

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 2527**

Chapter 152, Laws of 2010

61st Legislature  
2010 Regular Session

ENERGY FACILITY SITE EVALUATION COUNCIL

EFFECTIVE DATE: 06/10/10

Passed by the House March 6, 2010  
Yeas 95 Nays 0

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Passed by the Senate March 3, 2010  
Yeas 43 Nays 2

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Approved March 22, 2010, 2:27 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2527** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

\_\_\_\_\_  
**Chief Clerk**

FILED

March 22, 2010

**Secretary of State  
State of Washington**

---

**SUBSTITUTE HOUSE BILL 2527**

---

AS AMENDED BY THE SENATE

Passed Legislature - 2010 Regular Session

**State of Washington                      61st Legislature                      2010 Regular Session**

**By** House Technology, Energy & Communications (originally sponsored by Representatives Morris, Chase, Hudgins, and Jacks)

READ FIRST TIME 02/02/10.

1            AN ACT Relating to the energy facility site evaluation council;  
2 amending RCW 80.50.020, 80.50.030, and 80.50.071; and creating a new  
3 section.

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

5            **Sec. 1.** RCW 80.50.020 and 2007 c 325 s 1 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, alternative energy resource, or electrical transmission  
3 facility.

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

10 (6) "Associated facilities" means storage, transmission, handling,  
11 or other related and supporting facilities connecting an energy plant  
12 with the existing energy supply, processing, or distribution system,  
13 including, but not limited to, communications, controls, mobilizing or  
14 maintenance equipment, instrumentation, and other types of ancillary  
15 transmission equipment, off-line storage or venting required for  
16 efficient operation or safety of the transmission system and overhead,  
17 and surface or subsurface lines of physical access for the inspection,  
18 maintenance, and safe operations of the transmission facility and new  
19 transmission lines constructed to operate at nominal voltages of at  
20 least 115,000 volts to connect a thermal power plant or alternative  
21 energy facilities to the northwest power grid. However, common carrier  
22 railroads or motor vehicles shall not 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 liquefied petroleum gas  
31 transmission pipeline of the following dimensions: A pipeline larger  
32 than fourteen inches minimum inside diameter between valves, for the  
33 transmission of these products, with a total length of at least fifteen  
34 miles for the purpose of delivering gas to a distribution facility,  
35 except an interstate natural gas pipeline regulated by the United  
36 States federal power commission.

37 (8) "Electrical transmission facilities" means electrical power  
38 lines and related equipment.

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

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

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

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

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

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

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

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

24 (15) "Energy plant" means the following facilities together with  
25 their associated facilities:

26 (a) Any nuclear power facility where the primary purpose is to  
27 produce and sell electricity;

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

37 ((~~b~~)) (c) Facilities which will have the capacity to receive

1 liquefied natural gas in the equivalent of more than one hundred  
2 million standard cubic feet of natural gas per day, which has been  
3 transported over marine waters;

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

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

14 ~~((e))~~ (f) Facilities capable of processing more than twenty-five  
15 thousand barrels per day of petroleum or biofuel into refined products  
16 except where such biofuel production is undertaken at existing  
17 industrial facilities.

18 (16) "Land use plan" means a comprehensive plan or land use element  
19 thereof adopted by a unit of local government pursuant to chapter  
20 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by  
21 chapter 325, Laws of 2007.

22 (17) "Zoning ordinance" means an ordinance of a unit of local  
23 government regulating the use of land and adopted pursuant to chapter  
24 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state  
25 Constitution, or as otherwise designated by chapter 325, Laws of 2007.

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

33 (19) "Secretary" means the secretary of the United States  
34 department of energy.

35 (20) "Preapplication process" means the process which is initiated  
36 by written correspondence from the preapplicant to the council, and  
37 includes the process adopted by the council for consulting with the

1 preapplicant and with cities, towns, and counties prior to accepting  
2 applications for all transmission facilities.

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

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

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

8 (1) There is created and established the energy facility site  
9 evaluation council.

10 (2)(a) The chair of the council shall be appointed by the governor  
11 with the advice and consent of the senate, shall have a vote on matters  
12 before the council, shall serve for a term coextensive with the term of  
13 the governor, and is removable for cause. The chair may designate a  
14 member of the council to serve as acting chair in the event of the  
15 chair's absence. The salary of the chair shall be determined under RCW  
16 43.03.040. The chair is a "state employee" for the purposes of chapter  
17 42.52 RCW. As applicable, when attending meetings of the council,  
18 members may receive reimbursement for travel expenses in accordance  
19 with RCW 43.03.050 and 43.03.060, and are eligible for compensation  
20 under RCW 43.03.250.

21 (b) The chair or a designee shall execute all official documents,  
22 contracts, and other materials on behalf of the council. The  
23 Washington state department of community, trade, and economic  
24 development shall provide all administrative and staff support for the  
25 council. The director of the department of community, trade, and  
26 economic development has supervisory authority over the staff of the  
27 council and shall employ such personnel as are necessary to implement  
28 this chapter. Not more than three such employees may be exempt from  
29 chapter 41.06 RCW.

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

- 33 (i) Department of ecology;
- 34 (ii) Department of fish and wildlife;
- 35 (iii) Department of community, trade, and economic development;
- 36 (iv) Utilities and transportation commission; and
- 37 (v) Department of natural resources.

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

- 6 (i) Department of agriculture;
- 7 (ii) Department of health;
- 8 (iii) Military department; and
- 9 (iv) Department of transportation.

10 (c) Council membership is discretionary for agencies that choose to  
11 participate under (b) of this subsection only for applications that are  
12 filed with the council on or after May 8, 2001. For applications filed  
13 before May 8, 2001, council membership is mandatory for those agencies  
14 listed in (b) of this subsection.

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

22 (5) The city legislative authority of every city within whose  
23 corporate limits an energy (~~(plant)~~) facility is proposed to be located  
24 shall appoint a member or designee as a voting member to the council.  
25 The member or designee so appointed shall sit with the council only at  
26 such times as the council considers the proposed site for the city  
27 which he or she represents, and such member or designee shall serve  
28 until there has been a final acceptance or rejection of the proposed  
29 site.

30 (6) For any port district wherein an application for a proposed  
31 port facility is filed subject to this chapter, the port district shall  
32 appoint a member or designee as a nonvoting member to the council. The  
33 member or designee so appointed shall sit with the council only at such  
34 times as the council considers the proposed site for the port district  
35 which he or she represents, and such member or designee shall serve  
36 until there has been a final acceptance or rejection of the proposed  
37 site. The provisions of this subsection shall not apply if the port

1 district is the applicant, either singly or in partnership or  
2 association with any other person.

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

5 (1) The council shall receive all applications for energy facility  
6 site certification. ~~((The following fees or charges for application  
7 processing or certification monitoring shall be paid by the applicant  
8 or certificate holder:))~~ Each applicant shall pay such reasonable costs  
9 as are actually and necessarily incurred by the council in processing  
10 an application.

11 (a) ~~((A fee of twenty five thousand dollars for each proposed site,  
12 to be applied toward the cost of the independent consultant study  
13 authorized in this subsection, shall accompany the application and  
14 shall be a condition precedent to any further consideration or action  
15 on the application by the council))~~ Each applicant shall, at the time  
16 of application submission, deposit fifty thousand dollars, or such  
17 greater amount as may be specified by the council after consultation  
18 with the applicant. Costs that may be charged against the deposit  
19 include, but are not limited to, independent consultants' costs,  
20 councilmember's wages, employee benefits, costs of a hearing examiner,  
21 costs of a court reporter, staff salaries, wages and employee benefits,  
22 goods and services, travel expenses, and miscellaneous direct expenses  
23 as arise directly from processing an application.

24 ~~((The council shall commission its own independent consultant study  
25 to measure the consequences of the proposed energy facility on the  
26 environment for each site application. The council shall direct the  
27 consultant to study any matter which it deems essential to an adequate  
28 appraisal of the site. The full cost of the study shall be paid by the  
29 applicant: PROVIDED, That said costs exceeding a total of the twenty-  
30 five thousand dollars paid pursuant to subsection (1)(a) of this  
31 section shall be payable subject to the applicant giving prior approval  
32 to such excess amount.))~~

33 (b) ~~((Each applicant shall, in addition to the costs of the  
34 independent consultant provided by subsection (1)(a) of this section,  
35 pay such reasonable costs as are actually and necessarily incurred by  
36 the council and its members as designated in RCW 80.50.030 in  
37 processing the application. Such costs shall include, but are not~~



1 ~~limited to, council member's wages, employee benefits, costs of a~~  
2 ~~hearing examiner, a court reporter, additional staff salaries, wages~~  
3 ~~and employee benefits, goods and services, travel expenses within the~~  
4 ~~state and miscellaneous expenses, as arise directly from processing~~  
5 ~~such application)) The council may commission its own independent  
6 consultant study to measure the consequences of the proposed energy  
7 facility on the environment or any matter that it deems essential to an  
8 adequate appraisal of the site. The council shall provide an estimate  
9 of the cost of the study to the applicant and consider applicant  
10 comments.~~

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

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

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

33 (a) Each certificate holder, within thirty days of execution of the  
34 site certification agreement, shall have on deposit ~~((twenty))~~ fifty  
35 thousand dollars, or such ~~((other))~~ greater amount as may be specified  
36 by the council ~~((rule, to cover costs provided for by subsection (1)(c)~~  
37 ~~of this section))~~ after consultation with the certificate holder.  
38 ~~((Reasonable and necessary costs of the council directly attributable~~

1 ~~to~~) Costs that may be charged against the deposit include, but are not  
2 limited to, those specified in subsection (1)(a) of this section as  
3 arise from inspection and determination of compliance by the  
4 certificate holder with the terms of the certification (~~relative to~~  
5 ~~monitoring the effects of construction and operation of the facility~~  
6 ~~shall be charged against such deposit~~)).

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

17 ~~((+2))~~ (3) If an applicant or certificate holder fails to provide  
18 the initial deposit, or if subsequently required payments are not  
19 received within thirty days following receipt of the statement from the  
20 council, the council may (a) in the case of the applicant, suspend  
21 processing of the application until payment is received; or (b) in the  
22 case of a certificate holder, suspend the certification.

23 ~~((+3))~~ (4) All payments required of the applicant or certificate  
24 holder under this section are to be made to the state treasurer who  
25 shall make payments as instructed by the council from the funds  
26 submitted. All such funds shall be subject to state auditing  
27 procedures. Any unexpended portions thereof shall be returned to the  
28 applicant or certificate holder.

29 NEW SECTION. Sec. 4. Rule-making costs incurred by the energy  
30 facility site evaluation council in implementing and administering this  
31 act shall be proportionately divided among the certificate holders and  
32 applicants directly affected by this act.

Passed by the House March 6, 2010.

Passed by the Senate March 3, 2010.

Approved by the Governor March 22, 2010.

Filed in Office of Secretary of State March 22, 2010.