H-0306.1

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**HOUSE BILL 1123**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Representatives Dye, Klicker, Walsh, and Schmick

AN ACT Relating to supporting local and tribal control of clean energy facility siting by altering the authority of the energy facility site evaluation council; amending RCW 80.50.060 and 80.50.100; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature recognizes that the national environmental policy act set a goal that government actions affecting the environment should assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings and should seek to preserve important historic, cultural, and natural aspects of our national heritage, as found in 42 U.S.C. Sec. 4331(b)(2) and (4). The legislature finds that it is fully in keeping with this tradition of environmentalism for counties and tribes to express positions of concern about the local impacts of siting of utility-scale wind and solar facilities, either individually or in their overall cumulative impact. The legislature recognizes that in many cases these counties and tribes may support the siting of carbon-free clean energy facilities and the state's decarbonization goals, but seek to achieve that outcome in a manner that is less disruptive to land use, custom, culture, esthetics, and the economic stability of the local community.

The legislature finds that there are multiple viable paths to decarbonization, for example, through energy efficiency, conservation, green hydrogen, and carbon-free nuclear energy. The legislature also recognizes that there are limits to the land use impact one part of the state that is abundant in solar and wind resources should be asked to bear to support the energy needs of another part of the state that does not experience that land use impact. Nuclear energy facilities use dramatically less acreage to produce dramatically more reliable, safe, and affordable energy with less impact to wildlife and can be a reasonable alternative to land-use intensive intermittent energy facilities that provide little in the way of full-time, on-site employment after construction.

Therefore, to properly balance the state interest in decarbonizing the economy with our heritage of local control of land-use decisions, when a local tribe or county adopts a resolution supporting the siting of an equal or greater amount of carbon-free energy from nuclear energy in lieu of a specific solar or wind project that has submitted an application for siting at the energy facility site evaluation council, the state shall respect that decision and be barred from overriding local concerns on that specific project.

**Sec.**  RCW 80.50.060 and 2022 c 183 s 6 are each amended to read as follows:

(1)(a) 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 (14) and (29). No construction or reconstruction of such energy facilities may be undertaken, except as otherwise provided in this chapter, without first obtaining certification in the manner provided in this chapter.

(b) If applicants proposing the following types of facilities choose to receive certification under this chapter, the provisions of this chapter apply to the construction, reconstruction, or enlargement of these new or existing facilities:

(i) Facilities that produce refined biofuel, but which are not capable of producing 25,000 barrels or more per day;

(ii) Alternative energy resource facilities;

(iii) Electrical transmission facilities: (A) Of a nominal voltage of at least 115,000 volts; and (B) located in more than one jurisdiction that has promulgated land use plans or zoning ordinances;

(iv) Clean energy product manufacturing facilities; and

(v) Storage facilities.

(c) All of the council's powers with regard to energy facilities apply to all of the facilities in (b) of this subsection and these facilities are subject to all provisions of this chapter that apply to an energy facility.

(2)(a) The provisions of this chapter must apply to the construction, reconstruction, or modification of electrical transmission facilities when the facilities are located in a national interest electric transmission corridor as specified in RCW 80.50.045.

(b) For the purposes of this subsection, "modification" 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.

(3) 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 (14) and (29).

(4) 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 80.50.071 which shall apply to such prior applications and to site certifications prospectively from July 15, 1977.

(5) 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.

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

(a) The appropriate county legislative authority or authorities where the proposed facility is located;

(b) The appropriate city legislative authority or authorities where the proposed facility is located;

(c) The department of archaeology and historic preservation; and

(d) The appropriate federally recognized tribal governments that may be affected by the proposed facility.

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

(8) The council must consult with all federally recognized tribes that possess resources, rights, or interests reserved or protected by federal treaty, statute, or executive order in the area where an energy facility is proposed to be located to provide early and meaningful participation and input during siting review and compliance monitoring. The chair and designated staff must offer to conduct government-to-government consultation to address issues of concern raised by such a tribe. The goal of the consultation process is to identify tribal resources or rights potentially affected by the proposed energy facility and to seek ways to avoid, minimize, or mitigate any adverse effects on tribal resources or rights. The chair must provide regular updates on the consultation to the council throughout the application review process. The report from the council to the governor required in RCW 80.50.100 must include a summary of the government-to-government consultation process that complies with RCW 42.56.300, including the issues and proposed resolutions.

(9) The department of archaeology and historic preservation shall coordinate with the affected federally recognized tribes and the applicant in order to assess potential effects to tribal cultural resources, archaeological sites, and sacred sites.

(10)(a) If the legislative authority of a county, or an affected federally recognized tribe as described in subsection (8) of this section, has adopted a resolution expressing that the community or tribe prefers to support a transition to a clean energy future by welcoming the siting of a nuclear energy facility of equal or greater generating capacity than a wind or solar energy facility, then the council may not recommend that a proposed wind or solar energy facility be sited in that county or affected tribal area.

(b) For the purposes of this subsection, a resolution must be adopted no later than 120 days after the council receives an application for certification under this chapter.

**Sec.**  RCW 80.50.100 and 2022 c 183 s 10 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~~)) 12 months of receipt by the council of an application deemed complete by the director, or such later time as is mutually agreed by the council and the applicant.

(b) The council shall review and consider comments received during the application process in making its recommendation.

(c) 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 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~~)) 180 days of receipt by the council of such an application, or a later time as is mutually agreed by the council and the applicant.

(d) The council may not recommend approval of an application for certification of a wind or solar energy facility to the governor if the legislative authority of a county or an affected federally recognized tribe objects in accordance with the requirements of RCW 80.50.060(10).

(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, local governmental, or community interests, or overburdened communities as defined in RCW 70A.02.010 affected by the construction or operation of the 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 60 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 60 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.

(c) The governor may not approve an application for certification of a wind or solar energy facility if the legislative authority of a county or an affected federally recognized tribe objects in accordance with the requirements of RCW 80.50.060(10).

(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.

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