H-2561.1

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**HOUSE BILL 2429**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Ramel and Pollet

AN ACT Relating to the process to make recommendations for a project by the energy facility site evaluation council; and amending RCW 80.50.030, 80.50.071, 80.50.080, 80.50.090, and 80.50.100.

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

**Sec.**  RCW 80.50.030 and 2022 c 183 s 3 are each amended to read as follows:

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

(2) 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.

(3)(a) The council shall consist of the chair of the council and:

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

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

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

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

(v) The commissioner of public lands or the commissioner's designee.

(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.

(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.

(7) A quorum of the council consists of a majority of members appointed for business to be conducted. Majority consensus by a quorum of the council is required to conduct the business of the council pursuant to RCW 80.50.040. No member of the council, including the chair, may unilaterally conduct the council's business.

**Sec.**  RCW 80.50.071 and 2022 c 183 s 8 are each amended to read as follows:

(1) The council shall receive all applications for energy facility site certification, provided that such applications contain sufficient information for the council to complete its evaluation of all potential impacts under chapter 43.21C RCW, the state environmental policy act. If an application does not contain sufficient information for the council to make a threshold determination required by RCW 43.21C.030, the application must be rejected and not processed until such information is submitted. Each applicant shall pay actual costs incurred by the council in processing an application.

(a) Each applicant shall, at the time of application submission, pay to the council for deposit into the energy facility site evaluation council account created in RCW 80.50.390 an amount up to ((~~fifty thousand dollars~~)) $50,000, or such greater amount as specified by the council after consultation with the applicant. The council shall charge costs against the deposit if the applicant withdraws its application and has not reimbursed 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 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 council for actual expenditures that arise in considering the application, including the cost of any independent consultant study. 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 council the amount of the invoice by the due date.

(2) Each certificate holder shall pay 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~~)) 30 days of execution of the site certification agreement, pay to the council for deposit into the energy facility site evaluation council account created in RCW 80.50.390 an amount up to ((~~fifty thousand dollars~~)) $50,000, or such greater amount as specified by the council after consultation with the certificate holder. The council shall charge costs against the deposit if the certificate holder ceases operations and has not reimbursed 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 council for actual expenditures that arise in administering this chapter and determining compliance. The council 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 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 council for deposit into the energy facility site evaluation council account created in RCW 80.50.390. All such funds shall be subject to state auditing procedures. Any unexpended portions of the deposit shall be returned to the applicant within ((~~sixty~~)) 60 days following the conclusion of the application process or to the certificate holder within ((~~sixty~~)) 60 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 80.50.080 and 2013 c 23 s 282 are each amended to read as follows:

After the council has received a site application, the attorney general shall appoint an assistant attorney general as a counsel for the environment. The counsel for the environment shall represent the public and its interest in protecting the quality of the environment. Costs incurred by the counsel for the environment in the performance of these duties shall be charged to the office of the attorney general, and shall not be a charge against the appropriation to the energy facility site evaluation council. He or she shall be accorded all the rights, privileges, and responsibilities of an attorney representing a party in a formal action. In the event that the council commences an adjudication pursuant to RCW 80.50.090, the counsel for the environment shall take one of three positions in final briefing for the adjudication: (1) Full support for the application for site certification; (2) qualified support for the application for site certification with recommended modifications; or (3) opposition to approval of the application for site certification. This section shall not be construed to prevent any person from being heard or represented by counsel in accordance with the other provisions of this chapter.

**Sec.**  RCW 80.50.090 and 2022 c 183 s 9 are each 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~~)) 60 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.

(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 on the date of the application.

(3)(a) After the submission of an environmental checklist and prior to issuing a threshold determination that a facility is likely to cause a significant adverse environmental impact under chapter 43.21C RCW, the director must notify the project applicant and explain in writing the basis for its anticipated determination of significance. Prior to issuing the threshold determination of significance, the director must give the project applicant the option of withdrawing and revising its application and the associated environmental checklist to clarify or make changes to features of the proposal that are designed to mitigate the impacts that were the basis of the director's anticipated determination of significance. The director shall make the threshold determination based upon the changed or clarified proposal following the applicant's submittal. The director must provide an opportunity for public comment on a project for which a project applicant has withdrawn and revised the application and environmental checklist and subsequently received a threshold determination of nonsignificance or mitigated determination of nonsignificance.

(b) The notification required under (a) of this subsection is not an official determination by the director and is not subject to appeal under chapter 43.21C RCW.

(4) 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. Such an adjudicative proceeding may not be commenced until the council has completed its environmental analysis under chapter 43.21C RCW, including the issuance of a final environmental impact statement when applicable.

(a) At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification by raising one or more specific issues, provided that the person has raised the issue or issues in writing with specificity during the application review process or during the public comment period that will be held prior to the start of the adjudicative hearing. A person's right to be heard in support of or in opposition to the application for certification includes the right to call any witness with relevant information, without limitation by a witness's personal or professional affiliation or employment, except for the councilmembers or council staff.

(b) If the environmental impact of the proposed facility in an application for certification is not significant or will be mitigated to a nonsignificant level under RCW 43.21C.031, the council may limit the topic of the public hearing conducted as an adjudicative proceeding under this section to whether any land use plans or zoning ordinances with which the proposed site is determined to be inconsistent under subsection (2) of this section should be preempted.

(5) After expedited processing is granted under RCW 80.50.075, the council must hold a public meeting to take comments on the proposed application prior to issuing a council recommendation to the governor.

(6) 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 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~~)) 24 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) Time limits set forth under this section restart in the event that the applicant makes substantive changes to the scope or design of the energy facility that is the subject of the application for certification.

(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.

(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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