

# HOUSE BILL REPORT

## SB 5310

---

---

As of Second Reading

**Title:** An act relating to enforcement actions at facilities sited by the energy facility site evaluation council.

**Brief Description:** Addressing enforcement actions at facilities sited by the energy facility site evaluation council.

**Sponsors:** Senators Ericksen, McCoy, Sheldon, Honeyford, Ranker and Cleveland; by request of Energy Facilities Siting and Evaluation Council.

**Brief History:**

**Committee Activity:**

Technology & Economic Development: 3/17/15, 3/24/15 [DP].

**Brief Summary of Bill**

- Increases the maximum daily penalty amount that may be imposed on permit violators by the Energy Facility Site Evaluation Council (EFSEC).
- Clarifies the appeal process for penalties imposed by the EFSEC.
- Clarifies that the Department of Ecology may impose oil-discharge fines on facilities under the regulatory jurisdiction of the EFSEC.

**Staff:** Nikkole Hughes (786-7156).

**Background:**

The Energy Facility Site Evaluation Council.

The Energy Facility Site Evaluation Council (EFSEC or Council) was established in 1970 to provide a single siting process for major energy facilities located in the state. The EFSEC coordinates all evaluation and licensing steps for siting certain energy facilities, as well as specifies the conditions of construction and operation. If approved, a site certification agreement is issued in lieu of any other individual state or local agency permits.

Council Members.

The EFSEC is comprised of a chair appointed by the Governor and representatives from the following state agencies: the department of Commerce, Ecology, Fish and Wildlife, Natural

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Resources, and the Utilities and Transportation Commission. When an application to site a facility is submitted to the EFSEC, representatives from particular cities, counties, or port districts affected by the project are appointed to the EFSEC for proceedings related to the project.

The Council's Site Certification and Permitting Authority.

The EFSEC's siting authority extends over nuclear power plants of any size and thermal electric power plants with a generating capacity of 350 megawatts or greater. Energy facilities of any size that exclusively use alternative energy resources such as wind may opt into the EFSEC review and certification process. The EFSEC's jurisdiction does not extend to hydropower facilities or thermal electric plants that have a generating capacity of less than 350 megawatts.

The EFSEC has the authority to issue permits under the Federal Clean Air Act and the Federal Clean Water Act (CWA) for facilities under its jurisdiction.

The Council's Enforcement Authority.

The EFSEC may enforce compliance with conditions in a site certification agreement or with a permit through fines or by ceasing construction or operation of the facility. A violation of a certificate or permit issued by the EFSEC can be enforced by a fine of up to \$5,000 per day.

The EFSEC may remit or mitigate any penalty upon receiving a written application by a person incurring a penalty within 15 days after notice imposing any penalty is received by the person. Any person incurring a penalty may appeal to the EFSEC within 30 days of receipt of notice of a penalty unless an application for remission or mitigation is made to the EFSEC.

The Department of Ecology.

The Department of Ecology (Ecology) is designated as the state water pollution control agency for enforcement of the CWA for certain energy facilities not under the jurisdiction of the EFSEC. A violation of a permit issued by Ecology can be enforced by a fine of up to \$10,000 per day. Ecology may levy an additional fine of up to \$100,000 per day for discharges of oil in state waters.

---

**Summary of Bill:**

The Council's Enforcement Authority.

The maximum daily fine the EFSEC may impose for violation of a site certification agreement or permit issued or administered by the EFSEC is increased from \$5,000 per day to \$10,000 per day for facilities under its jurisdiction, which is equivalent to the maximum daily fine imposed by Ecology for violations of similar permits.

The appeal process for penalties imposed by the EFSEC is clarified to require any person incurring a penalty to appeal to the EFSEC before he or she may appeal the penalty to superior court. Appeals to the EFSEC must be filed within 30 days of the date of receipt of notice imposing any penalty. Any penalty imposed by the EFSEC becomes due and payable

30 days after the date of receipt of a penalty notice unless an appeal is filed with the EFSEC, in which case the penalty becomes due and payable only upon completion of all review proceedings and the issuance of a final order.

The Department of Ecology.

The authority of Ecology to issue oil-discharge fines of up to \$100,000 per day is clarified to include discharges of oil by an energy facility regulated by the EFSEC.

---

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill updates the enforcement authority of the EFSEC to make it consistent with the authority of Ecology and corrects internal references and omissions in current law. The maximum penalty authority of the EFSEC has to be the same as Ecology's in order to continue to have the authority to issue National Pollutant Discharge Elimination System permits under the U.S. Environmental Protection Agency. This bill also makes it totally clear that Ecology can impose penalties for oil spills by facilities under the EFSEC jurisdiction.

(Opposed) None.

**Persons Testifying:** Bill Lynch, Energy Facility Site Evaluation Council.

**Persons Signed In To Testify But Not Testifying:** None.