
HOUSE BILL 2429

State of Washington

68th Legislature

2024 Regular Session

By Representatives Ramel and Pollet

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

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

5 **Sec. 1.** RCW 80.50.030 and 2022 c 183 s 3 are each amended to
6 read as follows:

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

9 (2) The chair of the council shall be appointed by the governor
10 with the advice and consent of the senate, shall have a vote on
11 matters before the council, shall serve for a term coextensive with
12 the term of the governor, and is removable for cause. The chair may
13 designate a member of the council to serve as acting chair in the
14 event of the chair's absence. The salary of the chair shall be
15 determined under RCW 43.03.040. The chair is a "state employee" for
16 the purposes of chapter 42.52 RCW. As applicable, when attending
17 meetings of the council, members may receive reimbursement for travel
18 expenses in accordance with RCW 43.03.050 and 43.03.060, and are
19 eligible for compensation under RCW 43.03.250.

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

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

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

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

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

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

11 (b) The directors, administrators, or their designees, of the
12 following departments, agencies, and commissions, or their statutory
13 successors, may participate as councilmembers at their own discretion
14 provided they elect to participate no later than sixty days after an
15 application is filed:

16 (i) Department of agriculture;

17 (ii) Department of health;

18 (iii) Military department; and

19 (iv) Department of transportation.

20 (4) The appropriate county legislative authority of every county
21 wherein an application for a proposed site is filed shall appoint a
22 member or designee as a voting member to the council. The member or
23 designee so appointed shall sit with the council only at such times
24 as the council considers the proposed site for the county which he or
25 she represents, and such member or designee shall serve until there
26 has been a final acceptance or rejection of the proposed site.

27 (5) The city legislative authority of every city within whose
28 corporate limits an energy facility is proposed to be located shall
29 appoint a member or designee as a voting member to the council. The
30 member or designee so appointed shall sit with the council only at
31 such times as the council considers the proposed site for the city
32 which he or she represents, and such member or designee shall serve
33 until there has been a final acceptance or rejection of the proposed
34 site.

35 (6) For any port district wherein an application for a proposed
36 port facility is filed subject to this chapter, the port district
37 shall appoint a member or designee as a nonvoting member to the
38 council. The member or designee so appointed shall sit with the
39 council only at such times as the council considers the proposed site
40 for the port district which he or she represents, and such member or

1 designee shall serve until there has been a final acceptance or
2 rejection of the proposed site. The provisions of this subsection
3 shall not apply if the port district is the applicant, either singly
4 or in partnership or association with any other person.

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

10 **Sec. 2.** RCW 80.50.071 and 2022 c 183 s 8 are each amended to
11 read as follows:

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

22 (a) Each applicant shall, at the time of application submission,
23 pay to the council for deposit into the energy facility site
24 evaluation council account created in RCW 80.50.390 an amount up to
25 (~~fifty thousand dollars~~) \$50,000, or such greater amount as
26 specified by the council after consultation with the applicant. The
27 council shall charge costs against the deposit if the applicant
28 withdraws its application and has not reimbursed the council for all
29 actual expenditures incurred in considering the application.

30 (b) The council may commission its own independent consultant
31 study to measure the consequences of the proposed energy facility on
32 the environment or any matter that it deems essential to an adequate
33 appraisal of the site. The council shall provide an estimate of the
34 cost of the study to the applicant and consider applicant comments.

35 (c) In addition to the deposit required under (a) of this
36 subsection, applicants must reimburse the council for actual
37 expenditures that arise in considering the application, including the
38 cost of any independent consultant study. The council shall submit to
39 each applicant an invoice of actual expenditures made during the

1 preceding calendar quarter in sufficient detail to explain the
2 expenditures. The applicant shall pay the council the amount of the
3 invoice by the due date.

4 (2) Each certificate holder shall pay the actual costs incurred
5 by the council for inspection and determination of compliance by the
6 certificate holder with the terms of the certification relative to
7 monitoring the effects of construction, operation, and site
8 restoration of the facility.

9 (a) Each certificate holder shall, within (~~thirty~~) 30 days of
10 execution of the site certification agreement, pay to the council for
11 deposit into the energy facility site evaluation council account
12 created in RCW 80.50.390 an amount up to (~~fifty thousand dollars~~)
13 \$50,000, or such greater amount as specified by the council after
14 consultation with the certificate holder. The council shall charge
15 costs against the deposit if the certificate holder ceases operations
16 and has not reimbursed the council for all actual expenditures
17 incurred in conducting inspections and determining compliance with
18 the terms of the certification.

19 (b) In addition to the deposit required under (a) of this
20 subsection, certificate holders must reimburse the council for actual
21 expenditures that arise in administering this chapter and determining
22 compliance. The council shall submit to each certificate holder an
23 invoice of the expenditures actually made during the preceding
24 calendar quarter in sufficient detail to explain the expenditures.
25 The certificate holder shall pay the amount of the invoice by the due
26 date.

27 (3) If an applicant or certificate holder fails to provide the
28 initial deposit, or if subsequently required payments are not
29 received within thirty days following receipt of the invoice from the
30 council, the council may (a) in the case of the applicant, suspend
31 processing of the application until payment is received; or (b) in
32 the case of a certificate holder, suspend the certification.

33 (4) All payments required of the applicant or certificate holder
34 under this section are to be made to the council for deposit into the
35 energy facility site evaluation council account created in RCW
36 80.50.390. All such funds shall be subject to state auditing
37 procedures. Any unexpended portions of the deposit shall be returned
38 to the applicant within (~~sixty~~) 60 days following the conclusion of
39 the application process or to the certificate holder within (~~sixty~~)
40 60 days after a determination by the council that the certificate is

1 no longer required and there is no continuing need for compliance
2 with its terms. For purposes of this section, "conclusion of the
3 application process" means after the governor's decision granting or
4 denying a certificate and the expiration of any opportunities for
5 judicial review.

6 (5) (a) Upon receipt of an application for an energy facility site
7 certification proposing an energy plant or alternative energy
8 resource that is connected to electrical transmission facilities of a
9 nominal voltage of at least one hundred fifteen thousand volts, the
10 council shall notify in writing the United States department of
11 defense. The notification shall include, but not be limited to, the
12 following:

13 (i) A description of the proposed energy plant or alternative
14 energy resource;

15 (ii) The location of the site;

16 (iii) The placement of the energy plant or alternative energy
17 resource on the site;

18 (iv) The date and time by which comments must be received by the
19 council; and

20 (v) Contact information of the council and the applicant.

21 (b) The purpose of the written notification is to provide an
22 opportunity for the United States department of defense to comment
23 upon the application, and to identify potential issues relating to
24 the placement and operations of the energy plant or alternative
25 energy resource, before a site certification application is approved.
26 The time period set forth by the council for receipt of such comments
27 shall not extend the time period for the council's processing of the
28 application.

29 (c) In order to assist local governments required to notify the
30 United States department of defense under RCW 35.63.270, 35A.63.290,
31 and 36.01.320, the council shall post on its website the appropriate
32 information for contacting the United States department of defense.

33 **Sec. 3.** RCW 80.50.080 and 2013 c 23 s 282 are each amended to
34 read as follows:

35 After the council has received a site application, the attorney
36 general shall appoint an assistant attorney general as a counsel for
37 the environment. The counsel for the environment shall represent the
38 public and its interest in protecting the quality of the environment.
39 Costs incurred by the counsel for the environment in the performance

1 of these duties shall be charged to the office of the attorney
2 general, and shall not be a charge against the appropriation to the
3 energy facility site evaluation council. He or she shall be accorded
4 all the rights, privileges, and responsibilities of an attorney
5 representing a party in a formal action. In the event that the
6 council commences an adjudication pursuant to RCW 80.50.090, the
7 counsel for the environment shall take one of three positions in
8 final briefing for the adjudication: (1) Full support for the
9 application for site certification; (2) qualified support for the
10 application for site certification with recommended modifications; or
11 (3) opposition to approval of the application for site certification.
12 This section shall not be construed to prevent any person from being
13 heard or represented by counsel in accordance with the other
14 provisions of this chapter.

15 **Sec. 4.** RCW 80.50.090 and 2022 c 183 s 9 are each amended to
16 read as follows:

17 (1) The council shall conduct an informational public hearing in
18 the county of the proposed site as soon as practicable but not later
19 than ((~~sixty~~)) 60 days after receipt of an application for site
20 certification. However, the place of such public hearing shall be as
21 close as practical to the proposed site.

22 (2) Subsequent to the informational public hearing, the council
23 shall conduct a public hearing to determine whether or not the
24 proposed site is consistent and in compliance with city, county, or
25 regional land use plans or zoning ordinances on the date of the
26 application.

27 (3)(a) After the submission of an environmental checklist and
28 prior to issuing a threshold determination that a facility is likely
29 to cause a significant adverse environmental impact under chapter
30 43.21C RCW, the director must notify the project applicant and
31 explain in writing the basis for its anticipated determination of
32 significance. Prior to issuing the threshold determination of
33 significance, the director must give the project applicant the option
34 of withdrawing and revising its application and the associated
35 environmental checklist to clarify or make changes to features of the
36 proposal that are designed to mitigate the impacts that were the
37 basis of the director's anticipated determination of significance.
38 The director shall make the threshold determination based upon the
39 changed or clarified proposal following the applicant's submittal.

1 The director must provide an opportunity for public comment on a
2 project for which a project applicant has withdrawn and revised the
3 application and environmental checklist and subsequently received a
4 threshold determination of nonsignificance or mitigated determination
5 of nonsignificance.

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

9 (4) Prior to the issuance of a council recommendation to the
10 governor under RCW 80.50.100 a public hearing, conducted as an
11 adjudicative proceeding under chapter 34.05 RCW, the administrative
12 procedure act, shall be held. Such an adjudicative proceeding may not
13 be commenced until the council has completed its environmental
14 analysis under chapter 43.21C RCW, including the issuance of a final
15 environmental impact statement when applicable.

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

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

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

1 (6) Additional public hearings shall be held as deemed
2 appropriate by the council in the exercise of its functions under
3 this chapter.

4 **Sec. 5.** RCW 80.50.100 and 2022 c 183 s 10 are each amended to
5 read as follows:

6 (1)(a) The council shall report to the governor its
7 recommendations as to the approval or rejection of an application for
8 certification within (~~twelve~~) 24 months of receipt by the council
9 of an application deemed complete by the director, or such later time
10 as is mutually agreed by the council and the applicant.

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

13 (c) In the case of an application filed prior to December 31,
14 2025, for certification of an energy facility proposed for
15 construction, modification, or expansion for the purpose of providing
16 generating facilities that meet the requirements of RCW 80.80.040 and
17 are located in a county with a coal-fired electric generation
18 facility subject to RCW 80.80.040(3)(c), the council shall expedite
19 the processing of the application pursuant to RCW 80.50.075 and shall
20 report its recommendations to the governor within (~~one hundred~~
21 ~~eighty~~) 180 days of receipt by the council of such an application,
22 or a later time as is mutually agreed by the council and the
23 applicant.

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

28 (2) If the council recommends approval of an application for
29 certification, it shall also submit a draft certification agreement
30 with the report. The council shall include conditions in the draft
31 certification agreement to implement the provisions of this chapter
32 including, but not limited to, conditions to protect state, local
33 governmental, or community interests, or overburdened communities as
34 defined in RCW 70A.02.010 affected by the construction or operation
35 of the facility, and conditions designed to recognize the purpose of
36 laws or ordinances, or rules or regulations promulgated thereunder,
37 that are preempted or superseded pursuant to RCW 80.50.110 as now or
38 hereafter amended.

1 (3) (a) Within 60 days of receipt of the council's report the
2 governor shall take one of the following actions:

3 (i) Approve the application and execute the draft certification
4 agreement; or

5 (ii) Reject the application; or

6 (iii) Direct the council to reconsider certain aspects of the
7 draft certification agreement.

8 (b) The council shall reconsider such aspects of the draft
9 certification agreement by reviewing the existing record of the
10 application or, as necessary, by reopening the adjudicative
11 proceeding for the purposes of receiving additional evidence. Such
12 reconsideration shall be conducted expeditiously. The council shall
13 resubmit the draft certification to the governor incorporating any
14 amendments deemed necessary upon reconsideration. Within 60 days of
15 receipt of such draft certification agreement, the governor shall
16 either approve the application and execute the certification
17 agreement or reject the application. The certification agreement
18 shall be binding upon execution by the governor and the applicant.

19 (4) The rejection of an application for certification by the
20 governor shall be final as to that application but shall not preclude
21 submission of a subsequent application for the same site on the basis
22 of changed conditions or new information.

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