
Environment & Energy Committee

HB 1237

Brief Description: Facilitating predictable and timely application decisions by the energy facility site evaluation council.

Sponsors: Representatives Fitzgibbon, Berry, Fosse, Simmons, Duerr, Ormsby, Hill and Tharinger.

Brief Summary of Bill

- Requires the Energy Facility Site Evaluation Council (EFSEC) to recommend to the Governor any application for the siting of certain energy facilities if the EFSEC determines that the application meets specific standards.
- Requires a public hearing prior to the issuance of a recommendation by the EFSEC on an application where the EFSEC determines that the proposed site is inconsistent or not in compliance with applicable land use plans or zoning ordinances, and after the issuance of any final Environmental Impact Statement under the State Environmental Policy Act.
- Repeals provisions pertaining to the expedited processing of applications and the assessment of the operations of the EFSEC by the Governor.

Hearing Date: 1/20/25

Staff: Matt Sterling (786-7289).

Background:

The Energy Facility Site Evaluation Council.

The Energy Facility Site Evaluation Council (EFSEC) was established in 1970 to provide a

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.

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. If approved by the Governor, a site certification agreement is issued in lieu of any other individual state or local agency permits.

The Governor, with the advice and consent of the Senate, appoints the EFSEC Chair (Chair). The EFSEC is a stand-alone entity of state government. The Chair appoints a director to oversee operations and carry out responsibilities for energy facility siting. The director must employ administrative staff. The director, personal secretary to the director, council chair, and not more than two professional staff are exempted from the Civil Service Law. The Chair may delegate its council appointing authority to the director. Along with the Chair, the permanent membership of the EFSEC consists of:

- the Director of the Department of Ecology or a designee;
- the Director of the Department of Fish and Wildlife or a designee;
- the Director of the Department of Commerce or a designee;
- the Chair of the Utilities and Transportation Commission or a designee; and
- the Commissioner of Public Lands or a designee.

The directors, administrators, or their designees, of the following may participate as EFSEC members in a specific site certification proceeding at their own discretion, provided they elect to participate no later than 60 days after an application is filed:

- the Department of Agriculture;
- the Department of Health;
- the Washington State Military Department; and
- the Department of Transportation.

The legislative authority of every county and city in which an application for a proposed site is filed must appoint a member or designee as a voting member to the EFSEC. Any port district in which an application for a proposed port facility is filed must appoint a member or designee as a nonvoting member to the EFSEC. However, if the port district is an applicant for a port facility, the port may not appoint a member or designee to the EFSEC for review of that application. For cities, counties, and port districts, the appointed member or designee only sits with the EFSEC from the time the proposed site is considered until there is a final acceptance or rejection of the proposed site.

EFSEC Powers and Duties.

Among the EFSEC's enumerated powers are the authorities to:

- develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities;
- conduct or contract studies of sites proposed for certification;

- conduct public hearings on the proposed location of energy facilities;
- issue required permits, including permits in compliance with applicable provisions of the federally approved state implementation plan adopted in accordance with the Federal Clean Air Act; and
- preempt local regulation and certification of the location, construction, and operational conditions of certification of energy facilities.

Energy Facilities Covered Under the EFSEC Siting Laws.

The laws that provide for 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. The EFSEC has siting authority over energy facilities including nuclear power plants of any size, thermal electric power plants with a generating capacity of 350 megawatts or greater, and other facilities that meet specified capacity thresholds to receive, store, process, or produce various energy types. The EFSEC's jurisdiction does not extend to hydropower facilities or facilities operated by and for the armed services, or by other federal authority for national defense.

Applications are also required to go through the EFSEC certification process for the construction, reconstruction, or enlargement of new or existing electrical transmission facilities:

- if the facilities are:
 - of a nominal voltage of at least 500,000 volts alternating current or at least 300,000 volts direct current;
 - located in more than one county; and
 - located in the Washington service area of more than one retail electric utility; or
- when the facilities are located in a national interest electric transmission corridor.

Facilities That May Choose the EFSEC Certification.

The EFSEC certification process may be selected by a person for the construction, reconstruction, or enlargement of:

- biofuel facilities that produce no more than 25,000 barrels per day;
- alternative energy resource facilities;
- electrical transmission lines of a nominal voltage of at least 115,000 volts that are located in more than one jurisdiction that has promulgated land use plans or zoning ordinances;
- clean energy product manufacturing facilities; and
- storage facilities.

Review of Applications and Report to the Governor.

The EFSEC must receive all applications for energy facility site certification. 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 receipt of an application deemed complete by the director. The recommendation must include a draft certification agreement, which must include various conditions including conditions to protect state, local, community interests, and overburdened communities 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.

Expedited Processing of Applications.

Any person filing an application for certification may apply for expedited processing, but there are certain facility applications for which the EFSEC must automatically expedite the processing for and report recommendations to the Governor within 180 days of application receipt. The EFSEC may grant expedited processing if it finds that the:

- environmental impact of the proposed facility is not significant or will be mitigated to a nonsignificant level under a review pursuant to the State Environmental Policy Act (SEPA); and
- project is in compliance with local land use plans or zoning ordinances.

If an application for a project's certification is granted expedited processing, the EFSEC is not required to commission an independent study to further measure the consequences of the proposed facility on the environment or hold an adjudicative proceeding on the application.

After expedited processing is granted and before providing a recommendation to the Governor, the EFSEC must hold a public meeting to take comments on the proposed application. There will be a public comment period before the adjudicative proceeding.

After the EFSEC receives an application, the Attorney General must appoint an Assistant Attorney General to represent the public as a Counsel for the Environment.

Engagement with Local Legislative Authorities and Federally Recognized Tribes.

When an application is received, the Chair must notify the:

- city and county legislative authorities where the proposed facility is located;
- federally recognized tribal governments affected by the proposed facility; and
- Department of Archaeology and Historic Preservation (DAHP).

The DAHP must coordinate with affected federally recognized tribes and with the applicant. The EFSEC must work with local governments where a project is proposed to be sited, and with all federally recognized tribes affected by a proposed facility, to provide for participation and input during siting review and compliance monitoring.

The EFSEC staff must inform affected federally recognized tribes of a project undergoing preapplication review. The Chair and staff must offer to conduct government-to-government consultation to address issues of concern raised by any tribe. The Chair must provide regular updates on the consultation to the EFSEC during the application review process. A summary of the government-to-government consultation process, including issues and proposed resolutions, must be included in the EFSEC reports to the Governor that recommend approving or rejecting an application for certification. This summary must comply with the Public Records Act to exempt records, maps, and other information related to archaeological and certain tribal sites from public reporting.

Public Hearings.

For each application, the EFSEC must hold three sequential public hearings:

- an informational hearing;
- a land use and zoning ordinance hearing. The EFSEC must determine whether the proposal is consistent with local land use and zoning ordinances on the date of the application; and
- a public hearing conducted as an adjudicative proceeding prior to the issuance of a certification recommendation to the Governor. During the adjudicative proceeding, anyone may raise one or more specific issues, but only as long as they raised the issue or issues in writing with specificity during the application review process or during the public comment period prior to the start of this hearing.

The EFSEC must review and consider comments received during the application process in making its recommendation to the Governor. There must be a public comment period prior to the start of the final public hearing that is conducted as an adjudicative proceeding. During the final public hearing, anyone may raise one or more specific issues, but only as long as they raised the issue or issues in writing with specificity during the application review process or during the public comment period prior to the start of this hearing.

Additionally, the EFSEC may limit the adjudicative proceeding to whether any local land use plans or zoning ordinances that are inconsistent with the proposed site, as determined in the previous hearing, should be preempted. The EFSEC may only limit the final public hearing in this way if the SEPA review determines that the environmental impact of the proposed facility is not significant or will be mitigated to a nonsignificant level.

The director of the EFSEC must provide an opportunity for public comment on a SEPA determination of nonsignificance or mitigated nonsignificance at the end of a process where a project applicant withdraws and revises an application to avoid a determination of significance on the originally submitted application.

State Environmental Policy Act.

The 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 governmental 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, 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 Ecology, the EFSEC is the lead agency for all government actions for energy facilities that require certification under the EFSEC's siting laws and the EFSEC director is responsible for coordinating activities to comply with the SEPA.

Study of Potential Sites.

The EFSEC may conduct a preliminary study of a potential project if an applicant and the EFSEC agree that the EFSEC do so. The EFSEC may commission an independent consultant to study the potential project. This preliminary study is before any SEPA environmental review process begins, and is not required to include an analysis of environmental impact information. Tribal entities are added to the entities that the EFSEC may cooperate and work with while conducting the preliminary study. If an applicant submits a formal application for the proposed site that was studied, the applicant's payments for the preliminary study may be considered as payment toward the application fee. The preliminary EFSEC study may not be used in place of the EIS required under SEPA.

Except for the siting of electrical transmission facilities, applicants may request a preapplication review of a proposed project. The EFSEC staff must provide comments on any additional studies and stakeholder and tribal input that should be included in the application. After this initial review, the EFSEC staff may conduct or contract a further review and consultation if the applicant pays fees that are agreed upon by the director and the applicant.

Assessment of EFSEC Operations by the Governor.

The Governor is required to undertake an evaluation of the operations of the EFSEC to assess ways to enhance its efficiency. The assessment must include whether the efficiency of the siting process would be improved by conducting the process under the SEPA in a particular sequence relative to the adjudicative proceeding. The results of the Governor's assessment may include recommendations for administrative changes, statutory changes, or expanded staffing levels.

Summary of Bill:

Public Hearings.

Prior to the issuance of a recommendation to the Governor, the EFSEC must hold a public hearing under the following circumstances:

- if the EFSEC determines that the proposed site in an application is inconsistent or not in compliance with applicable land use plans or zoning ordinances on the date of the application. At the public hearing, that is to be conducted as an adjudicative hearing under the Administrative Procedure Act, the EFSEC must consider whether any such land use plans or zoning ordinances should be preempted; and
- to take comments on a proposed application after the issuance of any final EIS.

Review of Applications and Report to the Governor.

If the EFSEC determines that the preponderance of evidence on the record supports that the application meets specific standards, the EFSEC must recommend that the Governor approve an

application for an alternative energy resource, a clean energy manufacturing facility, a biofuel production facility, a fusion energy facility, a storage facility, or an electric transmission facility. In the determination of whether the record supports that the application has met these standards, the EFSEC must include consideration of economic viability. The specific standards that the EFSEC must determine are supported in the application include that the:

- project provides public benefits that include:
 - contributions towards meeting:
 - greenhouse gas (GHG) emissions limits;
 - requirements under the Clean Energy Transformation Act for the sale of GHG neutral electricity; or
 - the state energy strategy prepared by the Department of Commerce;
 - public health, environmental, economic, and other benefits of GHG reductions;
 - tax benefits;
 - community benefits; and
 - the creation of jobs;
- project avoids, minimizes, or mitigates, to the maximum extent practicable, significant adverse environmental impacts:
 - related to the siting, design, construction, and operation of the project;
 - on historical, archaeological, and cultural resources; and
 - to threatened and endangered species;
- applicant has taken measures to ensure that the project avoids, minimizes, or mitigates impacts to overburdened communities and vulnerable populations and that the project will provide benefits to those populations in the vicinity of the project;
- project does not present an unreasonable threat to health and safety; and
- applicant has agreed to requirements for project decommissioning that ensure that project components are reused, refurbished, or disposed of in a manner consistent with state and federal requirements for waste disposal or recycling, and that lands affected by the project are restored to their pre-project condition to the maximum extent practicable.

Expedited Hearings and Assessment of EFSEC Operations by Governor.

The sections pertaining to the expedited processing of applications and the assessment of operations of the EFSEC by the Governor are repealed.

Appropriation: None.

Fiscal Note: Available.

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