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**SENATE BILL 5415**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Lovelett, Billig, Hasegawa, Keiser, Liias, Nguyen, Nobles, Saldaña, Wellman, and Wilson, C.

AN ACT Relating to the energy facility site evaluation council; amending RCW 80.50.040, 80.50.060, 80.50.071, 80.50.100, 80.50.140, 80.50.175, and 43.79A.040; reenacting and amending RCW 80.50.020, 80.50.030, and 80.50.090; adding new sections to chapter 80.50 RCW; repealing RCW 80.50.190; providing an effective date; and declaring an emergency.

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

**Sec.**  RCW 80.50.020 and 2010 c 152 s 1 are each reenacted and amended to read as follows:

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

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

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

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

(4) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant or clean energy project with the existing infrastructure and energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages of at least 115,000 volts to connect a thermal power plant or alternative energy facilities to the northwest power grid. However, common carrier railroads or motor vehicles shall not be included.

(5) "Biofuel" ((~~has the same meaning as defined in RCW 43.325.010~~)) includes, but is not limited to, biodiesel, ethanol, and ethanol blend fuels and renewable liquid natural gas or liquid compressed natural gas made from biogas.

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

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

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

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

(10) "Electrical transmission facilities" means electrical power lines and related equipment.

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

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

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

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

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

(b) Any nonnuclear stationary thermal power plant with generating capacity of three hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of one hundred thousand kilowatts or more suspended on the surface of water by means of a barge, vessel, or other floating platform;

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

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

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

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

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

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

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

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

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

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

(19) "Site" means any proposed or approved location of an energy facility, ((~~alternative~~)) clean energy ((~~resource~~)) project, or electrical transmission facility.

(20) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel for distribution of electricity by electric utilities.

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

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

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

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

(23) "Biogas" includes waste gases derived from landfills and wastewater treatment plants and dairy and farm wastes.

(24) "Clean energy manufacturing project" means a facility that manufactures products, equipment, or components used for:

(a) Renewable energy generation and electricity storage;

(b) The production of electric, hydrogen, or other vehicle type that emits no exhaust gas from the onboard source of power, other than water vapor; or

(c) Charging and fueling infrastructure for electric, hydrogen, or other vehicle type that emits no exhaust gas from the onboard source of power, other than water vapor.

(25) "Clean energy project" means a project is one of the following types of facilities together with its associated facilities:

(a) Alternative energy resource;

(b) Electric energy storage;

(c) Facilities capable of processing more than 1,500 barrels per day of biofuel into refined products except where this biofuel production is undertaken at existing industrial facilities;

(d) Projects capable of producing replacements for natural gas from renewable sources, including renewable natural gas and renewable hydrogen; and

(e) Clean energy manufacturing projects.

(26) "Renewable hydrogen" has the same meaning as provided in RCW 19.405.020.

(27) "Renewable natural gas" has the same meaning as provided in RCW 19.405.020.

**Sec.**  RCW 80.50.030 and 2010 c 271 s 601 and 2010 c 152 s 2 are each reenacted and amended to read as follows:

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

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

(b) The chair or a designee shall execute all official documents, contracts, and other materials on behalf of the council. ((~~The Washington utilities and transportation commission shall provide all administrative and staff support for the council.~~)) The ((~~commission~~)) chair is the appointing authority and has supervisory authority over the staff of the council and shall employ such personnel as are necessary to implement this chapter. Not more than three such employees may be exempt from chapter 41.06 RCW. The Washington utilities and transportation commission shall provide administrative support for the council. The council shall ((~~otherwise~~)) retain its independence in exercising its powers, functions, and duties and its supervisory control over ((~~nonadministrative~~)) council staff ((~~support~~)). Membership, powers, functions, and duties of the Washington state utilities and transportation commission and the council shall otherwise remain as provided by law.

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

~~(i) Department of ecology;~~

~~(ii) Department of fish and wildlife;~~

~~(iii) Department of commerce;~~

~~(iv) Utilities and transportation commission; and~~

~~(v) Department of natural resources.~~

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

~~(i) Department of agriculture;~~

~~(ii) Department of health;~~

~~(iii) Military department; and~~

~~(iv) Department of transportation.~~

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

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

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

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

(a) The director of the department of ecology or the director's designee;

(b) The director of the department of fish and wildlife or the director's designee;

(c) The director of the department of commerce or the director's designee;

(d) The chair of the utilities and transportation commission or the chair's designee;

(e) The commissioner of public lands or the commissioner's designee;

(f) One member designated by the board of directors of the Washington state association of counties or its successor; and

(g) Two members selected by federally recognized tribes within the state of Washington.

(4) The city legislative authority of every city within whose corporate limits an energy facility is proposed to be located may appoint a member or designee as a voting member to the council. The city legislative authority must make the appointment no later than 90 days after notification from the council. The member or designee so appointed may sit with the council only at such times as the council considers the proposed site for the city that the member represents.

(5) A quorum of the council consists of a majority of members appointed for business to be conducted.

**Sec.**  RCW 80.50.040 and 2001 c 214 s 6 are each amended to read as follows:

The council shall have the following powers:

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

(2) To develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, ((~~and~~)) initial operational conditions of certification, and ongoing regulatory oversight of energy facilities subject to this chapter;

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

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

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

(6) To ((~~make and contract, when applicable, for independent studies of sites proposed by the applicant~~)) enter into contracts to carry out the provisions of this chapter;

(7) To conduct hearings on the proposed location and operational conditions of the energy facilities;

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

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

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

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

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

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

**Sec.**  RCW 80.50.060 and 2007 c 325 s 2 are each amended to read as follows:

(1) The provisions of this chapter apply to the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of existing energy facilities where the net increase in physical capacity or dimensions resulting from such reconstruction or enlargement meets or exceeds those capacities or dimensions set forth in RCW 80.50.020 ((~~(7)~~)) (12) and ((~~(15)~~)) (21). No construction of such energy facilities may be undertaken, except as otherwise provided in this chapter, after July 15, 1977, without first obtaining certification in the manner provided in this chapter.

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

(3)(a) The provisions of this chapter apply to the construction, reconstruction, or modification of electrical transmission facilities when:

(i) The facilities are located in a national interest electric transmission corridor as specified in RCW 80.50.045;

(ii) An applicant chooses to receive certification under this chapter, and the facilities are: (A) Of a nominal voltage of at least one hundred fifteen thousand volts and are located in a completely new corridor, except for the terminus of the new facility or interconnection of the new facility with the existing grid, and the corridor is not otherwise used for electrical transmission facilities; and (B) located in more than one jurisdiction that has promulgated land use plans or zoning ordinances; or

(iii) An applicant chooses to receive certification under this chapter, and the facilities are: (A) Of a nominal voltage in excess of one hundred fifteen thousand volts; and (B) located outside an electrical transmission corridor identified in (a)(i) and (ii) of this subsection (3).

(b) For the purposes of this subsection, "modify" means a significant change to an electrical transmission facility and does not include the following: (i) Minor improvements such as the replacement of existing transmission line facilities or supporting structures with equivalent facilities or structures; (ii) the relocation of existing electrical transmission line facilities; (iii) the conversion of existing overhead lines to underground; or (iv) the placing of new or additional conductors, supporting structures, insulators, or their accessories on or replacement of supporting structures already built.

(4) The provisions of this chapter shall not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those set forth in RCW 80.50.020 ((~~(7)~~)) (12) and ((~~(15)~~)) (21).

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

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

(7) Upon receipt of an application for certification under this chapter, the chair shall notify the:

(a) Department of agriculture;

(b) Department of health;

(c) Military department;

(d) Department of transportation;

(e) Appropriate county legislative authority where the proposed facility is located; and

(f) Appropriate federally recognized tribal governments affected by the proposed facility.

(8) The council shall work with local governments where a project is proposed to be sited in order to ensure meaningful participation and input during siting review and compliance monitoring.

(9) The council must work with all federally recognized tribal governments affected by a proposed facility in order to ensure meaningful participation and input during siting review and compliance monitoring. Consistent with RCW 43.376.020, the chair and designated staff must conduct government-to-government meetings to the council throughout the application review process. The report required in RCW 80.50.100 must include a summary of the government-to-government meetings, including the issues and resolutions.

**Sec.**  RCW 80.50.071 and 2016 sp.s. c 10 s 1 are each amended to read as follows:

(1) The council shall receive all applications for energy facility site certification. Each applicant shall pay actual costs incurred by the council and the utilities and transportation commission in processing an application.

(a) Each applicant shall, at the time of application submission, ((~~deposit with the utilities and transportation commission~~)) pay to the council for deposit into the energy facility site evaluation account an amount up to fifty thousand dollars, or such greater amount as specified by the council after consultation with the applicant. The council and the utilities and transportation commission shall charge costs against the deposit if the applicant withdraws its application and has not reimbursed the commission, on behalf of the council, for all actual expenditures incurred in considering the application.

(b) The council may commission its own independent consultant study to measure the consequences of the proposed energy facility on the environment or any matter that it deems essential to an adequate appraisal of the site. The council, after consultation with the utilities and transportation commission, shall provide an estimate of the cost of the study to the applicant and consider applicant comments.

(c) In addition to the deposit required under (a) of this subsection, applicants must reimburse the utilities and transportation commission, on behalf of the council, for actual expenditures that arise in considering the application, including the cost of any independent consultant study. The utilities and transportation commission, on behalf of the council, shall submit to each applicant an invoice of actual expenditures made during the preceding calendar quarter in sufficient detail to explain the expenditures. The applicant shall pay the utilities and transportation commission the amount of the invoice by the due date.

(2) Each certificate holder shall pay to the utilities and transportation commission the actual costs incurred by the council for inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction, operation, and site restoration of the facility.

(a) Each certificate holder shall, within thirty days of execution of the site certification agreement, ((~~deposit with the utilities and transportation commission~~)) pay to the council for deposit into the energy facility site evaluation account an amount up to fifty thousand dollars, or such greater amount as specified by the council after consultation with the certificate holder. The council and the utilities and transportation commission shall charge costs against the deposit if the certificate holder ceases operations and has not reimbursed the commission, on behalf of the council, for all actual expenditures incurred in conducting inspections and determining compliance with the terms of the certification.

(b) In addition to the deposit required under (a) of this subsection, certificate holders must reimburse the utilities and transportation commission, on behalf of the council, for actual expenditures that arise in administering this chapter and determining compliance. The council, after consultation with the utilities and transportation commission, shall submit to each certificate holder an invoice of the expenditures actually made during the preceding calendar quarter in sufficient detail to explain the expenditures. The certificate holder shall pay the utilities and transportation commission the amount of the invoice by the due date.

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

(4) All payments required of the applicant or certificate holder under this section are to be made to the utilities and transportation commission who shall make payments as instructed by the council from the funds submitted. All such funds shall be subject to state auditing procedures. Any unexpended portions of the deposit shall be returned to the applicant within sixty days following the conclusion of the application process or to the certificate holder within sixty days after a determination by the council that the certificate is no longer required and there is no continuing need for compliance with its terms. For purposes of this section, "conclusion of the application process" means after the governor's decision granting or denying a certificate and the expiration of any opportunities for judicial review.

(5)(a) Upon receipt of an application for an energy facility site certification proposing an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least one hundred fifteen thousand volts, the council shall notify in writing the United States department of defense. The notification shall include, but not be limited to, the following:

(i) A description of the proposed energy plant or alternative energy resource;

(ii) The location of the site;

(iii) The placement of the energy plant or alternative energy resource on the site;

(iv) The date and time by which comments must be received by the council; and

(v) Contact information of the council and the applicant.

(b) The purpose of the written notification is to provide an opportunity for the United States department of defense to comment upon the application, and to identify potential issues relating to the placement and operations of the energy plant or alternative energy resource, before a site certification application is approved. The time period set forth by the council for receipt of such comments shall not extend the time period for the council's processing of the application.

(c) In order to assist local governments required to notify the United States department of defense under RCW 35.63.270, 35A.63.290, and 36.01.320, the council shall post on its website the appropriate information for contacting the United States department of defense.

**Sec.**  RCW 80.50.090 and 2006 c 205 s 3 and 2006 c 196 s 6 are each reenacted and amended to read as follows:

(1) The council shall conduct an informational public hearing in the county of the proposed site as soon as practicable but not later than sixty days after receipt of an application for site certification. However, the place of such public hearing shall be as close as practical to the proposed site. At this hearing, the council must take public comment on the application for site certification, as well as whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances in effect on the date of the application.

(2) ((~~Subsequent to the informational public hearing, the council shall conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the city, county, or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site.~~)) After the completion of tribal consultation and its environmental review under chapter 43.21C RCW, the council shall determine whether genuine issues of fact exist on matters the council deems material to its recommendation to the governor. A council determination that such issues do not exist may only be made after holding a hearing to take public comment on the question and after tribal consultation is complete. If the council determines that such issues do not exist and that under subsection (1) of this section the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances, the council may waive the adjudicative proceeding required by subsection (3) of this section. Waiving the adjudicative proceeding requires a vote of the council.

(3) Prior to the issuance of a council recommendation to the governor under RCW 80.50.100 a public hearing, conducted as an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, shall be held unless previously waived in accordance with subsection (2) of this section. At such a public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification.

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

**Sec.**  RCW 80.50.100 and 2011 c 180 s 109 are each amended to read as follows:

(1)(a) The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt by the council of ((~~such~~)) an application deemed complete by the council, or such later time as is mutually agreed by the council and the applicant.

(b) In the case of an application filed prior to December 31, 2025, for certification of an energy facility proposed for construction, modification, or expansion for the purpose of providing generating facilities that meet the requirements of RCW 80.80.040 and are located in a county with a coal-fired electric ((~~generating [generation]~~)) generation facility subject to RCW 80.80.040(3)(c), the council shall expedite the processing of the application pursuant to RCW 80.50.075 and shall report its recommendations to the governor within one hundred eighty days of receipt by the council of such an application, or a later time as is mutually agreed by the council and the applicant.

(2) If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

(3)(a) Within sixty days of receipt of the council's report the governor shall take one of the following actions:

(i) Approve the application and execute the draft certification agreement; or

(ii) Reject the application; or

(iii) Direct the council to reconsider certain aspects of the draft certification agreement.

(b) The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the adjudicative proceeding for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within sixty days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

(4) The rejection of an application for certification by the governor shall be final as to that application but shall not preclude submission of a subsequent application for the same site on the basis of changed conditions or new information.

(5) Objections raised by any party in interest concerning procedural error by the council must be filed with the council within 60 days of the commission of such an error, or within 30 days of the first public hearing or meeting of the council at which the general subject matter to which the error is related is discussed, whichever comes later, or such an objection is deemed waived for purposes of judicial review as provided in this section.

(6) The rules and regulations adopted by the council are subject to judicial review pursuant to the provisions of chapter 34.05 RCW.

**Sec.**  RCW 80.50.140 and 1988 c 202 s 62 are each amended to read as follows:

(1) A final decision pursuant to RCW 80.50.100 on an application for certification shall be subject to judicial review pursuant to provisions of chapter 34.05 RCW and this section. Petitions for review of such a decision shall be filed in the Thurston county superior court. All petitions for review of a decision under RCW 80.50.100 shall be consolidated into a single proceeding before the Thurston county superior court. The Thurston county superior court shall certify the petition for review to the supreme court upon the following conditions:

(a) Review can be made on the administrative record;

(b) Fundamental and urgent interests affecting the public interest and development of energy facilities are involved which require a prompt determination;

(c) Review by the supreme court would likely be sought regardless of the determination of the Thurston county superior court; and

(d) The record is complete for review.

The Thurston county superior court shall assign a petition for review of a decision under RCW 80.50.100 for hearing at the earliest possible date and shall expedite such petition in every way possible. If the court finds that review cannot be limited to the administrative record as set forth in ((~~subparagraph~~)) (a) of this subsection because there are alleged irregularities in the procedure before the council not found in the record, but finds that the standards set forth in ((~~subparagraphs~~)) (b), (c), and (d) of this subsection are met, the court shall proceed to take testimony and determine such factual issues raised by the alleged irregularities and certify the petition and its determination of such factual issues to the supreme court. For clean energy projects, the Thurston county superior court shall schedule a hearing within 60 days of receiving a completed petition. Upon certification, the supreme court shall assign the petition for hearing at the earliest possible date, and it shall expedite its review and decision in every way possible. For clean energy projects, the supreme court shall complete its review and issue a final determination in a time frame not to exceed six months after certification by the Thurston county superior court.

(2) Objections raised by any party in interest concerning procedural error by the council shall be filed with the council within sixty days of the commission of such error, or within thirty days of the first public hearing or meeting of the council at which the general subject matter to which the error is related is discussed, whichever comes later, or such objection shall be deemed waived for purposes of judicial review as provided in this section.

(3) The rules and regulations adopted by the council shall be subject to judicial review pursuant to the provisions of chapter 34.05 RCW.

**Sec.**  RCW 80.50.175 and 1983 c 3 s 205 are each amended to read as follows:

(1) In addition to all other powers conferred on the council under this chapter, the council shall have the powers set forth in this section.

(2) ((~~The council, upon request of any potential applicant, is authorized, as provided in this section, to conduct a preliminary study of any potential site prior to receipt of an application for site certification. A fee of ten thousand dollars for each potential site, to be applied toward the cost of any study agreed upon pursuant to subsection (3) of this section, shall accompany the request and shall be a condition precedent to any action on the request by the council.~~

~~(3) After receiving a request to study a potential site, the council shall commission its own independent consultant to study matters relative to the potential site. The study shall include, but need not be limited to, the preparation and analysis of environmental impact information for the proposed potential site and any other matter the council and the potential applicant deem essential to an adequate appraisal of the potential site. In conducting the study, the council is authorized to cooperate and work jointly with the county or counties in which the potential site is located, any federal, state, or local governmental agency that might be requested to comment upon the potential site, and any municipal or public corporation having an interest in the matter. The full cost of the study shall be paid by the potential applicant: PROVIDED, That such costs exceeding a total of ten thousand dollars shall be payable subject to the potential applicant giving prior approval to such excess amount.~~

~~(4) Any study prepared by the council pursuant to subsection (3) of this section may be used in place of the "detailed statement" required by RCW 43.21C.030(2)(c) by any branch of government except the council created pursuant to chapter 80.50 RCW.~~

~~(5) All payments required of the potential applicant under this section are to be made to the state treasurer, who in turn shall pay the consultant as instructed by the council. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the potential applicant.~~

~~(6) Nothing in this section shall change the requirements for an application for site certification or the requirement of payment of a fee as provided in RCW 80.50.071, or change the time for disposition of an application for certification as provided in RCW 80.50.100.~~

~~(7) Nothing in this section shall be construed as preventing a city or county from requiring any information it deems appropriate to make a decision approving a particular location~~)) (a) The council, upon agreement with any potential applicant, is authorized as provided in this section to conduct a preliminary study of any potential project prior to receipt of an application for site certification. A fee of $10,000 for each potential project, to be applied toward the cost of any study agreed upon pursuant to (b) of this subsection, must accompany the agreement and is a condition precedent to any action on the agreement by the council.

(b) Upon agreement with the potential applicant, the council may commission its own independent consultant to study matters relative to the potential project. The study must include, but need not be limited to, the preparation and analysis of environmental impact information for the potential project and any other matter the council and the potential applicant deem essential to an adequate appraisal of the potential project. In conducting the study, the council is authorized to cooperate and work jointly with the county or counties in which the potential project is located, any federal, state, local, or tribal governmental agency that might be requested to comment upon the potential project, and any municipal or public corporation having an interest in the matter. The full cost of the study must be paid by the potential applicant. However, costs exceeding a total of $10,000 are payable subject to the potential applicant giving prior approval to such an excess amount.

(3) All payments required of the potential applicant under this section are to be made to the council for deposit into the energy facility site evaluation account for payment for the consultant. All such funds are subject to state auditing procedures. Any unexpended portions thereof must be returned to the potential applicant.

(4) If a potential applicant subsequently submits a formal application for site certification for an energy facility at the site where a preliminary study was conducted, payments made under this section for that study may be considered as payment towards the application fee provided in RCW 80.50.071.

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

(1) The energy facility site evaluation account is created in the custody of the state treasurer. All receipts from funds received by the council for fees received under this chapter must be deposited into the account. Expenditures from the account may be used for purposes set forth in this chapter. Only the chair of the council or the chair's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) All funds currently credited to the council from receipt under this chapter as of the effective date of this section must be transferred to the energy facility site evaluation account.

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

(1) Subject to the availability of amounts appropriated for this specific purpose, the council must initiate, in coordination with its members, a least-conflict priority clean energy project siting program. This program must be carried out by Washington State University's energy program and must engage all relevant stakeholders to identify priority areas where there is the least amount of potential environmental and other conflict in the siting of covered clean energy projects and develop a map highlighting these areas. The program must also compile the latest information on opportunities for dual-use and colocation of clean energy projects with other land use values. The council may create different maps for divergent categories of clean energy projects to address multiple types of environmental and other conflicts for each category.

(2) A project sited in an area designated under subsection (1) of this section does not receive a guarantee or assurance of certification under this chapter. Project proponents are not limited to proposing projects in identified least-conflict zones.

(3) The council must update the study in subsection (1) of this section at least once every six years.

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

(1) Subject to the availability of amounts appropriated for this specific purpose, the council must, in coordination with its members, develop a list of mitigation measures for significant likely environmental impacts of clean energy projects seeking certification under this chapter including, but not limited to, air quality impacts, impacts to land and aquatic habitats, wildlife, and other impacts that the council or its members identify as likely resulting from clean energy projects. The council shall identify a nonexhaustive list of potential impacts of clean energy projects to develop mitigations for, subject to available capacity and according to the council's best judgment of highest priority impacts to address. A mitigation measure may only be included in the list developed under this subsection if the measure is developed using best available science and has a high likelihood of mitigating the identified environmental impact. The council and its members should consider mitigation banks, siting and design best practices for clean energy projects, and other measures. Development of mitigation measures must include the involvement of local communities and other stakeholders.

(2) An applicant may use mitigation measures developed under subsection (1) of this section and may propose other mitigation measures not identified under this subsection. The list of mitigation measures identified pursuant to subsection (1) of this section does not replace the requirement to evaluate applicability to any specific proposal under consideration and, if such measures are not applicable, to develop individualized site-specific mitigation evaluations and requirements for each project or facility.

(3) The council may retain a consultant, contract with a state institution of higher education in Washington, delegate to an agency member, or otherwise retain outside assistance in completing the requirements of subsection (1) of this section.

(4) The council must update the list developed under subsection (1) of this section at least once every six years.

**Sec.**  RCW 43.79A.040 and 2020 c 18 s 2 are each amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments must occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Gina Grant Bull memorial legislative page scholarship account, the Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the county road administration board emergency loan account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the energy facility site evaluation account, the fair fund, the family and medical leave insurance account, the fish and wildlife federal lands revolving account, the natural resources federal lands revolving account, the food animal veterinarian conditional scholarship account, the forest health revolving account, the fruit and vegetable inspection account, the educator conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the Washington history day account, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the low-income home rehabilitation revolving loan program account, the multiagency permitting team account, the northeast Washington wolf-livestock management account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state library-archives building account, the reduced cigarette ignition propensity account, the center for deaf and hard of hearing youth account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, the school employees' benefits board insurance reserve fund, the public employees' and retirees' insurance account, the school employees' insurance account, the long-term services and supports trust account, the radiation perpetual maintenance fund, the Indian health improvement reinvestment account, the department of licensing tuition recovery trust fund, the student achievement council tuition recovery trust fund, the tuition recovery trust fund, the industrial insurance premium refund account, the mobile home park relocation fund, the natural resources deposit fund, the Washington state health insurance pool account, the federal forest revolving account, and the library operations account.

(c) The following accounts and funds must receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advance right-of-way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. **Sec.**  RCW 80.50.190 (Disposition of receipts from applicants) and 1977 ex.s. c 371 s 15 are each repealed.

NEW SECTION. **Sec.**  Section 10 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2021.

**--- END ---**