

HOUSE BILL REPORT

E2SHB 1216

As Passed House:

March 4, 2023

Title: An act relating to clean energy siting.

Brief Description: Concerning clean energy siting.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Fitzgibbon, Doglio, Berry, Reed, Simmons, Macri, Fosse and Pollet; by request of Office of the Governor).

Brief History:

Committee Activity:

Environment & Energy: 1/19/23, 2/9/23 [DPS];
Appropriations: 2/21/23, 2/23/23 [DP2S(w/o sub ENVI)].

Floor Activity:

Passed House: 3/4/23, 75-20.

Brief Summary of Engrossed Second Substitute Bill

- Establishes an Interagency Clean Energy Siting Coordinating Council to be cochaired by the Department of Ecology (Ecology) and the Department of Commerce (Commerce).
- Directs Commerce to establish a new program for the designation of Clean Energy Projects of Statewide Significance.
- Makes certain clean energy processes eligible for a coordinated permitting process to be overseen by Ecology.
- Amends provisions of the State Environmental Policy Act (SEPA) for certain types of clean energy projects, including directing lead agencies to complete environmental impact statements (EISs) within 24 months and specifying the content of SEPA review for clean energy projects.
- Directs Ecology to prepare nonproject EISs for solar energy projects,

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

onshore wind energy projects, green electrolytic or renewable hydrogen projects, and any co-located battery storage.

- Directs the Washington State University Energy Program to conduct a pumped storage siting process.
- Directs Commerce to study and report on rural clean energy and resilience.
- Changes the name of the Joint Committee on Energy Supply, Energy Conservation, and Energy Resilience, and requires the committee to review and report on inequities in the historic and anticipated siting of large alternative energy facilities.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Doglio, Chair; Mena, Vice Chair; Dye, Ranking Minority Member; Abbarno, Berry, Couture, Duerr, Fey, Lekanoff, Ramel, Slatter and Street.

Minority Report: Do not pass. Signed by 2 members: Representatives Ybarra, Assistant Ranking Minority Member; Barnard.

Minority Report: Without recommendation. Signed by 1 member: Representative Goehner.

Staff: Jacob Lipson (786-7196).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment & Energy. Signed by 27 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Berg, Chandler, Chopp, Connors, Couture, Davis, Dye, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Ryu, Sandlin, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

Minority Report: Without recommendation. Signed by 3 members: Representatives Corry, Assistant Ranking Minority Member; Rude and Schmick.

Staff: Dan Jones (786-7118).

Background:

Energy Facility Siting.

The Energy Facility Site Evaluation Council (EFSEC) was established in 1970 to provide a single siting process for major energy facilities located in the state. The EFSEC coordinates all evaluation and licensing steps for siting certain energy facilities, as well as specifies the conditions of construction and operation. After evaluating an application, the EFSEC submits a recommendation either approving or rejecting an application to the Governor, who makes the final decision on site certification. This recommendation must be reported to the Governor within 12 months of application receipt, or at a later time if agreed to by the applicant and the EFSEC. The recommendation must include a draft certification agreement, which must include various conditions including conditions to protect state, local, and community interests affected by the construction or operation of the energy facility. If approved by the Governor, a site certification agreement is issued in lieu of any other individual state or local agency permits.

The laws that require or allow a facility to seek certification through the EFSEC process apply to the construction, reconstruction, and enlargement of energy facilities, biorefineries, and electrical transmission facilities, with many specifications. Energy facilities of any size that exclusively use alternative energy resources, such as wind or solar energy, may opt into the EFSEC review and certification process. Energy facilities that exclusively use alternative energy resources that choose not to opt in to the EFSEC review and certification process must instead receive applicable state and local agency development and environmental permits for their projects directly from each agency.

Projects of Statewide Significance.

In 1997 a process was enacted to expedite the development of certain types of industrial projects of statewide significance. To qualify for designation as a project of statewide significance, a project must meet capital investment or job creation requirements. Possible designations include: (1) border-crossing projects; (2) private projects investing in manufacturing, research, and development; (3) projects that will provide a net environmental benefit; and (4) projects that will further commercialization of an innovation. The Legislature has designated certain types of projects as projects of statewide significance; for all other types of projects, an application for designation as a project of statewide significance must be submitted to the Department of Commerce. The application must include a letter of approval from jurisdictions where a project is located and must commit to providing the local staff necessary to expedite the completion of a project. Counties and cities with projects must enter into agreements with the Governor's Office of Regulatory Innovation and Assistance (ORIA) and local project managers to expedite the processes necessary for the design and construction of projects. The ORIA must provide facilitation and coordination services to expedite completion of industrial projects of statewide significance. The project proponents may provide the funding necessary for the local jurisdiction to hire the staff required to expedite the process.

State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. If an initial review of the checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact, known as a threshold determination, the proposal must undergo a more comprehensive environmental analysis in the form of an environmental impact statement (EIS). If the SEPA review process identifies significant adverse environmental impacts, the lead agency may deny a government decision or may require mitigation for identified environmental impacts.

Under SEPA rules adopted by the Department of Ecology (Ecology), after the submission of an environmental checklist and prior to a lead agency's threshold determination, an applicant may ask the lead agency to indicate whether it is considering a determination of significance. If the lead agency indicates that a determination of significance is likely, the applicant may clarify or change features of the proposal to mitigate the impacts which led the agency to consider a determination of significance to be the likely threshold determination. If an applicant revises the environmental checklist as necessary to describe the clarifications or changes, the lead agency must make its threshold determination based on the changed or clarified proposal.

Lead agencies undertaking SEPA review are directed to aspire to finish an EIS as expeditiously as possible without compromising the integrity of the analysis. For complex government decisions, the lead agency must aspire to finish an EIS within 24 months of making a threshold determination that an EIS is needed; for government decisions with narrower and more easily identifiable environmental impacts, the lead agency must aspire to finish in far less time than 24 months. The aspirational time limit does not create civil liability or a new cause of action against a lead agency. Ecology must submit a report to the Legislature every two years on recent EISs.

Under SEPA rules, when a lead agency prepares an EIS on a nonproject proposal, the lead agency has less detailed information available on environmental impacts and the environmental impacts of any subsequent project proposals that may follow the EIS. The lead agency's nonproject EIS discusses impacts and alternatives in the level of detail appropriate to the scope of the proposal and the level of planning for the proposal. If a specific geographic area is the focus of a nonproject EIS, site specific analyses are not required but may be included for specific areas of concern. After the approval of a nonproject EIS by the lead agency based on the EIS assessing the proposal's broad impacts, when a project is proposed that is consistent with the approved nonproject action that was the subject of the nonproject EIS, the EIS for the project proposal must focus on the impacts and alternatives, including mitigation measures, that are specific to the subsequent project and that were not analyzed in the nonproject EIS. State Environmental Policy Act

procedures allow for the adoption and use of portions of the nonproject EIS in a subsequent project-level SEPA review. Lead agencies must, at the time of project-level SEPA review, evaluate the nonproject EIS that was previously completed to ensure that the nonproject analysis is valid when applied to the current proposal, knowledge, and technology. If a nonproject EIS's analysis is no longer valid, the analysis must be reanalyzed in the project-level EIS.

Local Project Review.

Legislation enacted in 1995 required counties and cities planning under the Growth Management Act (GMA) to establish an integrated and consolidated development permit process for all projects involving two or more permits and to provide for no more than one open record hearing and one closed record appeal. Other jurisdictions may incorporate some or all of the integrated and consolidated development permit process. The 1995 legislation specified the permit process must include a determination of completeness of the project application within 28 days of submission. A project permit application is determined to be complete when it meets the local procedural submission requirements even if additional information is needed because of subsequent project modifications. Within 14 days of receiving requested additional information, the local government must notify the applicant whether the application is deemed complete. The determination of completeness does not preclude the local government from requesting additional information if new information is required or substantial project changes occur. A project permit application is deemed complete if the GMA jurisdiction does not provide the determination within the required time period.

Summary of Engrossed Second Substitute Bill:

Interagency Clean Energy Siting Coordinating Council.

An Interagency Clean Energy Siting Coordinating Council (Coordinating Council) is created, and is co-chaired and co-staffed by the Department of Ecology (Ecology) and the Department of Commerce (Commerce). The Coordinating Council must have participation from at least 10 named state agencies or offices in addition to Ecology and Commerce. The Coordinating Council's responsibilities are enumerated and include identifying actions to improve the siting and permitting of clean energy projects, tracking federal government efforts, soliciting input from parties with interests in clean energy project siting and permitting, and supporting the creation and annual update of a list to be published by the Governor's Office of Indian Affairs containing contacts at federally recognized Indian tribes, applicable tribal laws on consultation, and tribal preferences regarding clean energy project siting and outreach. The Coordinating Council must provide annual updates to the Governor and the Legislature.

The Coordinating Council must advise Commerce in contracting for an independent third party to evaluate state agency siting and permitting processes, identify successful models used in other states for siting and permitting clean energy projects, and make recommendations for improvements by July 1, 2024. The Coordinating Council, led by

Ecology, must also pursue development of a consolidated clean energy application and must explore development of a consolidated permit for clean energy projects. Ecology must update the Legislature on the consolidated clean energy application and the consolidated permit by the second half of 2024.

Clean Energy Projects of Statewide Significance.

Commerce must establish an application process for the designation of Clean Energy Projects of Statewide Significance (CEPSS). The CEPSS process contains similar elements to the existing Projects of Statewide Significance process, but is independent of that process. Applicants must demonstrate certain information to Commerce as part of the CEPSS application, including an explanation of how the project will contribute to the state's achievement of state greenhouse gas emission limits and be consistent with the state energy strategy, how the product will contribute to the state's economic development goals, and a plan for meaningful engagement and information sharing with potentially affected federally recognized Indian tribes.

The clean energy projects eligible for designation as a CEPSS include:

- certain types of clean energy product manufacturing facilities;
- electrical transmission facilities that don't primarily or solely serve fossil fuel electric generation facilities;
- facilities that produce electric generation from renewable resources or that do not result in greenhouse gas emissions, with the exception of certain hydroelectric facilities;
- storage facilities;
- facilities and projects at any facilities that exclusively or primarily process biogenic feedstocks into biofuel;
- biomass energy facilities;
- facilities or projects at any facilities that exclusively or primarily process alternative jet fuel that has 40 percent lower greenhouse gas emissions than conventional jet fuel;
- projects or facility upgrades undertaken by emissions-intensive trade exposed industries classified under the Climate Commitment Act, for which the facility can demonstrate overall levels of greenhouse gas emission reductions that exceed the rate of decline of free allowances allocated to the facilities under the Climate Commitment Act; and
- storage, transmission, handling, or other related and supported facilities associated with any of the above facilities.

Commerce must determine within 60 days of receipt of an application whether to designate a clean energy project as a CEPSS, taking into consideration criteria including the applicant's need for coordinated state assistance, whether a nonproject environmental review process or least-conflict siting process has been carried out in the project's area, and the potential impacts on environmental and public health. Commerce may designate an unlimited number of CEPSS.

The Coordinated Permit Process Available to Clean Energy Projects.

Ecology is given certain responsibilities for coordinating an optional coordinated permitting process for clean energy projects.

Upon request, Ecology must conduct an initial assessment of a clean energy project to determine the level of coordination needed and the complexity, size, and need for assistance of the project, including specified permitting and environmental review processes. Ecology's initial assessment must be documented in writing, made available to the public, and completed within 60 days of the request for the initial assessment.

Clean energy project proponents may request that Ecology convene a fully coordinated permit process. A clean energy project proponent must provide specified information and enter into a cost reimbursement agreement with Ecology to cover the costs to Ecology and other agencies in carrying out the coordinated permit process. To convene the coordinated permit process, Ecology must determine that the clean energy project raises complex coordination, permit processing, or substantive review issues. Ecology serves as the main point of contact for the project proponent and participating agencies, and keeps a schedule identifying procedural steps in the permitting process and highlighting substantive issues that require resolution. A project proponent may withdraw from the coordinated permit process.

Within 30 days of accepting a project for the coordinated permit process, Ecology must convene a work plan meeting to develop a coordinated permit process schedule with the project proponent, local government, and participating permit agencies. Each participating agency and the lead agency under the State Environmental Policy Act (SEPA) must send representatives to the work plan meeting, and relevant federal agencies and potentially affected federally recognized Indian tribes must be notified and invited to participate. Any accelerated time periods for permits or SEPA review under the coordinated permit process schedule must be consistent with statute, rules, regulations, or adopted state policies, standards, and guidelines for public participation and the participation of other agencies and federally recognized Indian tribes. The coordinated permit process schedule must be finalized and made available to the public after the work plan meeting.

Cities and counties with development projects determined as eligible for the coordinated permit process within their jurisdictions must enter into an agreement with Ecology or project proponents for expediting the completion of projects, including expedited permit processing and environmental review processing.

Following specified procedures, Ecology must offer early, meaningful, and individual consultation with any affected federally recognized Indian tribe on a clean energy project participating in the coordinated permit process. Ecology must identify overburdened communities that might be potentially affected by clean energy project, and verify that these communities have been meaningfully engaged in the regulatory processes in a timely manner by participating agencies.

The CEPSS designation and coordinated permit process does not affect the jurisdiction of the Energy Facility Site Evaluation Council (EFSEC), limit or abridge the powers of a participating permit agency, or prohibit a state agency, local government, federally recognized Indian tribe, or CEPSS applicant or project proponent from entering into nondisclosure agreements related to confidential proprietary information.

State Environmental Policy Act for Clean Energy Projects.

A number of new provisions are added to SEPA that apply to clean energy project proposals:

- In addition to the 24 month aspirational timeline that applies to all SEPA environmental impact statements (EISs), lead agencies are directed to complete an EIS for a clean energy project within 24 months of a threshold determination. Lead agencies may work with a project applicant to set or extend a time limit longer than 24 months. Lead agencies must work collaboratively with agencies that have actions requiring SEPA review for a clean energy project to develop a schedule that includes a list of agency responsibilities, actions, and deadlines. Failure to comply with the SEPA timeline requirements is not subject to appeal, does not invalidate SEPA review, and does not create civil liability or create a new cause of action.
- Lead agencies may not combine the evaluation of a clean energy project proposal with other proposals unless the proposals are closely related or the applicant agrees to a combined SEPA review. Lead agencies may require mitigation measures for clean energy projects only to address the environmental impacts that are attributable to and caused by a proposal.
- After submitting an environmental checklist, but prior to a threshold determination, a lead agency must notify a clean energy project applicant that a project proposal is likely to result in a determination of significance. The lead agency must provide the project applicant the option of withdrawing or revising the application, and must use any revised application as the basis for the threshold determination.

Ecology must prepare nonproject EISs for solar energy projects, onshore wind energy projects, and green electrolytic or renewable hydrogen projects, along with co-located battery storage for such hydrogen, solar, and wind projects. Ecology must include certain information in the nonproject EIS and address specified types of environmental impacts, and determine the EIS's scope based on input from specified parties. Ecology must offer early and meaningful consultation on the nonproject EIS's with any affected federally recognized Indian tribe. The nonproject EISs must result in the development of maps identifying probable significant adverse environmental impacts for evaluated resources. Following the completion of nonproject EISs, the Coordinating Council must review the findings and make recommendations to the Legislature and the Governor on potential areas to designate as clean energy preferred zones for the technology analyzed, and any taxation, regulatory, environmental review, or other benefits that should accrue to projects in those zones. Project proponents of actions covered by these nonproject EISs must consider the impact analysis from the nonproject EIS in carrying out project-level SEPA reviews, and

may rely on the nonproject EIS in specified ways when carrying out project-level SEPA review. Clean energy projects that follow the recommendations of the nonproject environmental review must be considered to have mitigated environmental impacts unless the project-specific environmental review identifies project-level adverse environmental impacts not addressed in the nonproject environmental impact review.

Other.

During a local project review of a project to construct or improve electric generation, transmission or distribution facilities, a local government may not require a project applicant to demonstrate the necessity or utility of the project, other than to require as part of the completed project application the submission of documentation required by Federal Energy Regulatory Commission or other federal agencies with regulatory authority over electric power transmission and distribution needs, or the Utilities and Transportation Commission.

A county may not prohibit the installation of wind and solar resource evaluation equipment necessary for the design and environmental planning of a renewable energy project.

The Washington State University (WSU) Energy Program must conduct a pumped storage siting process to support expanded capacity to store intermittently produced renewable energy, with a goal of understanding issues and interests related to areas where pumped storage might be sited, and to provide useful information to developers and for subsequent SEPA reviews of environmental impacts. The WSU Energy Program must allow ample opportunity for participation by stakeholders, governments, and federally recognized Indian tribes who self-identify an interest in the process, and must complete the process by June 30, 2025. The WSU Energy Program must develop and make available a map with geographical information systems data layers highlighting areas identified through the process, but the map may not include sensitive tribal information as identified by federally recognized Indian tribes and the WSU Energy Program must take precautions to prevent disclosure of any sensitive tribal information it receives.

Commerce must conduct at least three stakeholder meetings, with at least one in Eastern Washington and at least one in Western Washington. These stakeholder meetings must be held with rural, agriculture, natural resource management and conservation, and forestry stakeholders to gain a better understanding of the benefits and impacts of anticipated changes in the state's energy system, including the siting of facilities under the jurisdiction of the EFSEC, and to identify risks and opportunities for rural communities. Commerce must then complete a report on rural clean energy and resilience, which must consider the stakeholder consultation and must include recommendations for how to more equitably distribute costs and benefits to rural communities. The report must specifically examine the impacts of energy projects in rural areas to jobs, local tax revenue, agriculture, and tourism, and it must forecast what Washington's clean energy transition will require for energy projects in rural Washington. A report is due December 1, 2024.

The Joint Committee on Energy Supply and Energy Conservation is renamed the Joint Committee on Energy Supply, Energy Conservation, and Energy Resilience (Joint Committee). The Joint Committee must hold at least two meetings to consider policy and budget recommendations to reduce impacts and increase benefits of the clean energy transition for rural communities. The Joint Committee must report its findings and any recommendations to the EFSEC and the Legislature by December 1, 2024.

A severability clause is included.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Environment & Energy):

(In support) To meet Washington's clean energy goals, clean energy projects and infrastructure of all types will need to be built, including sources of clean electricity and fuels. Projects that support green and low carbon energy outcomes can still have negative environmental impacts that should be considered and mitigated or avoided. Clean energy projects can have positive economic outcomes for Washington, and can leverage newly available federal funds for clean energy infrastructure. Climate projects will create family wage jobs for the building trades. The bill aims to facilitate clean energy projects not by avoiding environmental review but by doing better upfront planning, conducting early engagement with tribes and impacted communities, improving state agency and local government coordination, and streamlining processes. The bill could be improved by expanding the number of technologies addressed, including in the scope of nonproject environmental impact statements (EISs), to include wind, geothermal, battery storage, biomass, and electric system infrastructure. This bill will help get efforts to site hydrogen and alternative jet fuel infrastructure, which are currently considering Washington but have not yet committed to investing. Timely permitting and increased certainty in the siting of clean energy projects is necessary for regulatory efforts like the Climate Commitment Act, the Clean Energy Transformation Act, and the Clean Fuels Program to function as intended. This bill could be more ambitious and do more to expedite more types of clean energy projects in more locations in Washington. The limitations on the use of State Environmental Policy Act mitigation authority are concerning and would tie the hands of governments doing environmental review.

(Opposed) None.

(Other) The bill could do more to highlight the inclusion of nuclear energy as a solution to Washington's clean energy aspirations. The nonproject EISs could cover more topics and

be of clearer utility. The bill should include additional streamlining and permitting reform. The bill contains a significant amount of process, not all of which will necessarily be helpful to the siting of clean energy projects. State Environmental Policy Act reviews of clean energy projects do not always adequately consider or mitigate environmental impacts to endangered species or habitat, and the bill could do more to protect those interests. The bill could do more to help developers pick low-conflict locations that will have fewer species and tribal impacts for clean energy projects. The requirements for engagement with local governments in the coordinated permit process could be clarified, and should include community benefit agreements. The bill preserves local siting authority.

Staff Summary of Public Testimony (Appropriations):

(In support) There is a lot of construction needed to build the clean energy infrastructure to decarbonize our economy. This bill makes that construction process easier without compromising environmental protections or community engagement. The bill was informed by conversations about the rural communities that are impacted by clean energy projects. The substitute House bill is a huge improvement over the original bill. The investments in this bill will improve the certainty and consistency needed to site, build, and permit the clean energy resources that are needed to meet the state's climate goals. This bill has received input from the environmental, business, and developer communities. The bill will improve the process for siting clean energy projects in the state. The bill would create good jobs, including through the advancement of projects facilitated by the nonproject EISs. The bill would integrate with utility resource plans. The bill would facilitate more efficient and responsible project development and compliance with state clean energy laws. The analysis the bill requires is an important use of state dollars. The bill advances clean energy while protecting communities, tribal rights and resources, and the environment. Commerce's study and engagement process was funded in the governor's budget. The substitute House bill version provides better process streamlining, but the bill could still do better in this respect and provide developers more certainty.

(Opposed) None.

Persons Testifying (Environment & Energy): (In support) Representative Joe Fitzgibbon, prime sponsor; Mark Vossler, Washington Physicians for Social Responsibility; Donny Donovan, International Association of Machinists and Aerospace Workers 751; Mark Riker, Washington State Building and Construction Trades Council; Cassie Bordelon, Puget Sound Energy; Kate Brouns, Renewable Northwest; Becky Kelley, Office of the Governor; Jasmine Vasavada, Department of Commerce; Diane Butorac, Department of Ecology; Justin Allegro, The Nature Conservancy; Clifford Traisman, Washington Conservation Action; Kelly Hall, Climate Solutions; Tom Wolf, BP America; Jan Hasselman, Earthjustice; Dave Warren, Washington Green Hydrogen Alliance; Eric ffitch, Washington Public Ports Association; John Rothlin, Avista; and Isaac Kastama, Clean and Prosperous Washington.

(Other) Jennifer Ziegler, National Construction Alliance; Josh Lozano, Energy Northwest; Jay Kehne, Conservation Northwest; Adam Maxwell, Audubon Washington; Paul Jewell, Washington State Association of Counties; Nicolas Garcia, Washington Public Utility Districts Association; and Peter Godlewski, Association of Washington Business.

Persons Testifying (Appropriations): Representative Joe Fitzgibbon, prime sponsor; Becky Kelley, Office of the Governor; Cassie Bordelon, Puget Sound Energy; Mark Riker, Washington State Building and Construction Trades Council; Kelly Hall, Climate Solutions; and Peter Godlewski, Association of Washington Business .

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.