

SENATE BILL REPORT

SB 5246

As of January 20, 2025

Title: An act relating to facilitating predictable and timely application decisions by the energy facility site evaluation council.

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

Sponsors: Senators Shewmake, Boehnke, Chapman and Nobles.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/21/25.

Brief Summary of Bill

- Requires the Energy Facility Site Evaluation Council (EFSEC) to hold an adjudicative proceeding only for applications EFSEC determines are inconsistent with applicable land use plans, rather than all applications;
- Requires EFSEC to recommend application approval for an alternative energy resource and certain facilities if the record supports specified criteria; and
- Repeals the statutes that (1) allow for an expedited certification process, and (2) require the Governor to evaluate EFSEC efficiency.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

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Background: Energy Facility Site Evaluation Council. Created in 1970, the Energy Facility Site Evaluation Council (EFSEC) is the permitting and certifying authority for siting major energy facilities in Washington. EFSEC coordinates all evaluation and licensing steps for siting certain energy facilities, and specifies the conditions of

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construction, enlargement, and operation. EFSEC is comprised of a chair appointed by the Governor, and representatives from five state agencies.

EFSEC's siting jurisdiction includes nuclear power plants of any size and thermal electric power plants with a generating capacity of 350 megawatts or greater. Energy facilities of any size that exclusively use alternative energy resources, such as wind or solar energy; clean energy product manufacturing facilities; and storage facilities may opt into the EFSEC certification process.

Certification Process. The EFSEC certification process consists of several steps and begins when an application is submitted. No later than 60 days after receiving the application, EFSEC must conduct an informational public meeting on the proposed project. Next, EFSEC must hold a land use hearing to determine whether the proposed project is consistent with city, county, or regional land use plans or ordinances. If EFSEC determines the project is not consistent with local land use plans, it will schedule an adjudicative proceeding to determine whether or not to recommend preempting local land use regulations.

EFSEC must hold a separate public hearing, conducted as an adjudicative proceeding, to allow the applicant and opponents to present information to support their cases. Land use preemption issues may also be heard during these proceedings.

Under the State Environmental Policy Act (SEPA), proposed projects require either an environmental checklist or a more detailed Environmental Impact Statement (EIS). At the same time the EIS is developed and related public hearings on the draft EIS are held, adjudicative proceedings may be taking place. The adjudicative proceedings must be finalized before EFSEC issues the final EIS.

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. 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. An applicant may apply for expedited processing for any facility covered under EFSEC's siting laws. To be eligible for expedited processing, EFSEC must find that the proposed project has no significant environmental impact, or the impacts will be mitigated to a nonsignificant level, and is consistent and in compliance with existing local land use ordinances.

Governor's Evaluation. Under EFSEC laws, the Governor must assess the efficiency of EFSEC's operations, including whether efficiency would be improved by conducting the SEPA process in a different sequence compared to the adjudicative proceeding. The assessment may include recommendations for administrative changes, statutory changes, or expanded staff levels.

Summary of Bill: Adjudicative Proceedings and Public Hearings. EFSEC must hold a public hearing, conducted as an adjudicative proceeding, only for applications EFSEC determines are inconsistent with applicable land use plans, rather than all applications. The proceeding must consider whether any land use plans or zoning ordinances inconsistent with the proposed site should be preempted.

After the issuance of a final EIS, if any, EFSEC must hold a public hearing to take comments on the proposed application prior to issuing a recommendation to the Governor.

Project Approval. EFSEC must recommend that the Governor approve an application for an alternative energy resource, clean energy manufacturing facility, biofuel production facility, fusion energy facility, storage facility, or electric transmission facility, if EFSEC determines that the preponderance of evidence on the record supports specified conclusions. These conclusions include that the project, or project applicant:

- provides public benefits, including contributing to meeting state environmental policies; public health, environmental, economic, and other benefits from greenhouse gas reductions; tax benefits; community benefits; and job creation;
- avoids, minimizes, or mitigates, to the maximum extent practicable, SEPA-identified significant adverse environmental impacts:
 1. related to siting, design, construction and operation of the project;
 2. on historical, archeological, and cultural resources;
 3. to threatened or endangered species;
 4. to overburdened communities and vulnerable populations while providing benefits to those populations in the vicinity of the project
- does not present an unreasonable threat to health and safety; and
- agrees to reasonable requirements for project decommissioning.

Repealed Provisions. The following provisions are removed from the EFSEC chapter:

- the expedited processing of application process; and
- the Governor's assessment of the efficiency of EFSEC's operations.

Appropriation: None.

Fiscal Note: Requested on January 17, 2025.

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

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