of the statement from the
8 council, the council may (a) in the case of the applicant, suspend
9 processing of the application until payment is received; or (b) in the
10 case of a certificate holder, suspend the certification.

11 ~~((+3))~~ (4) All payments required of the applicant or certificate
12 holder under this section are to be made to the state treasurer who
13 shall make payments as instructed by the council from the funds
14 submitted. All such funds shall be subject to state auditing
15 procedures. Any unexpended portions thereof shall be returned to the
16 applicant or certificate holder.

17 (5)(a) Reasonable and necessary costs incurred directly by the
18 council in adopting rules under RCW 80.50.040(1) and indirectly in
19 implementing and administering this chapter may be assessed against
20 applicants and certificate holders that are subject to the requirements
21 of this chapter.

22 (b) Reasonable and necessary costs that may be assessed by the
23 council and collected from applicants and certificate holders must not
24 exceed twenty-five thousand dollars per applicant or certificate
25 holder. Beginning July 1, 2015, reasonable and necessary costs must
26 not exceed twenty-five thousand dollars per applicant or certificate
27 holder plus the consumer price index as calculated in (c) of this
28 subsection.

29 (c) Beginning July 1, 2015, and repeated every five years
30 thereafter, the dollar limit established in (b) of this subsection must
31 be adjusted for inflation by the office of financial management based
32 upon changes in the consumer price index during that time period.
33 "Consumer price index" means, for any calendar year, that year's annual
34 average national consumer price index for all urban consumers, compiled
35 by the bureau of labor and statistics, United States department of
36 labor. The office of financial management must calculate the new
37 dollar limit and transmit it to the office of the code reviser for

1 publication in the Washington State Register at least one month before
2 the new dollar limit is to take effect.

3 (d) Moneys assessed and collected by the council from applicants
4 and certificate holders under this subsection must be dispersed by the
5 manager of the council."

6 Correct the title.

EFFECT: Restores the original statutory provisions that require applicants to pay the reasonable costs as are actually and necessarily incurred by the council when processing an application, monitoring for compliance with the terms of a site certificate agreement, and monitoring restoration of an existing energy facility site. Removes provisions that allow the council to charge indirect costs against the deposit for a site certification application or the deposit for the monitoring for compliance with the terms of a site certificate agreement. Provides that the council may assess against and collect from an applicant or certificate holder reasonable and necessary costs incurred directly in adopting rules and indirectly in implementing and administering the council's statutory duties. Reduces the amount the council may assess against an applicant or site certificate holder from fifty thousand dollars to twenty-five thousand dollars.

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