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**SUBSTITUTE SENATE BILL 5165**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Nguyen, Mullet, Boehnke, Frame, Hasegawa, Keiser, Nobles, and Stanford; by request of Office of the Governor)

READ FIRST TIME 02/09/23.

1 AN ACT Relating to electric power system transmission planning;  
2 amending RCW 19.280.030, 80.50.060, and 80.50.045; adding a new  
3 section to chapter 19.280 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the  
6 electric power system serving Washington will require additional high  
7 voltage transmission capacity to achieve the state's objectives and  
8 legal requirements. Washington must reduce its greenhouse gas  
9 emissions under state law, and the 2021 state energy strategy finds  
10 that this will require a significant increase in the use of renewable  
11 or nonemitting electricity in place of fossil fuels now used in the  
12 transportation, industry, and building sectors.

13 (2) The legislature anticipated the crucial role of additional  
14 transmission capacity in 2019 in the enactment of the clean energy  
15 transformation act and directed the energy facilities site evaluation  
16 council to convene a transmission corridors work group. The  
17 transmission corridors work group issued its final report on October  
18 31, 2022, in which it confirmed the central role of transmission and  
19 recommended actions to achieve the expansion of transmission capacity  
20 to address this need.

1 (3) Expanded transmission capacity and the more effective use of  
2 existing transmission capacity will provide benefits to electricity  
3 consumers in the state by enhancing the reliability of the electric  
4 power system and increasing access to more affordable sources of  
5 electricity within the state and across the western United States and  
6 Canada.

7 (4) Existing constraints on transmission capacity within the  
8 state already present challenges in ensuring adequate and affordable  
9 supplies of clean electricity. Of particular concern is the  
10 capability of the transmission system to deliver clean electricity  
11 into and within the central Puget Sound area.

12 (5) There are multiple issues that contribute to the challenge of  
13 making timely and cost-effective expansions of the high voltage  
14 transmission system. Among those challenges is the need for a more  
15 proactive transmission planning process using a longer planning  
16 period than current law requires. Transmission planning must reflect  
17 not just the requirements to connect individual generating resources  
18 to the grid but also the need to transfer electricity across the  
19 state and the west. Transmission planning must incorporate state  
20 policies and laws in planning objectives.

21 (6) Certain transmission projects are of significant state  
22 interest due to their impact on the access of multiple utilities and  
23 communities to gain access to clean, affordable electricity supplies  
24 and obtain electricity that is necessary to comply with state laws.

25 (7) The legislature intends and affirms that the option to use  
26 local government permitting processes remains available for  
27 transmission projects not subject to mandatory jurisdiction under RCW  
28 80.50.060(2).

29 (8) Transmission projects typically take at least a decade to  
30 develop and permit. This timing presents particular challenges for  
31 achieving the state's greenhouse gas emissions reduction mandates,  
32 which include ambitious benchmarks as early as 2030. There is a need  
33 to accelerate the timeline for transmission development while still  
34 protecting other Washington values.

35 **Sec. 2.** RCW 19.280.030 and 2021 c 300 s 3 are each amended to  
36 read as follows:

37 Each electric utility must develop a plan consistent with this  
38 section.

1 (1) Utilities with more than (~~twenty-five thousand~~) 25,000  
2 customers that are not full requirements customers must develop or  
3 update an integrated resource plan by September 1, 2008. At a  
4 minimum, progress reports reflecting changing conditions and the  
5 progress of the integrated resource plan must be produced every two  
6 years thereafter. An updated integrated resource plan must be  
7 developed at least every four years subsequent to the 2008 integrated  
8 resource plan. The integrated resource plan, at a minimum, must  
9 include:

10 (a) A range of forecasts, for at least the next (~~ten~~) 10 years  
11 or longer, of projected customer demand which takes into account  
12 econometric data and customer usage;

13 (b) An assessment of commercially available conservation and  
14 efficiency resources, as informed, as applicable, by the assessment  
15 for conservation potential under RCW 19.285.040 for the planning  
16 horizon consistent with (a) of this subsection. Such assessment may  
17 include, as appropriate, opportunities for development of combined  
18 heat and power as an energy and capacity resource, demand response  
19 and load management programs, and currently employed and new policies  
20 and programs needed to obtain the conservation and efficiency  
21 resources;

22 (c) An assessment of commercially available, utility scale  
23 renewable and nonrenewable generating technologies including a  
24 comparison of the benefits and risks of purchasing power or building  
25 new resources;

26 (d) A comparative evaluation of renewable and nonrenewable  
27 generating resources, including transmission and distribution  
28 delivery costs, and conservation and efficiency resources using  
29 "lowest reasonable cost" as a criterion;

30 (e) An assessment of methods, commercially available  
31 technologies, or facilities for integrating renewable resources,  
32 including but not limited to battery storage and pumped storage, and  
33 addressing overgeneration events, if applicable to the utility's  
34 resource portfolio;

35 (f) An assessment and (~~ten~~) 20-year forecast of the  
36 availability of and requirements for regional generation and  
37 transmission capacity (~~on which the utility may rely~~) to provide  
38 and deliver electricity to (~~its customers~~) the utility's customers  
39 and to meet the requirements of the clean energy transformation act.  
40 The transmission assessment must take into account the state's

1 emissions reduction limits; opportunities to make more effective use  
2 of existing transmission capacity through improved transmission  
3 system operating practices, energy efficiency, demand response, grid  
4 modernization, nonwires solutions, and other programs; and the  
5 electrification of transportation and other end uses historically met  
6 using fossil fuels. The transmission assessment must identify the  
7 utility's expected needs to develop new, or expand or upgrade  
8 existing, bulk transmission facilities consistent with the  
9 requirements of this section;

10 (g) A determination of resource adequacy metrics for the resource  
11 plan consistent with the forecasts;

12 (h) A forecast of distributed energy resources that may be  
13 installed by the utility's customers and an assessment of their  
14 effect on the utility's load and operations;

15 (i) An identification of an appropriate resource adequacy  
16 requirement and measurement metric consistent with prudent utility  
17 practice in implementing RCW 19.405.030 through 19.405.050;

18 (j) The integration of the demand forecasts, resource  
19 evaluations, and resource adequacy requirement into a long-range  
20 assessment describing the mix of supply side generating resources and  
21 conservation and efficiency resources that will meet current and  
22 projected needs, including mitigating overgeneration events and  
23 implementing RCW 19.405.030 through 19.405.050, at the lowest  
24 reasonable cost and risk to the utility and its customers, while  
25 maintaining and protecting the safety, reliable operation, and  
26 balancing of its electric system;

27 (k) An assessment, informed by the cumulative impact analysis  
28 conducted under RCW 19.405.140, of: Energy and nonenergy benefits and  
29 reductions of burdens to vulnerable populations and highly impacted  
30 communities; long-term and short-term public health and environmental  
31 benefits, costs, and risks; and energy security and risk;

32 (l) A ~~((ten))~~ 10-year clean energy action plan for implementing  
33 RCW 19.405.030 through 19.405.050 at the lowest reasonable cost, and  
34 at an acceptable resource adequacy standard, that identifies the  
35 specific actions to be taken by the utility consistent with the  
36 long-range integrated resource plan; and

37 (m) An analysis of how the plan accounts for:

38 (i) Modeled load forecast scenarios that consider the anticipated  
39 levels of zero emissions vehicle use in a utility's service area,

1 including anticipated levels of zero emissions vehicle use in the  
2 utility's service area provided in RCW 47.01.520, if feasible;

3 (ii) Analysis, research, findings, recommendations, actions, and  
4 any other relevant information found in the electrification of  
5 transportation plans submitted under RCW 35.92.450, 54.16.430, and  
6 80.28.365; and

7 (iii) Assumed use case forecasts and the associated energy  
8 impacts. Electric utilities may, but are not required to, use the  
9 forecasts generated by the mapping and forecasting tool created in  
10 RCW 47.01.520. This subsection (1)(m)(iii) applies only to plans due  
11 to be filed after September 1, 2023.

12 (2) (~~(For an investor-owned utility, the)~~) The clean energy  
13 action plan must:

14 (a) Identify and be informed by the utility's (~~ten~~) 10-year  
15 cost-effective conservation potential assessment as determined under  
16 RCW 19.285.040, if applicable;

17 (b) (~~establish~~) Establish a resource adequacy requirement;

18 (c) (~~identify~~) Identify the potential cost-effective demand  
19 response and load management programs that may be acquired;

20 (d) (~~identify~~) Identify renewable resources, nonemitting  
21 electric generation, and distributed energy resources that may be  
22 acquired and evaluate how each identified resource may be expected to  
23 contribute to meeting the utility's resource adequacy requirement;

24 (e) (~~identify~~) Identify any need to develop new, or expand or  
25 upgrade existing, bulk transmission and distribution facilities and  
26 document existing and planned efforts by the utility to make more  
27 effective use of existing transmission capacity and secure additional  
28 transmission capacity consistent with the requirements of subsection  
29 (1)(f) of this section; and

30 (f) (~~identify~~) Identify the nature and possible extent to which  
31 the utility may need to rely on alternative compliance options under  
32 RCW 19.405.040(1)(b), if appropriate.

33 (3)(a) An electric utility shall consider the social cost of  
34 greenhouse gas emissions, as determined by the commission for  
35 investor-owned utilities pursuant to RCW 80.28.405 and the department  
36 for consumer-owned utilities, when developing integrated resource  
37 plans and clean energy action plans. An electric utility must  
38 incorporate the social cost of greenhouse gas emissions as a cost  
39 adder when:

1 (i) Evaluating and selecting conservation policies, programs, and  
2 targets;

3 (ii) Developing integrated resource plans and clean energy action  
4 plans; and

5 (iii) Evaluating and selecting intermediate term and long-term  
6 resource options.

7 (b) For the purposes of this subsection (3): (i) Gas consisting  
8 largely of methane and other hydrocarbons derived from the  
9 decomposition of organic material in landfills, wastewater treatment  
10 facilities, and anaerobic digesters must be considered a nonemitting  
11 resource; and (ii) qualified biomass energy must be considered a  
12 nonemitting resource.

13 (4) To facilitate broad, equitable, and efficient implementation  
14 of chapter 288, Laws of 2019, a consumer-owned energy utility may  
15 enter into an agreement with a joint operating agency organized under  
16 chapter 43.52 RCW or other nonprofit organization to develop and  
17 implement a joint clean energy action plan in collaboration with  
18 other utilities.

19 (5) All other utilities may elect to develop a full integrated  
20 resource plan as set forth in subsection (1) of this section or, at a  
21 minimum, shall develop a resource plan that:

22 (a) Estimates loads for the next five and (~~ten~~) 10 years;

23 (b) Enumerates the resources that will be maintained and/or  
24 acquired to serve those loads;

25 (c) Explains why the resources in (b) of this subsection were  
26 chosen and, if the resources chosen are not: (i) Renewable resources;  
27 (ii) methods, commercially available technologies, or facilities for  
28 integrating renewable resources, including addressing any  
29 overgeneration event; or (iii) conservation and efficiency resources,  
30 why such a decision was made;

31 (d) By December 31, 2020, and in every resource plan thereafter,  
32 identifies how the utility plans over a (~~ten~~) 10-year period to  
33 implement RCW 19.405.040 and 19.405.050; and

34 (e) Accounts for:

35 (i) Modeled load forecast scenarios that consider the anticipated  
36 levels of zero emissions vehicle use in a utility's service area,  
37 including anticipated levels of zero emissions vehicle use in the  
38 utility's service area provided in RCW 47.01.520, if feasible;

39 (ii) Analysis, research, findings, recommendations, actions, and  
40 any other relevant information found in the electrification of

1 transportation plans submitted under RCW 35.92.450, 54.16.430, and  
2 80.28.365; and

3 (iii) Assumed use case forecasts and the associated energy  
4 impacts. Electric utilities may, but are not required to, use the  
5 forecasts generated by the mapping and forecasting tool created in  
6 RCW 47.01.520. This subsection (5)(e)(iii) applies only to plans due  
7 to be filed after September 1, 2023.

8 (6) Assessments for demand-side resources included in an  
9 integrated resource plan may include combined heat and power systems  
10 as one of the measures in a conservation supply curve. The value of  
11 recoverable waste heat resulting from combined heat and power must be  
12 reflected in analyses of cost-effectiveness under this subsection.

13 (7) An electric utility that is required to develop a resource  
14 plan under this section must complete its initial plan by September  
15 1, 2008.

16 (8) Plans developed under this section must be updated on a  
17 regular basis, on intervals approved by the commission or the  
18 department, or at a minimum on intervals of two years.

19 (9) Plans shall not be a basis to bring legal action against  
20 electric utilities.

21 (10)(a) To maximize transparency, the commission, for investor-  
22 owned utilities, or the governing body, for consumer-owned utilities,  
23 may require an electric utility to make the utility's data input  
24 files available in a native format. Each electric utility shall  
25 publish its final plan either as part of an annual report or as a  
26 separate document available to the public. The report may be in an  
27 electronic form.

28 (b) Nothing in this subsection limits the protection of records  
29 containing commercial information under RCW 80.04.095.

30 ~~((11) By December 31, 2021, the department and the commission  
31 must adopt rules establishing the requirements for incorporating the  
32 cumulative impact analysis developed under RCW 19.405.140 into the  
33 criteria for developing clean energy action plans under this  
34 section.))~~

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.280  
36 RCW to read as follows:

37 (1) Electric utilities must, in the selection and acquisition of  
38 renewable resources, give reasonable consideration to, and may not  
39 unreasonably exclude from consideration, resources that would use

1 transmission services considered to be conditional firm under the  
2 tariff of the relevant transmission provider. For the purposes of  
3 this section, conditional firm service means any form of long-term  
4 firm point-to-point transmission service in which transmission  
5 customers are able to reserve service subject to specific and limited  
6 conditions under which the transmission provider may curtail the  
7 transmission customer's reservation of service prior to curtailment  
8 of other firm service.

9 (2) Electric utilities are encouraged to satisfy the transmission  
10 planning requirements of RCW 19.280.030 through statewide or  
11 multiutility planning activities and through interstate transmission  
12 planning processes.

13 (3) Electric utilities must seek the support of federal,  
14 interstate, and voluntary industry organizations with a role in the  
15 bulk power transmission system, including but not limited to the  
16 Bonneville power administration, the Pacific Northwest electric power  
17 and conservation planning council, NorthernGrid, the Western Power  
18 Pool, and public interest organizations in improving the planning and  
19 development of transmission capacity consistent with this act.

20 **Sec. 4.** RCW 80.50.060 and 2022 c 183 s 6 are each amended to  
21 read as follows:

22 (1)(a) The provisions of this chapter apply to the construction  
23 of energy facilities which includes the new construction of energy  
24 facilities and the reconstruction or enlargement of existing energy  
25 facilities where the net increase in physical capacity or dimensions  
26 resulting from such reconstruction or enlargement meets or exceeds  
27 those capacities or dimensions set forth in RCW 80.50.020 (14) and  
28 (29). No construction or reconstruction of such energy facilities may  
29 be undertaken, except as otherwise provided in this chapter, without  
30 first obtaining certification in the manner provided in this chapter.

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

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

37 (ii) Alternative energy resource facilities;

38 (iii) Electrical transmission facilities: (A) Of a nominal  
39 voltage of at least 115,000 volts; and (B) located in more than one



1 jurisdiction that has promulgated land use plans or zoning  
2 ordinances;

3 (iv) Clean energy product manufacturing facilities; and

4 (v) Storage facilities.

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

9 (2) (a) The provisions of this chapter must apply to ~~((the))~~;

10 (i) The construction, reconstruction, or enlargement of new or  
11 existing electrical transmission facilities: (A) Of a nominal voltage  
12 of at least 500,000 volts alternating current or at least 300,000  
13 volts direct current; (B) located in more than one county; and (C)  
14 located in the Washington service area of more than one retail  
15 electric utility; and

16 (ii) The construction, reconstruction, or modification of  
17 electrical transmission facilities when the facilities are located in  
18 a national interest electric transmission corridor as specified in  
19 RCW 80.50.045.

20 (b) For the purposes of this subsection, "modification" means a  
21 significant change to an electrical transmission facility and does  
22 not include the following: (i) Minor improvements such as the  
23 replacement of existing transmission line facilities or supporting  
24 structures with equivalent facilities or structures; (ii) the  
25 relocation of existing electrical transmission line facilities; (iii)  
26 the conversion of existing overhead lines to underground; or (iv) the  
27 placing of new or additional conductors, supporting structures,  
28 insulators, or their accessories on or replacement of supporting  
29 structures already built.

30 (3) The provisions of this chapter shall not apply to normal  
31 maintenance and repairs which do not increase the capacity or  
32 dimensions beyond those set forth in RCW 80.50.020 (14) and (29).

33 (4) Applications for certification of energy facilities made  
34 prior to July 15, 1977, shall continue to be governed by the  
35 applicable provisions of law in effect on the day immediately  
36 preceding July 15, 1977, with the exceptions of RCW 80.50.071 which  
37 shall apply to such prior applications and to site certifications  
38 prospectively from July 15, 1977.

1 (5) Applications for certification shall be upon forms prescribed  
2 by the council and shall be supported by such information and  
3 technical studies as the council may require.

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

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

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

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

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

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

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

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

38 **Sec. 5.** RCW 80.50.045 and 2006 c 196 s 3 are each amended to  
39 read as follows:

1 (1) The council shall consult with other state agencies,  
2 utilities, local municipal governments, public interest groups,  
3 tribes, and other interested persons to convey their views to the  
4 secretary and the federal energy regulatory commission regarding  
5 appropriate limits on federal regulatory authority in the siting of  
6 electrical transmission corridors in the state of Washington.

7 (2) The council is designated as the state authority for purposes  
8 of siting transmission facilities under (~~the national energy policy~~  
9 ~~act of 2005~~) Title 16 U.S.C. Sec. 824p and for purposes of other  
10 such rules or regulations adopted by the secretary. The council's  
11 authority regarding transmission facilities under this subsection is  
12 limited to those transmission facilities that are the subject of  
13 (~~section 1221 of the national energy policy act~~) Title 16 U.S.C.  
14 Sec. 824p and this chapter.

15 (3) For the construction and modification of transmission  
16 facilities that are the subject of (~~section 1221 of the national~~  
17 ~~energy policy act~~) Title 16 U.S.C. Sec. 824p, the council may: (a)  
18 Approve the siting of the facilities; and (b) consider the interstate  
19 benefits expected to be achieved by the proposed construction or  
20 modification of the facilities in the state.

21 (4) When developing recommendations as to the disposition of an  
22 application for the construction or modification of transmission  
23 facilities under this chapter, the fuel source of the electricity  
24 carried by the transmission facilities shall not be considered.

25 (5) For electrical transmission projects proposed or sited by a  
26 federal agency, the director must coordinate state agency  
27 participation in environmental review under the national  
28 environmental policy act.

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