
SUBSTITUTE SENATE BILL 5228

State of Washington 62nd Legislature 2011 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senators Rockefeller, Honeyford, Delvin, Kline, and Chase)

READ FIRST TIME 02/18/11.

1 AN ACT Relating to small facility siting; amending RCW 80.50.040,
2 80.50.060, 80.50.071, and 80.50.100; reenacting and amending RCW
3 80.50.020 and 80.50.090; adding new sections to chapter 80.50 RCW;
4 creating a new section; providing an effective date; and declaring an
5 emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that small alternative
8 energy resource facilities provide various benefits to local
9 communities such as: Reducing emissions of air, soil, and water
10 pollutants; creating local jobs; securing a diversified energy supply;
11 and contributing to the development of a clean, sustainable energy
12 industry. The legislature finds that the implementation of state
13 policies that support the development of small alternative energy
14 resource facilities may be hindered by the lack of appropriate local
15 ordinances to permit the siting of these facilities.

16 The legislature finds that the energy facility site evaluation
17 council maintains the necessary expertise to evaluate proposed energy
18 projects, balancing the demand for new energy facilities with
19 protection of environmental quality and safety of energy facilities.

1 The legislature intends to ensure that small alternative energy
2 resource facilities are sited in a timely manner in local jurisdictions
3 where there are no existing ordinances to permit these facilities,
4 where applicable ordinances have not been updated in over ten years, or
5 where ordinances have been adopted that impede the timely permitting of
6 these facilities.

7 Additionally, it is the intent of the legislature to encourage
8 local governments to enter into interlocal agreements with the energy
9 facility site evaluation council for the purpose of authorizing the
10 council to issue permits for small alternative energy resource
11 facilities that are proposed within the geographic jurisdiction of a
12 local government, if the local government determines that it would be
13 more cost-effective for the council to permit these facilities.

14 The legislature finds that it may be more cost-effective in some
15 cases for the state to provide a centralized small renewable energy
16 resource facility permitting agency than for each county and
17 municipality to maintain individual permitting staff.

18 **Sec. 2.** RCW 80.50.020 and 2010 c 152 s 1 are each reenacted and
19 amended to read as follows:

20 The definitions in this section apply throughout this chapter
21 unless the context clearly requires otherwise.

22 (1) "Alternative energy resource" includes energy facilities of the
23 following types: (a) Wind; (b) solar energy; (c) geothermal energy;
24 (d) landfill gas; (e) wave or tidal action; or (f) biomass energy based
25 on solid organic fuels from wood, forest, or field residues, or
26 dedicated energy crops that do not include wood pieces that have been
27 treated with chemical preservatives such as creosote,
28 pentachlorophenol, or copper-chrome-arsenic.

29 (2) "Applicant" means any person who makes application for a site
30 certification pursuant to the provisions of this chapter.

31 (3) "Application" means any request for approval of a particular
32 site or sites filed in accordance with the procedures established
33 pursuant to this chapter, unless the context otherwise requires.

34 (4) "Associated facilities" means storage, transmission, handling,
35 or other related and supporting facilities connecting an energy plant
36 with the existing energy supply, processing, or distribution system,
37 including, but not limited to, communications, controls, mobilizing or

1 maintenance equipment, instrumentation, and other types of ancillary
2 transmission equipment, off-line storage or venting required for
3 efficient operation or safety of the transmission system and overhead,
4 and surface or subsurface lines of physical access for the inspection,
5 maintenance, and safe operations of the transmission facility and new
6 transmission lines constructed to operate at nominal voltages of at
7 least 115,000 volts to connect a thermal power plant or alternative
8 energy facilities to the northwest power grid. However, common carrier
9 railroads or motor vehicles shall not be included.

10 (5) "Biofuel" has the same meaning as defined in RCW 43.325.010.

11 (6) "Certification" means a binding agreement between an applicant
12 and the state which shall embody compliance to the siting guidelines,
13 in effect as of the date of certification, which have been adopted
14 pursuant to RCW 80.50.040 as now or hereafter amended as conditions to
15 be met prior to or concurrent with the construction or operation of any
16 energy facility.

17 (7) "Construction" means on-site improvements, excluding
18 exploratory work, which cost in excess of two hundred fifty thousand
19 dollars.

20 (8) "Council" means the energy facility site evaluation council
21 created by RCW 80.50.030.

22 (9) "Counsel for the environment" means an assistant attorney
23 general or a special assistant attorney general who shall represent the
24 public in accordance with RCW 80.50.080.

25 (10) "Electrical transmission facilities" means electrical power
26 lines and related equipment.

27 (11) "Energy facility" means an energy plant or transmission
28 facilities: PROVIDED, That the following are excluded from the
29 provisions of this chapter:

30 (a) Facilities for the extraction, conversion, transmission or
31 storage of water, other than water specifically consumed or discharged
32 by energy production or conversion for energy purposes; and

33 (b) Facilities operated by and for the armed services for military
34 purposes or by other federal authority for the national defense.

35 (12) "Energy plant" means the following facilities together with
36 their associated facilities:

37 (a) Any nuclear power facility where the primary purpose is to
38 produce and sell electricity;

1 (b) Any nonnuclear stationary thermal power plant with generating
2 capacity of three hundred fifty thousand kilowatts or more, measured
3 using maximum continuous electric generating capacity, less minimum
4 auxiliary load, at average ambient temperature and pressure, and
5 floating thermal power plants of one hundred thousand kilowatts or more
6 suspended on the surface of water by means of a barge, vessel, or other
7 floating platform;

8 (c) Facilities which will have the capacity to receive liquefied
9 natural gas in the equivalent of more than one hundred million standard
10 cubic feet of natural gas per day, which has been transported over
11 marine waters;

12 (d) Facilities which will have the capacity to receive more than an
13 average of fifty thousand barrels per day of crude or refined petroleum
14 or liquefied petroleum gas which has been or will be transported over
15 marine waters, except that the provisions of this chapter shall not
16 apply to storage facilities unless occasioned by such new facility
17 construction;

18 (e) Any underground reservoir for receipt and storage of natural
19 gas as defined in RCW 80.40.010 capable of delivering an average of
20 more than one hundred million standard cubic feet of natural gas per
21 day; ((and))

22 (f) Facilities capable of processing more than twenty-five thousand
23 barrels per day of petroleum or biofuel into refined products except
24 where such biofuel production is undertaken at existing industrial
25 facilities.

26 (13) "Independent consultants" means those persons who have no
27 financial interest in the applicant's proposals and who are retained by
28 the council to evaluate the applicant's proposals, supporting studies,
29 or to conduct additional studies.

30 (14) "Land use plan" means a comprehensive plan or land use element
31 thereof adopted by a unit of local government pursuant to chapter
32 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by
33 chapter 325, Laws of 2007.

34 (15) "Person" means an individual, partnership, joint venture,
35 private or public corporation, association, firm, public service
36 company, political subdivision, municipal corporation, government
37 agency, public utility district, or any other entity, public or
38 private, however organized.

1 (16) "Preapplicant" means a person considering applying for a site
2 certificate agreement for any transmission facility.

3 (17) "Preapplication process" means the process which is initiated
4 by written correspondence from the preapplicant to the council, and
5 includes the process adopted by the council for consulting with the
6 preapplicant and with cities, towns, and counties prior to accepting
7 applications for all transmission facilities.

8 (18) "Secretary" means the secretary of the United States
9 department of energy.

10 (19) "Site" means any proposed or approved location of an energy
11 facility, alternative energy resource, or electrical transmission
12 facility.

13 (20) "Thermal power plant" means, for the purpose of certification,
14 any electrical generating facility using any fuel for distribution of
15 electricity by electric utilities.

16 (21) "Transmission facility" means any of the following together
17 with their associated facilities:

18 (a) Crude or refined petroleum or liquid petroleum product
19 transmission pipeline of the following dimensions: A pipeline larger
20 than six inches minimum inside diameter between valves for the
21 transmission of these products with a total length of at least fifteen
22 miles;

23 (b) Natural gas, synthetic fuel gas, or liquefied petroleum gas
24 transmission pipeline of the following dimensions: A pipeline larger
25 than fourteen inches minimum inside diameter between valves, for the
26 transmission of these products, with a total length of at least fifteen
27 miles for the purpose of delivering gas to a distribution facility,
28 except an interstate natural gas pipeline regulated by the United
29 States federal power commission.

30 (22) "Zoning ordinance" means an ordinance of a unit of local
31 government regulating the use of land and adopted pursuant to chapter
32 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state
33 Constitution, or as otherwise designated by chapter 325, Laws of 2007.

34 (23) "Small alternative energy resource facility" means: (a) A
35 wind facility with a generating capacity of not more than five
36 megawatts; and (b) any facility that meets the definition of a "net
37 metering system" under RCW 80.60.010, except facilities that use
38 biomass as a fuel.

1 **Sec. 3.** RCW 80.50.040 and 2001 c 214 s 6 are each amended to read
2 as follows:

3 The council shall have the following powers:

4 (1) To adopt, (~~promulgate,~~) amend, or rescind suitable rules and
5 regulations, pursuant to chapter 34.05 RCW, to carry out the provisions
6 of this chapter, and the policies and practices of the council in
7 connection therewith;

8 (2) To develop and apply environmental and ecological guidelines in
9 relation to the type, design, location, construction, and operational
10 conditions of certification of energy facilities subject to this
11 chapter;

12 (3) To establish rules of practice for the conduct of public
13 hearings pursuant to the provisions of the administrative procedure
14 act, as found in chapter 34.05 RCW;

15 (4) To prescribe the form, content, and necessary supporting
16 documentation for site certification;

17 (5) To receive applications for energy facility locations and to
18 investigate the sufficiency thereof;

19 (6) To make and contract, when applicable, for independent studies
20 of sites proposed by the applicant;

21 (7) To conduct hearings on the proposed location of the energy
22 facilities;

23 (8) To prepare written reports to the governor which shall include:

24 (a) A statement indicating whether the application is in compliance
25 with the council's guidelines, (b) criteria specific to the site and
26 transmission line routing, (c) a council recommendation as to the
27 disposition of the application, and (d) a draft certification agreement
28 when the council recommends approval of the application;

29 (9) To prescribe the means for monitoring of the effects arising
30 from the construction and the operation of energy facilities to
31 (~~assure~~) ensure continued compliance with terms of certification
32 and/or permits issued by the council pursuant to chapter 90.48 RCW or
33 subsection (12) of this section: PROVIDED, That any on-site inspection
34 required by the council shall be performed by other state and local
35 agencies pursuant to interagency agreement: PROVIDED FURTHER, That the
36 council may retain authority for determining compliance relative to
37 monitoring or may delegate authority for ensuring compliance with the

1 terms of the certificate and/or permits to other state or local
2 agencies;

3 (10) To integrate its site evaluation activity with activities of
4 federal agencies having jurisdiction in such matters to avoid
5 unnecessary duplication;

6 (11) To present state concerns and interests to other states,
7 regional organizations, and the federal government on the location,
8 construction, and operation of any energy facility which may affect the
9 environment, health, or safety of the citizens of the state of
10 Washington;

11 (12) To issue permits in compliance with applicable provisions of
12 the federally approved state implementation plan adopted in accordance
13 with the federal clean air act, as now existing or hereafter amended,
14 for the new construction, reconstruction, or enlargement or operation
15 of energy facilities: PROVIDED, That such permits shall become
16 effective only if the governor approves an application for
17 certification and executes a certification agreement pursuant to this
18 chapter: AND PROVIDED FURTHER, That all such permits be conditioned
19 upon compliance with all provisions of the federally approved state
20 implementation plan which apply to energy facilities covered within the
21 provisions of this chapter; (~~and~~)

22 (13) To serve as an interagency coordinating body for energy-
23 related issues; and

24 (14) To issue site permits as provided under section 8 of this act,
25 for the construction, reconstruction, or enlargement of small
26 alternative energy resource facilities.

27 **Sec. 4.** RCW 80.50.060 and 2007 c 325 s 2 are each amended to read
28 as follows:

29 (1) The provisions of this chapter apply to the construction of
30 energy facilities which includes the new construction of energy
31 facilities and the reconstruction or enlargement of existing energy
32 facilities where the net increase in physical capacity or dimensions
33 resulting from such reconstruction or enlargement meets or exceeds
34 those capacities or dimensions set forth in RCW 80.50.020 (~~(+7) and~~
35 ~~(+15)~~) (12) and (21). No construction of such energy facilities may be
36 undertaken, except as otherwise provided in this chapter, after July

1 15, 1977, without first obtaining certification in the manner provided
2 in this chapter.

3 (2) The provisions of this chapter apply to the construction,
4 reconstruction, or enlargement of a new or existing energy facility
5 that exclusively uses alternative energy resources and chooses to
6 receive certification under this chapter, regardless of the generating
7 capacity of the project.

8 (3) The provisions of this chapter apply to the construction,
9 reconstruction, or enlargement of a small alternative energy resource
10 facility that chooses to receive a site permit under this chapter.

11 (4)(a) The provisions of this chapter apply to the construction,
12 reconstruction, or modification of electrical transmission facilities
13 when:

14 (i) The facilities are located in a national interest electric
15 transmission corridor as specified in RCW 80.50.045;

16 (ii) An applicant chooses to receive certification under this
17 chapter, and the facilities are: (A) Of a nominal voltage of at least
18 one hundred fifteen thousand volts and are located in a completely new
19 corridor, except for the terminus of the new facility or
20 interconnection of the new facility with the existing grid, and the
21 corridor is not otherwise used for electrical transmission facilities;
22 and (B) located in more than one jurisdiction that has promulgated land
23 use plans or zoning ordinances; or

24 (iii) An applicant chooses to receive certification under this
25 chapter, and the facilities are: (A) Of a nominal voltage in excess of
26 one hundred fifteen thousand volts; and (B) located outside an
27 electrical transmission corridor identified in (a)(i) and (ii) of this
28 subsection (~~((3))~~) (4).

29 (b) For the purposes of this subsection, "modify" means a
30 significant change to an electrical transmission facility and does not
31 include the following: (i) Minor improvements such as the replacement
32 of existing transmission line facilities or supporting structures with
33 equivalent facilities or structures; (ii) the relocation of existing
34 electrical transmission line facilities; (iii) the conversion of
35 existing overhead lines to underground; or (iv) the placing of new or
36 additional conductors, supporting structures, insulators, or their
37 accessories on or replacement of supporting structures already built.

1 (~~(4)~~) (5) The provisions of this chapter shall not apply to
2 normal maintenance and repairs which do not increase the capacity or
3 dimensions beyond those set forth in RCW 80.50.020 (~~(7) and (15)~~)
4 (12) and (21).

5 (~~(5)~~) (6) Applications for certification of energy facilities
6 made prior to July 15, 1977, shall continue to be governed by the
7 applicable provisions of law in effect on the day immediately preceding
8 July 15, 1977, with the exceptions of RCW 80.50.190 and 80.50.071 which
9 shall apply to such prior applications and to site certifications
10 prospectively from July 15, 1977.

11 (~~(6)~~) (7) Applications for certification shall be upon forms
12 prescribed by the council and shall be supported by such information
13 and technical studies as the council may require.

14 **Sec. 5.** RCW 80.50.071 and 2010 c 152 s 3 are each amended to read
15 as follows:

16 (1) The council shall receive all applications for energy facility
17 site certification. Except as provided under sections 8 and 9 of this
18 act, each applicant shall pay such reasonable costs as are actually and
19 necessarily incurred by the council in processing an application.

20 (a) Each applicant shall, at the time of application submission,
21 deposit fifty thousand dollars, or such greater amount as may be
22 specified by the council after consultation with the applicant. Costs
23 that may be charged against the deposit include, but are not limited
24 to, independent consultants' costs, councilmember's wages, employee
25 benefits, costs of a hearing examiner, costs of a court reporter, staff
26 salaries, wages and employee benefits, goods and services, travel
27 expenses, and miscellaneous direct expenses as arise directly from
28 processing an application.

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

34 (c) The council shall submit to each applicant a statement of such
35 expenditures made during the preceding calendar quarter which shall be
36 in sufficient detail to explain such expenditures. The applicant shall
37 pay the state treasurer the amount of such statement to restore the

1 total amount on deposit to the originally established level: PROVIDED,
2 That such applicant may, at the request of the council, increase the
3 amount of funds on deposit to cover anticipated expenses during peak
4 periods of application processing. Any funds remaining unexpended at
5 the conclusion of application processing shall be refunded to the
6 applicant, or at the applicant's option, credited against required
7 deposits of certificate holders.

8 (2) Each certificate holder shall pay such reasonable costs as are
9 actually and necessarily incurred by the council for inspection and
10 determination of compliance by the certificate holder with the terms of
11 the certification relative to monitoring the effects of construction,
12 operation, and site restoration of the facility.

13 (a) Each certificate holder, within thirty days of execution of the
14 site certification agreement, shall have on deposit fifty thousand
15 dollars, or such greater amount as may be specified by the council
16 after consultation with the certificate holder. Costs that may be
17 charged against the deposit include, but are not limited to, those
18 specified in subsection (1)(a) of this section as arise from inspection
19 and determination of compliance by the certificate holder with the
20 terms of the certification.

21 (b) The council shall submit to each certificate holder a statement
22 of such expenditures actually made during the preceding calendar
23 quarter which shall be in sufficient detail to explain such
24 expenditures. The certificate holder shall pay the state treasurer the
25 amount of such statement to restore the total amount on deposit to the
26 originally established level: PROVIDED, That if the actual
27 expenditures for inspection and determination of compliance in the
28 preceding calendar quarter have exceeded the amount of funds on
29 deposit, such excess costs shall be paid by the certificate holder.

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

36 (4) All payments required of the applicant or certificate holder
37 under this section are to be made to the state treasurer who shall make
38 payments as instructed by the council from the funds submitted. All

1 such funds shall be subject to state auditing procedures. Any
2 unexpended portions thereof shall be returned to the applicant or
3 certificate holder.

4 **Sec. 6.** RCW 80.50.090 and 2006 c 205 s 3 and 2006 c 196 s 6 are
5 each reenacted and amended to read as follows:

6 (1) The council shall conduct an informational public hearing in
7 the county of the proposed site as soon as practicable but not later
8 than sixty days after receipt of an application for site certification.
9 However, the place of such public hearing shall be as close as
10 practical to the proposed site.

11 (2) Subsequent to the informational public hearing, the council
12 shall conduct a public hearing to determine whether or not the proposed
13 site is consistent and in compliance with city, county, or regional
14 land use plans or zoning ordinances. If it is determined that the
15 proposed site does conform with existing land use plans or zoning
16 ordinances in effect as of the date of the application, the city,
17 county, or regional planning authority shall not thereafter change such
18 land use plans or zoning ordinances so as to affect the proposed site.

19 (3) Prior to the issuance of a council recommendation to the
20 governor under RCW 80.50.100 a public hearing, conducted as an
21 adjudicative proceeding under chapter 34.05 RCW, the administrative
22 procedure act, shall be held. At such public hearing any person shall
23 be entitled to be heard in support of or in opposition to the
24 application for certification.

25 (4) Additional public hearings shall be held as deemed appropriate
26 by the council in the exercise of its functions under this chapter.

27 (5) This section does not apply to sections 8 and 9 of this act.

28 **Sec. 7.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to
29 read as follows:

30 (1) The council shall report to the governor its recommendations as
31 to the approval or rejection of an application for certification within
32 twelve months of receipt by the council of such an application, or such
33 later time as is mutually agreed by the council and the applicant. If
34 the council recommends approval of an application for certification, it
35 shall also submit a draft certification agreement with the report. The
36 council shall include conditions in the draft certification agreement

1 to implement the provisions of this chapter, including, but not limited
2 to, conditions to protect state or local governmental or community
3 interests affected by the construction or operation of the energy
4 facility, and conditions designed to recognize the purpose of laws or
5 ordinances, or rules or regulations promulgated thereunder, that are
6 preempted or superseded pursuant to RCW 80.50.110 as now or hereafter
7 amended.

8 (2)(a) Within sixty days of receipt of the council's report the
9 governor shall take one of the following actions:

10 (~~(a)~~) (i) Approve the application and execute the draft
11 certification agreement; or

12 (~~(b)~~) (ii) Reject the application; or

13 (~~(c)~~) (iii) Direct the council to reconsider certain aspects of
14 the draft certification agreement.

15 (b) The council shall reconsider such aspects of the draft
16 certification agreement by reviewing the existing record of the
17 application or, as necessary, by reopening the adjudicative proceeding
18 for the purposes of receiving additional evidence. Such
19 reconsideration shall be conducted expeditiously. The council shall
20 resubmit the draft certification to the governor incorporating any
21 amendments deemed necessary upon reconsideration. Within sixty days of
22 receipt of such draft certification agreement, the governor shall
23 either approve the application and execute the certification agreement
24 or reject the application. The certification agreement shall be
25 binding upon execution by the governor and the applicant.

26 (3) The rejection of an application for certification by the
27 governor shall be final as to that application but shall not preclude
28 submission of a subsequent application for the same site on the basis
29 of changed conditions or new information.

30 (4) This section does not apply to sections 8 and 9 of this act.

31 NEW SECTION. **Sec. 8.** A new section is added to chapter 80.50 RCW
32 to read as follows:

33 (1) A person may apply to the council for a site permit for a small
34 alternative energy resource facility if the facility is located in a
35 county or municipality that has not adopted ordinances for the
36 permitting of small alternative energy resource facilities.

1 (2) The application for a site permit under this section must be
2 submitted to the council in the form and manner as may be determined by
3 the council.

4 (3) In consultation with the municipal research council, the
5 Washington state association of counties, and the association of
6 Washington cities, the council shall adopt a streamlined site
7 permitting process and siting standards for small alternative energy
8 resource facilities by December 31, 2012. The process and standards
9 shall be substantially similar to existing ordinances or model
10 ordinances, except interconnection requirements as provided in RCW
11 80.60.040 must be incorporated in any siting standard.

12 (4) The council may delegate authority to council staff to issue a
13 site permit for small alternative energy resource facilities.

14 (5) The council may charge a fee that covers the costs incurred by
15 the council in reviewing a small alternative energy resource facility
16 site permit and of any compliance inspection costs delegated to local
17 governments. The council must develop and charge a fee that provides
18 the lowest possible cost to the applicant.

19 (6) A site permit issued by the council under this section has the
20 same preemptory effect as a certification under this chapter and is
21 considered a final decision for the purposes of RCW 80.50.140.

22 (7) This section does not preclude an applicant from obtaining
23 certification under any other provisions of this chapter.

24 NEW SECTION. **Sec. 9.** A new section is added to chapter 80.50 RCW
25 to read as follows:

26 The council and any local government in the state may enter into,
27 and are encouraged to enter into, an interlocal agreement as provided
28 under chapter 39.34 RCW for the purpose of authorizing the council to
29 issue permits for small alternative energy resource facilities within
30 the geographic jurisdiction of the local government. The council may
31 serve as the permitting authority for a local government if the local
32 government determines that it would be more cost-effective for the
33 council to permit small alternative energy resource facilities within
34 their jurisdiction. Such an agreement supersedes the provisions
35 provided under section 8 of this act.

1 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 July 1, 2011.

--- END ---