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By Representatives Fitzgibbon, Berry, Duerr, Peterson, Ryu, Tharinger, Bateman, and Lekanoff

Read first time 01/17/22. Referred to Committee on Environment & Energy.

1 AN ACT Relating to the siting of energy infrastructure necessary
2 for the fulfillment of the state's decarbonization goals; amending
3 RCW 43.21C.033, 43.21B.160, 90.58.180, 90.58.190, and 42.56.420;
4 adding a new section to chapter 36.70B RCW; and creating a new
5 section.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the achievement
8 of the state's greenhouse gas emissions limits in chapter 70A.45 RCW
9 will, as laid out in the state energy strategy, require the
10 construction of substantial new energy infrastructure, including
11 electricity generation, electricity transmission, electricity
12 storage, biofuel production, and clean energy component
13 manufacturing. The legislature intends to facilitate the predictable
14 siting and permitting of energy infrastructure while maintaining
15 strong environmental review processes and protections for
16 Washington's land, water, and air.

17 **Sec. 2.** RCW 43.21C.033 and 1995 c 347 s 422 are each amended to
18 read as follows:

19 (1) Except as provided in subsection (~~(+2)~~) (3) of this section,
20 the responsible official shall make a threshold determination on a

1 completed application within (~~ninety~~) 90 days after the application
2 and supporting documentation are complete. The applicant may request
3 an additional (~~thirty~~) 30 days for the threshold determination. The
4 governmental entity responsible for making the threshold
5 determination shall by rule, resolution, or ordinance adopt
6 standards, consistent with rules adopted by the department to
7 implement this chapter, for determining when an application and
8 supporting documentation are complete.

9 (2) (~~This~~) (a) After the submission of an environmental
10 checklist and prior to issuing a threshold determination that a clean
11 energy project proposal is likely to cause a significant adverse
12 environmental impact, the lead agency must notify the project
13 applicant and explain in writing the basis for its anticipated
14 determination of significance. Prior to issuing the threshold
15 determination of significance, the lead agency must give the project
16 applicant the option of withdrawing and revising its application and
17 the associated environmental checklist to clarify or make changes to
18 features of the proposal that are designed to mitigate the impacts
19 that were the basis of the lead agency's anticipated determination of
20 significance. The lead agency shall make its threshold determination
21 based upon the changed or clarified proposal following the
22 applicant's submittal.

23 (b) The notification required under (a) of this subsection is not
24 an official determination by the lead agency and is not subject to
25 appeal under this chapter.

26 (c) The definitions in this subsection (2)(c) apply throughout
27 this subsection unless the context clearly requires otherwise.

28 (i) "Clean energy project" means a proposal for:

29 (A) A clean energy product manufacturing facility;

30 (B) Electrical transmission facilities as defined in RCW
31 80.50.020; or

32 (C) A facility to produce nonemitting electric generation or
33 electric generation from renewable resources, as those terms are
34 defined in chapter 19.405 RCW.

35 (ii) "Clean energy product manufacturing facility" means a
36 facility that exclusively or primarily manufactures the following
37 products or components of such products:

38 (A) Passenger cars, light duty trucks, medium duty passenger
39 vehicles, buses, commercial vehicles as defined in RCW 46.04.140, or

1 motorcycles, that emit no exhaust gas from the onboard source of
2 power, other than water vapor;

3 (B) Charging and fueling infrastructure for electric, hydrogen,
4 or other types of vehicles that emit no exhaust gas from the onboard
5 source of power, other than water vapor;

6 (C) Renewable or green electrolytic hydrogen, including preparing
7 renewable or green electrolytic hydrogen for distribution as an
8 energy carrier or manufacturing feedstock;

9 (D) Clean fuel that is reasonably anticipated to be determined
10 under chapter 70A.535 RCW to have life-cycle greenhouse gas emissions
11 not exceeding 80 percent of the 2017 levels established under RCW
12 70A.535.020;

13 (E) Equipment and products used to produce energy from
14 alternative energy resources; and

15 (F) Equipment that can retain energy, storing it by chemical,
16 thermal, mechanical, or other means for a period of time and then
17 delivering energy after storage.

18 (iii) (A) "Green electrolytic hydrogen" means hydrogen produced
19 through electrolysis.

20 (B) "Green electrolytic hydrogen" does not include hydrogen
21 manufactured using steam reforming or any other conversion technology
22 that produces hydrogen from a fossil fuel feedstock.

23 (iv) "Renewable hydrogen" means hydrogen produced using renewable
24 resources both as the source for the hydrogen and the source for the
25 energy input into the production process.

26 (3) Subsection (1) of this section shall not apply to a city,
27 town, or county that

28 ~~(a) By~~) by ordinance adopted prior to April 1, 1992, ((has
29 ~~adopted~~) procedures to integrate permit and land use decisions with
30 the requirements of this chapter

31 ~~(b) Is planning under RCW 36.70A.040 and is subject to the~~
32 ~~requirements of RCW 36.70B.090).~~

33 **Sec. 3.** RCW 43.21B.160 and 1995 c 382 s 2 are each amended to
34 read as follows:

35 (1) In all appeals, the hearings board shall have all powers
36 relating to administration of oaths, issuance of subpoenas, and
37 taking of depositions as are granted to agencies in chapter 34.05
38 RCW, the Administrative Procedure Act. The hearings board, and each
39 member thereof, shall be subject to all duties imposed upon

1 ~~shall have all powers granted to,~~) an agency by those provisions of
2 chapter 34.05 RCW relating to adjudicative proceedings. In the case
3 of appeals within the jurisdiction of the hearings board, the
4 hearings board, or any member thereof, may, where consistent with the
5 scope of review described in subsection (2) of this section, obtain
6 such assistance, including the making of field investigations, from
7 the staff of the director as the hearings board, or any member
8 thereof, may deem necessary or appropriate. Any communication, oral
9 or written, from the staff of the director to the hearings board
10 shall be presented only in an open hearing.

11 (2)(a) For the purposes of appeals of decisions of a type
12 specified in RCW 43.21B.110(1) (c) and (d) that address proposed
13 clean energy projects as defined in RCW 43.21C.033(2)(c), the
14 hearings board may consider new issues only to the same extent as
15 courts when reviewing agency decisions as specified in RCW 34.05.554
16 and may consider new evidence only to the same extent as courts may
17 consider new evidence as specified in RCW 34.05.562.

18 (b) Nothing in this subsection limits the evidence or issues that
19 the hearings board may consider for purposes of appeals of decisions
20 specified in RCW 43.21B.110(1) (a), (b), and (e) through (n) or for
21 appeals of decisions that are not related to proposed clean energy
22 projects.

23 **Sec. 4.** RCW 90.58.180 and 2011 c 277 s 4 are each amended to
24 read as follows:

25 (1) Any person aggrieved by the granting, denying, or rescinding
26 of a permit on shorelines of the state pursuant to RCW 90.58.140 may
27 seek review from the shorelines hearings board by filing a petition
28 for review within (~~twenty-one~~) 21 days of the date of filing of the
29 decision as defined in RCW 90.58.140(6).

30 Within seven days of the filing of any petition for review with
31 the board as provided in this section pertaining to a final decision
32 of a local government, the petitioner shall serve copies of the
33 petition on the department, the office of the attorney general, and
34 the local government. The department and the attorney general may
35 intervene to protect the public interest and ensure that the
36 provisions of this chapter are complied with at any time within
37 (~~fifteen~~) 15 days from the date of the receipt by the department or
38 the attorney general of a copy of the petition for review filed
39 pursuant to this section. The shorelines hearings board shall

1 schedule review proceedings on the petition for review without regard
2 as to whether the period for the department or the attorney general
3 to intervene has or has not expired.

4 (2) The department or the attorney general may obtain review of
5 any final decision granting a permit, or granting or denying an
6 application for a permit issued by a local government by filing a
7 written petition with the shorelines hearings board and the
8 appropriate local government within (~~(twenty-one)~~) 21 days from the
9 date the final decision was filed as provided in RCW 90.58.140(6).

10 (3) The review proceedings authorized in subsections (1) and (2)
11 of this section are subject to the provisions of chapter 34.05 RCW
12 pertaining to procedures in adjudicative proceedings, except that for
13 clean energy projects as defined in RCW 43.21C.033(2)(c), the
14 hearings board may consider new issues only to the same extent as
15 courts when reviewing agency decisions as specified in RCW 34.05.554
16 and may consider new evidence only to the same extent as courts may
17 consider new evidence as specified in RCW 34.05.562. Judicial review
18 of such proceedings of the shorelines hearings board is governed by
19 chapter 34.05 RCW. The board shall issue its decision on the appeal
20 authorized under subsections (1) and (2) of this section within (~~one~~
21 ~~hundred-eighty~~) 180 days after the date the petition is filed with
22 the board or a petition to intervene is filed by the department or
23 the attorney general, whichever is later. The time period may be
24 extended by the board for a period of (~~(thirty)~~) 30 days upon a
25 showing of good cause or may be waived by the parties.

26 (4) Any person may appeal any rules, regulations, or guidelines
27 adopted or approved by the department within (~~(thirty)~~) 30 days of
28 the date of the adoption or approval. The board shall make a final
29 decision within (~~(sixty)~~) 60 days following the hearing held thereon.

30 (5) The board shall find the rule, regulation, or guideline to be
31 valid and enter a final decision to that effect unless it determines
32 that the rule, regulation, or guideline:

33 (a) Is clearly erroneous in light of the policy of this chapter;
34 or

35 (b) Constitutes an implementation of this chapter in violation of
36 constitutional or statutory provisions; or

37 (c) Is arbitrary and capricious; or

38 (d) Was developed without fully considering and evaluating all
39 material submitted to the department during public review and
40 comment; or

1 (e) Was not adopted in accordance with required procedures.

2 (6) If the board makes a determination under subsection (5)(a)
3 through (e) of this section, it shall enter a final decision
4 declaring the rule, regulation, or guideline invalid, remanding the
5 rule, regulation, or guideline to the department with a statement of
6 the reasons in support of the determination, and directing the
7 department to adopt, after a thorough consultation with the affected
8 local government and any other interested party, a new rule,
9 regulation, or guideline consistent with the board's decision.

10 (7) A decision of the board on the validity of a rule,
11 regulation, or guideline shall be subject to review in superior
12 court, if authorized pursuant to chapter 34.05 RCW. A petition for
13 review of the decision of the shorelines hearings board on a rule,
14 regulation, or guideline shall be filed within (~~thirty~~) 30 days
15 after the date of final decision by the shorelines hearings board.

16 **Sec. 5.** RCW 90.58.190 and 2012 c 172 s 1 are each amended to
17 read as follows:

18 (1) The appeal of the department's decision to adopt a master
19 program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is
20 governed by RCW 34.05.510 through 34.05.598.

21 (2)(a) The department's final decision to approve or reject a
22 proposed master program or master program amendment by a local
23 government planning under RCW 36.70A.040 shall be appealed to the
24 growth management hearings board by filing a petition as provided in
25 RCW 36.70A.290.

26 (b) If the appeal to the growth management hearings board
27 concerns shorelines, the growth management hearings board shall
28 review the proposed master program or amendment solely for compliance
29 with the requirements of this chapter, the policy of RCW 90.58.020
30 and the applicable guidelines, the internal consistency provisions of
31 RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter
32 43.21C RCW as it relates to the adoption of master programs and
33 amendments under chapter 90.58 RCW.

34 (c) If the appeal to the growth management hearings board
35 concerns a shoreline of statewide significance, the board shall
36 uphold the decision by the department unless the board, by clear and
37 convincing evidence, determines that the decision of the department
38 is noncompliant with the policy of RCW 90.58.020 or the applicable

1 guidelines, or chapter 43.21C RCW as it relates to the adoption of
2 master programs and amendments under this chapter.

3 (d) The appellant has the burden of proof in all appeals to the
4 growth management hearings board under this subsection.

5 (e) Any party aggrieved by a final decision of the growth
6 management hearings board under this subsection may appeal the
7 decision to superior court as provided in RCW 36.70A.300.

8 (3)(a) The department's final decision to approve or reject a
9 proposed master program or master program amendment by a local
10 government not planning under RCW 36.70A.040 shall be appealed to the
11 shorelines hearings board by filing a petition within (~~(thirty)~~) 30
12 days of the date that the department publishes notice of its final
13 decision under RCW 90.58.090(8).

14 (b) In an appeal relating to shorelines, the shorelines hearings
15 board shall review the proposed master program or master program
16 amendment and, after full consideration of the presentations of the
17 parties, shall determine the validity of the local government's
18 master program or amendment in light of the policy of RCW 90.58.020
19 and the applicable guidelines, and chapter 43.21C RCW as it relates
20 to the adoption of master programs and amendments under this chapter.

21 (c) In an appeal relating to shorelines of statewide
22 significance, the shorelines hearings board shall uphold the decision
23 by the department unless the board determines, by clear and
24 convincing evidence that the decision of the department is
25 noncompliant with the policy of RCW 90.58.020 or the applicable
26 guidelines, or chapter 43.21C RCW as it relates to the adoption of
27 master programs and amendments under this chapter.

28 (d) Review by the shorelines hearings board shall be considered
29 an adjudicative proceeding under chapter 34.05 RCW, the
30 administrative procedure act, except that for clean energy projects
31 as defined in RCW 43.21C.033(2)(c), the hearings board may consider
32 new issues only to the same extent as courts when reviewing agency
33 decisions as specified in RCW 34.05.554 and may consider new evidence
34 only to the same extent as courts may consider new evidence as
35 specified in RCW 34.05.562. The appellant shall have the burden of
36 proof in all such reviews.

37 (e) Whenever possible, the review by the shorelines hearings
38 board shall be heard within the county where the land subject to the
39 proposed master program or master program amendment is primarily
40 located. The department and any party aggrieved by a final decision

1 of the hearings board may appeal the decision to superior court as
2 provided in chapter 34.05 RCW.

3 (4) A master program amendment shall become effective after the
4 approval of the department or after the decision of the growth
5 management hearings board or shorelines hearings board to uphold the
6 master program or master program amendment, provided that either the
7 growth management hearings board or the shorelines hearings board may
8 remand the master program or master program amendment to the local
9 government or the department for modification prior to the final
10 adoption of the master program or master program amendment.

11 NEW SECTION. **Sec. 6.** A new section is added to chapter 36.70B
12 RCW to read as follows:

13 During project review of a project proposed by an electric
14 utility, as defined in RCW 19.405.020, a local government may not
15 require a project applicant to demonstrate the necessity or utility
16 of the project other than to require, as part of a completed
17 application under RCW 36.70B.070(2), submission of documents
18 demonstrating a utility's performance of required assessments or
19 approvals from the federal energy regulatory commission or its
20 delegees or the utilities and transportation commission or its
21 delegees, or from any other federal or state agency with regulatory
22 authority over the assessment of a utility's infrastructure needs as
23 applicable.

24 **Sec. 7.** RCW 42.56.420 and 2021 c 26 s 1 are each amended to read
25 as follows:

26 The following information relating to security is exempt from
27 disclosure under this chapter:

28 (1) Those portions of records assembled, prepared, or maintained
29 to prevent, mitigate, or respond to criminal terrorist acts, which
30 are acts that significantly disrupt the conduct of government or of
31 the general civilian population of the state or the United States and
32 that manifest an extreme indifference to human life, the public
33 disclosure of which would have a substantial likelihood of
34 threatening public safety, consisting of:

35 (a) Specific and unique vulnerability assessments or specific and
36 unique response or deployment plans, including compiled underlying
37 data collected in preparation of or essential to the assessments, or
38 to the response or deployment plans; and

1 (b) Records not subject to public disclosure under federal law
2 that are shared by federal or international agencies, and information
3 prepared from national security briefings provided to state or local
4 government officials related to domestic preparedness for acts of
5 terrorism;

6 (2) Those portions of records containing specific and unique
7 vulnerability assessments or specific and unique emergency and escape
8 response plans at a city, county, or state adult or juvenile
9 correctional facility, or secure facility for persons civilly
10 confined under chapter 71.09 RCW, the public disclosure of which
11 would have a substantial likelihood of threatening the security of a
12 city, county, or state adult or juvenile correctional facility,
13 secure facility for persons civilly confined under chapter 71.09 RCW,
14 or any individual's safety;

15 (3) Information compiled by school districts or schools in the
16 development of their comprehensive safe school plans under RCW
17 28A.320.125, to the extent that they identify specific
18 vulnerabilities of school districts and each individual school;

19 (4) Information regarding the public and private infrastructure
20 and security of computer and telecommunications networks, consisting
21 of security passwords, security access codes and programs, access
22 codes for secure software applications, security and service recovery
23 plans, security risk assessments, and security test results to the
24 extent that they identify specific system vulnerabilities, and other
25 such information the release of which may increase risk to the
26 confidentiality, integrity, or availability of security, information
27 technology infrastructure, or assets;

28 (5) The system security and emergency preparedness plan required
29 under RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170,
30 and 81.112.180;

31 (6) Personally identifiable information of employees, and other
32 security information, of a private cloud service provider that has
33 entered into a criminal justice information services agreement as
34 contemplated by the United States department of justice criminal
35 justice information services security policy, as authorized by 28
36 C.F.R. Part 20; (~~and~~)

37 (7) In addition to the information in subsection (4) of this
38 section, the following related to election security:

39 (a)(i) The continuity of operations plan for election operations
40 and any security audits, security risk assessments, or security test

1 results, relating to physical security or cybersecurity of election
2 operations or infrastructure. These records are exempt from
3 disclosure in their entirety; and

4 (ii) Those portions of records containing information about
5 election infrastructure, election security, or potential threats to
6 election security, the public disclosure of which may increase risk
7 to the integrity of election operations or infrastructure.

8 (b) The exemptions specified in (a) of this subsection do not
9 include information or records pertaining to security breaches,
10 except as prohibited from disclosure pursuant to RCW 29A.12.200.

11 (c) The exemptions specified in (a) of this subsection do not
12 prohibit an audit authorized or required under Title 29A RCW from
13 being conducted; and

14 (8) Information that has been designated as critical electric
15 infrastructure information by the federal energy regulatory
16 commission or the secretary of the department of energy pursuant to
17 section 215A(d) of the federal power act (16 U.S.C. Sec. 791 et
18 seq.).

19 NEW SECTION. **Sec. 8.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

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