

SENATE BILL REPORT

E2SHB 1216

As of March 15, 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: Passed House: 3/4/23, 75-20.

Committee Activity: Environment, Energy & Technology: 3/15/23.

Brief Summary of Bill

- Establishes an interagency clean energy siting coordinating council to improve siting and permitting of clean energy projects.
- Creates a designation for clean energy projects of statewide significance and a coordinated permitting process for clean energy projects.
- Amends State Environmental Policy Act processes for clean energy projects, including notification of an anticipated determination of significance and limiting environmental impact statement preparation to 24 months.
- Requires preparation of nonproject environmental impact statements for certain types of clean energy projects.
- Directs the Washington State University Energy Program to conduct a pumped storage siting process.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Gregory Vogel (786-7413)

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.

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. 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, 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 EFSEC. The recommendation must include a draft certification agreement, which must include various conditions including those 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 this designation, a project must meet capital investment or job creation requirements. Possible designations include border-crossing projects; private projects investing in manufacturing, research, and development; projects that will provide a net environmental benefit; and projects that will further commercialize an innovation. The Legislature has designated certain types of projects as projects of statewide significance; for all other types of projects, an application for the designation must be submitted to the Department of Commerce (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. 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 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 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 (programmatic EIS), 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 programmatic 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 programmatic EIS, site specific analyses are not required, but may be included for specific areas of concern. After the approval of a programmatic 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 programmatic EIS, the EIS for the project proposal must focus on the impacts and alternatives, including mitigation measures, specific to the subsequent project and that were not analyzed in the nonproject EIS. SEPA procedures allow for the adoption and use of portions of the programmatic EIS in a subsequent project-level SEPA review. Lead agencies must, at the time of project-level SEPA review, evaluate the programmatic EIS previously completed to ensure the programmatic analysis is valid when applied to the current proposal, knowledge, and

technology. If a programmatic 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 Bill: Interagency Clean Energy Siting Coordinating Council. An Interagency Clean Energy Siting Coordinating Council (Council) is created, and is co-chaired and co-staffed by Ecology and Commerce. The Council must have participation from at least ten named state agencies or offices in addition to Ecology and Commerce. The Council's responsibilities 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 Council must provide annual updates to the Governor and the Legislature.

The 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 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 December 31, 2024.

Clean Energy Projects of Statewide Significance. Commerce must establish an application process for the designation of Clean Energy Project of Statewide Significance (CEPSS). 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 (GHG) emission limits and be consistent with the state

energy strategy, how the project 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.

Clean energy projects eligible for designation as a CEPSS include:

- certain types of clean energy product manufacturing facilities;
- electrical transmission facilities that do not primarily or solely serve fossil fuel electric generation facilities;
- facilities that produce electric generation from renewable resources or that do not result in GHG 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 GHG 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 GHG 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.

Coordinated Permit Process for Clean Energy Projects. An optional, fully coordinated permit process is established for clean energy projects that do not apply to EFSEC.

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 sufficient project information to identify probable significant environmental impacts 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 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 statutes, 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 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.

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 a 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 do not affect the jurisdiction of 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. Lead agencies must 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 utility-scale solar energy projects, onshore utility-scale wind energy projects, green electrolytic or renewable hydrogen projects, and co-located battery energy storage projects that may be included in any of the projects. The scope of a nonproject EIS must be limited to the probable, significant, adverse environmental impacts in geographic areas that are suitable for the applicable clean energy type. Ecology may consider standard attributes for likely development, proximity to existing transmission or complementary facilities, and planned corridors for transmission capacity construction, reconstruction, or enlargement. The scope of nonproject EISs must consider, as appropriate, analysis of the following probable, significant, adverse environmental impacts, including direct and indirect, and cumulative impacts to:

- historic and cultural resources;
- protected species;
- landscape scale habitat connectivity and wildlife migration corridors;
- environmental justice and overburdened communities;
- cultural resources and elements of the environment relevant to tribal rights, interests, and resources including tribal cultural resources, and fish, wildlife, and their habitat;
- land uses, including agricultural and ranching uses; and
- military installations and operations.

The nonproject EISs must identify measures to avoid, minimize, and mitigate probable significant adverse impacts identified during the review. Ecology will offer early and meaningful consultation with any affected federally recognized Indian tribe on the nonproject review for the purpose of understanding potential impacts to tribal rights and resources.

Final nonproject environmental review documents must include maps identifying probable, significant, adverse environmental impacts for the resources evaluated. Following the completion of nonproject review, the coordinating council must consider the findings and make recommendations to the Legislature and Governor on potential areas to designate as clean energy preferred zones and any incentives that should accrue to projects in such zones.

Lead agencies conducting project-level environmental review for projects covered by the nonproject EISs must consider the nonproject EIS to identify and mitigate project-level probable, significant, adverse environmental impacts. Project-level SEPA reviews by lead agencies must begin with review of the applicable nonproject EIS. The review must address any probable, significant, adverse environmental impacts associated with the proposal that were not analyzed in the nonproject EISs. The review must identify any mitigation measures specific to the project for probable, significant, adverse environmental impacts.

Lead agencies reviewing site-specific project proposals for clean energy projects must use the nonproject review through one of the following methods:

- use of the nonproject review unchanged, if the project does not cause a probable significant adverse environmental impact not identified in the nonproject review;
- preparation of an addendum;
- incorporation by reference; or
- preparation of a supplemental EIS.

Clean energy project proposals following the recommendations developed in the nonproject environmental review must be considered to have mitigated the probable, significant, adverse project-specific environmental impacts for which recommendations were specifically developed unless the project-specific environmental review identifies project-level probable, significant, adverse environmental impacts not addressed in the nonproject environmental review.

Local Project Review. 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.

Pumped Storage Siting Process. 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

identified by federally recognized Indian tribes. The WSU Energy Program must take precautions to prevent disclosure of any sensitive tribal information it receives.

Impacts to Rural Communities. 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 siting 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 EFSEC and the Legislature by December 1, 2024.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The goal is to cut pollution down and meet emissions limits through the siting of these projects. The bill uses many tools, with clear processes and timelines, upfront planning, and identifying needed mitigation, to proceed with the projects more quickly and efficiently. It also supported by complementary budget development. We want to ensure tribes are consulted and their issues are part of the process. States around the country are grappling with this. We are committed to putting major new federal funds to work. This bill is part of the solution.

The bill takes a proactive approach to improve siting, while supporting protection of environment, overburdened communities, and tribal resources. Supporting this work requires early and meaningful engagement. We want to create greater efficiency and predictability for proponents of these projects. The programmatic EIS will help streamline

future reviews, potentially saving time for local governments and other lead agencies.

The bill sends a signal that Washington is ready for the clean energy economy to thrive. We are excited about opportunity to produce lower carbon fuels and the jobs created that go along with it. Passing bills like this make it more likely that the projects will become a reality in Washington State.

The analysis of impacts to rural areas is much needed and the inclusion of local community benefit agreements are also a huge step forward. Over the past several years, the Legislature has committed to being a leader on climate, but to meet these laws, we need to be able to site new clean energy projects. We want to ensure consideration of tribes and overburdened communities, through early engagement, fair compensation, and mitigation.

OTHER: We do appreciate that the bill maintains local authority for land use and regulation. However, any opportunity for local benefits have been stripped from the bill. Unfortunately, a lot of these projects don't end up in realized local benefits, and may end with increased taxes on local residents. Wind turbines and solar panels add to the tax base but are later taxed as property, which may negatively impact the property tax burden on local residents in the area.

Persons Testifying: PRO: Isaac Kastama, Clean & Prosperous Washington; Tom Wolf, bp America; Kathryn Brigham, Confederated Tribes of the Umatilla Indian Reservation; Cassie Bordelon, Puget Sound Energy; Kelly Hall, Climate Solutions; Mark Riker, Washington State Building and Construction Trades Council; Becky Kelley, Office of Governor Jay Inslee; Jasmine Vasavada, WA Dept of Commerce; Adam Eitmann, WA Dept of Ecology; Eric ffitich, Washington Public Ports Association; Peter Godlewski, Association of Washington Business; Justin Allegro, The Nature Conservancy; Kate Brouns, Renewable Northwest.

OTHER: Paul Jewell, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: No one.