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**SUBSTITUTE SENATE BILL 5380**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Nguyen, Billig, Boehnke, Cleveland, Frame, Keiser, Kuderer, Liias, Pedersen, Valdez, and C. Wilson)

AN ACT Relating to clean energy siting; adding new sections to chapter 43.21C RCW; adding a new section to chapter 36.70B RCW; adding a new section to chapter 36.01 RCW; adding new chapters to Title 43 RCW; and creating new sections.

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

NEW SECTION. **Sec.**  STATEMENT OF LEGISLATIVE INTENT. (1) The legislature finds that efficient and effective siting and permitting of new clean energy projects throughout Washington is necessary to: Fight climate change and achieve the state's greenhouse gas emission limits; improve air quality; grow family-wage clean energy jobs and innovative clean energy businesses that provide economic benefits across the state; and make available secure domestic sources of the clean energy products needed to transition off fossil fuels.

(2) The legislature intends to: Enable more efficient and effective siting and permitting of clean energy projects with policies and investments that protect the environment, overburdened communities, and tribal rights, interests, and resources, including cultural resources; bring benefits to the communities that host clean energy projects; and facilitate the rapid transition to clean energy that is required to avoid the worst impacts of climate change on Washington's people and places. There is no single solution for improved siting and permitting processes. Rather, a variety of efforts and investments will help bring together state, local, tribal, and federal governments, communities, workers, clean energy project developers, and others to succeed in this essential task.

(3) Efficient and effective siting and permitting will benefit from early and meaningful community and tribal engagement, and from up-front planning including identification of least-conflict sites, and nonproject environmental review that identifies measures to avoid, minimize, and mitigate project impacts.

(4) Incorporating the principles and strategies identified in subsections (1), (2), and (3) of this section, the legislature intends to invest in, facilitate, and require better coordinated, faster environmental review and permitting decisions by state and local governments.

(5) Therefore, it is the intent of the legislature to support efficient, effective siting and permitting of clean energy projects through a variety of interventions, including:

(a) Establishing an interagency clean energy siting coordinating council to improve siting and permitting of clean energy projects;

(b) Creating a designation for clean energy projects of statewide significance;

(c) Creating a fully coordinated permit process for clean energy projects;

(d) Improving processes for review of clean energy projects under the state environmental policy act;

(e) Requiring preparation of separate nonproject environmental impact statements for green electrolytic and renewable hydrogen projects and colocated battery energy storage facilities, onshore utility-scale wind energy projects and colocated battery energy storage facilities, and for solar energy projects and colocated battery energy storage facilities, with the goal of preparing these nonproject reviews by June 30, 2025; and

(f) Requiring the Washington State University energy program to complete by June 30, 2025, a least-conflict siting process for pumped storage projects in Washington.

**PART 1**

**INTERAGENCY CLEAN ENERGY SITING COORDINATING COUNCIL**

NEW SECTION. **Sec.**  INTERAGENCY CLEAN ENERGY SITING COORDINATING COUNCIL. (1) The interagency clean energy siting coordinating council is created. The coordinating council is cochaired by the department of commerce and the department of ecology with participation from the following:

(a) The office of the governor;

(b) The energy facility site evaluation council;

(c) The department of fish and wildlife;

(d) The department of agriculture;

(e) The governor's office of Indian affairs;

(f) The department of archaeology and historic preservation;

(g) The department of natural resources;

(h) The department of transportation;

(i) The utilities and transportation commission;

(j) The governor's office for regulatory innovation and assistance; and

(k) Other state and federal agencies invited by the department of commerce and the department of ecology with key roles in siting clean energy to participate on an ongoing or ad hoc basis.

(2) The department of commerce and department of ecology shall assign staff in each agency to lead the coordinating council's work and provide ongoing updates to the governor and appropriate committees of the legislature, including those with jurisdiction over the environment, energy, or economic development policy.

(3) For purposes of this section and section 102 of this act, "coordinating council" means the interagency clean energy siting coordinating council created in this section.

NEW SECTION. **Sec.**  INTERAGENCY CLEAN ENERGY SITING COORDINATING COUNCIL DUTIES. (1) The responsibilities of the coordinating council include, but are not limited to:

(a) Identifying actions to improve siting and permitting of clean energy projects as defined in section 201 of this act, including through review of the recommendations of the department of ecology and department of commerce's 2022 *Low Carbon Energy Facility Siting Improvement Report*, creating implementation plans and timelines, and making recommendations for needed funding or policy changes;

(b) Tracking federal government efforts to improve clean energy project siting and permitting, including potential federal funding sources, and identifying state agency actions to improve coordination across state, local, and federal processes or to pursue supportive funding;

(c) Conducting outreach to parties with interests in clean energy siting and permitting for ongoing input on how to improve state agency processes and actions;

(d) Establishing work groups as needed to focus on specific energy types such as solar, wind, battery storage, or emerging technologies, or specific geographies for clean energy project siting;

(e) The creation of advisory committees deemed necessary to inform the development of items identified in (a) through (d) of this subsection;

(f) Supporting the governor's office of Indian affairs in creating and updating annually, or when requested by a federally recognized Indian tribe, a list of contacts at federally recognized Indian tribes, and tribal preferences regarding outreach about clean energy project siting and permitting, such as outreach by developers directly, by state government in the government-to-government relationship, or both;

(g) Supporting the department of archaeology and historic preservation, the governor's office of Indian affairs, the department of commerce, and the energy facility site evaluation council in developing and providing to clean energy project developers a training on consultation and engagement processes for federally recognized Indian tribes;

(h) Supporting the department of archaeology and historic preservation in updating the statewide predictive archaeological model to provide clean energy project developers information about where archaeological resources are likely to be found and the potential need for archaeological investigations; and

(i) Supporting and promptly providing information to the department of ecology in support of the nonproject reviews required under section 303 of this act.

(2) The coordinating council shall provide an annual report beginning October 1, 2024, to the governor and the appropriate committees of the legislature summarizing: Progress on efficient, effective, and responsible siting and permitting of clean energy projects; areas of additional work, including where clean energy project siting and permitting outcomes are not broadly recognized as efficient, effective, or responsible; resource needs; and any needed policy changes to help achieve the deployment of clean energy necessary to meet the state's statutory greenhouse gas emissions limits, chapter 70A.45 RCW, and the clean energy transformation act requirements, chapter 19.405 RCW, and to support achieving the state energy strategy adopted by the department of commerce.

(3) The coordinating council shall:

(a) Advise the department of commerce in:

(i) Contracting with an external, independent third party to:

(A) Carry out an evaluation of state agency siting and permitting processes for clean energy projects and related federal and state regulatory requirements, including the energy facility site evaluation council permitting process authorized in chapter 80.50 RCW;

(B) Identify successful models used in other states for the siting and permitting of projects similar to clean energy projects, including local and state government programs to prepare build ready clean energy sites; and

(C) Develop recommendations for improving these processes, including potential policy changes and funding, with the goal of more efficient, effective siting of clean energy projects; and

(ii) Reporting on the evaluation and recommendations in (a)(i) of this subsection to the governor and the legislature by July 1, 2024.

(b) Pursue development of a consolidated clean energy application similar to the joint aquatic resources permit application for, at a minimum, state permits needed for clean energy projects. The department of ecology shall lead this effort and engage with federal agencies and local governments to explore inclusion of federal and local permit applications as part of the consolidated application. The department may design a single consolidated application for multiple clean energy project types, may design separate applications for individual clean energy technologies, or may design an application for related resources. The department of ecology shall provide an update on its development of consolidated permit applications for clean energy projects to the governor and legislature by December 31, 2024. The consolidated permit application process must be available, but not required, for clean energy projects.

(c) Explore development of a consolidated permit for clean energy projects. The department of ecology shall lead this effort and explore options including a clean energy project permit that consolidates department of ecology permits only, or that consolidates permits from multiple state and local agencies. The permit structure must identify criteria or conditions that must be met for projects to use the consolidated permit. The department of ecology may analyze criteria or conditions as part of a nonproject review under chapter 43.21C RCW. The department of ecology shall update the legislature on its evaluation of consolidated permit options and make recommendations by October 1, 2024.

**PART 2**

**CLEAN ENERGY PROJECTS OF STATEWIDE SIGNIFICANCE AND CLEAN ENERGY COORDINATED PERMITTING PROCESS**

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Alternative energy resource" has the same meaning as defined in RCW 80.50.020.

(2) "Alternative jet fuel" means a fuel made from nonpetroleum sources that can be blended and used with conventional petroleum jet fuels without the need to modify aircraft engines and existing fuel distribution infrastructure and that meets the greenhouse gas emissions reduction requirements that apply to biomass-derived fuels as defined in RCW 70A.65.010. "Alternative jet fuel" includes jet fuels derived from coprocessed feedstocks at a conventional petroleum refinery.

(3) "Applicant" means a person applying to the department of commerce for designation of a development project as a clean energy project of statewide significance under this chapter.

(4)(a) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting a clean energy project with the existing energy supply, processing, or distribution system including, but not limited to, battery energy storage communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary storage and transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages of at least 115,000 volts to connect a clean energy project to the northwest power grid.

(b) Common carrier railroads or motor vehicles are not associated facilities.

(5) "Clean energy product manufacturing facility" means a facility or a project at any facility that exclusively or primarily manufactures the following products or components primarily used by such products:

(a) Vehicles, vessels, and other modes of transportation that emit no exhaust gas from the onboard source of power, other than water vapor;

(b) Charging and fueling infrastructure for electric, hydrogen, or other types of vehicles that emit no exhaust gas from the onboard source of power, other than water vapor;

(c) Renewable or green electrolytic hydrogen, including preparing renewable or green electrolytic hydrogen for distribution as an energy carrier or manufacturing feedstock, or converting it to a green hydrogen carrier;

(d) Equipment and products used to produce energy from alternative energy resources;

(e) Equipment and products used to produce nonemitting electric generation as defined in RCW 19.405.020;

(f) Equipment and products used at storage facilities;

(g) Equipment and products used to improve energy efficiency; and

(h) Semiconductors or semiconductor materials as defined in RCW 82.04.2404.

(6) "Clean energy project" means the following facilities together with their associated facilities:

(a) Clean energy product manufacturing facilities;

(b) Electrical transmission facilities;

(c) Facilities to produce nonemitting electric generation or electric generation from renewable resources, as defined in RCW 19.405.020, except for hydroelectric generation that includes new diversions, new impoundments, new bypass reaches, or the expansion of existing reservoirs constructed after May 7, 2019, unless the diversions, bypass reaches, or reservoir expansions are necessary for the operation of a pumped storage facility that: (i) Does not conflict with existing state or federal fish recovery plans; and (ii) complies with all local, state, and federal laws and regulations;

(d) Storage facilities;

(e) Facilities or projects at any facilities that exclusively or primarily process biogenic feedstocks into biofuel as defined in RCW 80.50.020;

(f) Biomass energy facilities as defined in RCW 19.405.020; or

(g) Facilities or projects at any facilities that exclusively or primarily process alternative jet fuel.

(7) "Electrical transmission facilities" has the same meaning as defined in RCW 80.50.020, except excluding electrical transmission facilities that primarily or solely serve facilities that generate electricity from fossil fuels.

(8) "Fully coordinated permit process" means a comprehensive coordinated permitting assistance approach supported by a written agreement between the project proponent, the department of ecology, and the participating agencies.

(9) "Fully coordinated project" means a clean energy project subject to the fully coordinated permit process.

(10) "Green electrolytic hydrogen" has the same meaning as defined in RCW 80.50.020.

(11) "Green hydrogen carrier" has the same meaning as defined in RCW 80.50.020.

(12) "Overburdened community" has the same meaning as defined in RCW 70A.02.010.

(13) "Permit" means any permit, license, certificate, use authorization, or other form of governmental review or approval required in order to construct, expand, or operate a project in the state of Washington.

(14) "Permit agency" means any state or local agency authorized by law to issue permits.

(15) "Project proponent" means a person, business, or any entity applying for or seeking a permit or permits in the state of Washington.

(16) "Reasonable costs" means direct and indirect expenses incurred by the department of ecology, participating agencies, or local governments in carrying out the coordinated permit process established in this chapter, including the initial assessment, environmental review, and permitting. "Reasonable costs" includes work done by agency or local government staff or consultants hired by agencies or local governments to carry out the work plan. "Reasonable costs" may also include other costs agreed to between the applicant and the department of ecology, participating agencies, or local governments.

(17) "Renewable hydrogen" has the same meaning as defined in RCW 80.50.020.

(18) "Renewable natural gas" has the same meaning as defined in RCW 80.50.020.

(19) "Renewable resource" has the same meaning as defined in RCW 80.50.020.

(20) "Storage facility" has the same meaning as defined in RCW 80.50.020.

NEW SECTION. **Sec.**  CLEAN ENERGY PROJECTS OF STATEWIDE SIGNIFICANCE—APPLICATION PROCESS. (1) The department of commerce shall develop an application for the designation of clean energy projects as clean energy projects of statewide significance.

(2) An application to the department of commerce by an applicant under this section must include:

(a) Information regarding the location of the project;

(b) Information sufficient to demonstrate that the project qualifies as a clean energy project;

(c) An explanation of how the project is expected to contribute to the state's achievement of the greenhouse gas emission limits in chapter 70A.45 RCW and is consistent with the state energy strategy adopted by the department of commerce, as well as any contribution that the project is expected to make to other state regulatory requirements for clean energy and greenhouse gas emissions, including the requirements of chapter 19.405, 70A.30, 70A.60, 70A.65, 70A.535, or 70A.540 RCW;

(d) An explanation of how the project is expected to contribute to the state's economic development goals, including information regarding the applicant's average employment in the state for the prior year, estimated new employment related to the project, estimated wages of employees related to the project, and estimated time schedules for completion and operation;

(e) A plan for meaningful engagement and information sharing with potentially affected federally recognized Indian tribes;

(f) A description of potential community benefits and impacts from the project, a plan for meaningful community engagement in the project development, and an explanation of how the applicant might use a community benefit agreement or other legal document that stipulates the benefits that the developer agrees to fund or furnish, in exchange for community support of a project; and

(g) Other information required by the department of commerce.

NEW SECTION. **Sec.**  CLEAN ENERGY PROJECTS OF STATEWIDE SIGNIFICANCE—DEPARTMENT OF COMMERCE DECISION. (1)(a) The department of commerce, in consultation with other state agencies identified as likely to have a role in siting or permitting a project, must review applications received under section 202 of this act.

(b) The director of the department of commerce must determine within 60 days whether to designate an applicant's project as a clean energy project of statewide significance. The department of commerce may pause its review of an application and the applicability of the 60-day determination time frame under this subsection to request additional information from an applicant.

(2) The department of commerce may designate a clean energy project of statewide significance taking into consideration:

(a) Whether the project qualifies as a clean energy project;

(b) Whether the project will: Contribute to achieving state emission reduction limits under chapter 70A.45 RCW; be consistent with the state energy strategy adopted by the department of commerce; contribute to achieving other state requirements for clean energy and greenhouse gas emissions reductions; and support the state's economic development goals;

(c) Whether the level of applicant need for coordinated state assistance, including for siting and permitting and the complexity of the project, warrants the designation of a project;

(d) Whether the project is proposed for an area or for a clean energy technology that has been reviewed through a nonproject environmental review process, or least-conflict siting process including, but not limited to, the processes identified in sections 303 and 306 of this act, and whether the project is consistent with the recommendations of such processes;

(e) Whether the project is anticipated to have potential near-term or long-term significant positive or adverse impacts on environmental and public health, including impacts to:

(i) State or federal endangered species act listed species in Washington;

(ii) Overburdened communities; and

(iii) Rights, interests, and resources, including tribal cultural resources, of potentially affected federally recognized Indian tribes; and

(f) Input received from potentially affected federally recognized Indian tribes, which the department must solicit and acknowledge the receipt of.

(3) In determining whether to approve an application, the department of commerce must consider information contained in an application under section 202 of this act demonstrating an applicant's meaningful tribal outreach and engagement, engagement with the department of archaeology and historic preservation, and engagement with the governor's office of Indian affairs.

(4)(a) The department of commerce may designate an unlimited number of projects of statewide significance that meet the criteria of this section.

(b) An applicant whose application to the department of commerce under this chapter is not successful is eligible to reapply.

NEW SECTION. **Sec.**  CLEAN ENERGY COORDINATED PERMITTING PROCESS—DEPARTMENT OF ECOLOGY DUTIES. An optional, fully coordinated permit process is established for clean energy projects that do not apply to the energy facility site evaluation council under chapter 80.50 RCW. In support of the coordinated permitting process for clean energy projects, the department of ecology must:

(1) Act as the central point of contact for the project proponent for the coordinated permitting process for projects that do not apply to the energy facility site evaluation council under chapter 80.50 RCW and communicate with the project proponent about defined issues;

(2) Conduct an initial assessment of the proposed project review and permitting actions for coordination purposes as provided in section 205 of this act;

(3) Ensure that the project proponent has been informed of all the information needed to apply for the state and local permits that are included in the coordinated permitting process;

(4) Facilitate communication between project proponents and agency staff to promote timely permit decisions and promote adherence to agreed schedules;

(5) Verify completion among participating agencies of administrative review and permit procedures, such as providing public notice;

(6) Assist in resolving any conflict or inconsistency among permit requirements and conditions;

(7) Consult with potentially affected federally recognized Indian tribes as provided in section 209 of this act in support of the coordinated permitting process;

(8) Engage with potentially affected overburdened communities as provided in section 209 of this act;

(9) Manage a fully coordinated permitting process; and

(10) Coordinate with local jurisdictions to assist with fulfilling the requirements of chapter 36.70B RCW and other local permitting processes.

NEW SECTION. **Sec.**  CLEAN ENERGY COORDINATED PERMITTING PROCESS INITIAL ASSESSMENT. (1) Upon the request of a proponent of a clean energy project, the department of ecology must conduct an initial assessment to determine the level of coordination needed, taking into consideration the complexity of the project and the experience of those expected to be involved in the project application and review process.

(2) The initial project assessment must consider the complexity, size, and need for assistance of the project and must address as appropriate:

(a) The expected type of environmental review;

(b) The state and local permits or approvals that are anticipated to be required for the project;

(c) The permit application forms and other application requirements of the participating permit agencies;

(d) The anticipated information needs and issues of concern of each participating agency; and

(e) The anticipated time required for the environmental review process under chapter 43.21C RCW and permit decisions by each participating agency, including the estimated time required to determine if the permit applications are complete, to conduct the environmental review under chapter 43.21C RCW, and conduct permitting processes for each participating agency. In determining the estimated time required, full consideration must be given to achieving the greatest possible efficiencies through any concurrent studies and any consolidated applications, hearings, and comment periods.

(3) The outcome of the initial assessment must be documented in writing, furnished to the project proponent, and be made available to the public.

(4) The initial assessment must be completed within 60 days of the clean energy project proponent's request to the department under this section, unless information on the project is not complete.

NEW SECTION. **Sec.**  CLEAN ENERGY COORDINATED PERMITTING PROCESS REQUIREMENTS AND PROCEDURES. (1) A project proponent may submit a written request to the department of ecology pursuant to section 208 of this act and a local government development agreement to support local government actions pursuant to section 207 of this act for participation in a fully coordinated permitting process. To be eligible to participate in the fully coordinated permit process:

(a) The project proponent must:

(i) Enter into a cost-reimbursement agreement pursuant to section 208 of this act;

(ii) Provide sufficient information on the project and project site to identify probable significant adverse environmental impacts;

(iii) Provide information on any voluntary mitigation measures; and

(iv) Provide information on engagement actions taken by the proponent with federally recognized Indian tribes, local government, and overburdened communities; and

(b) The department of ecology must determine that the project raises complex coordination, permit processing, or substantive permit review issues.

(2) A project proponent who requests designation as a fully coordinated project must provide the department of ecology with a complete description of the project. The department of ecology may request any information from the project proponent that is necessary to make the designation under this section and may convene a meeting of the likely participating permit agencies.

(3) For a fully coordinated permitting process, the department of ecology must serve as the main point of contact for the project proponent and participating agencies with regard to coordinating the permitting process for the project as a whole. Each participating permit agency must designate a single point of contact for coordinating with the department of ecology. The department of ecology must keep a schedule identifying required procedural steps in the permitting process and highlighting substantive issues as appropriate that must be resolved in order for the project to move forward. In carrying out these responsibilities, the department of ecology must:

(a) Conduct the duties for the coordinated permitting process as described in section 205 of this act;

(b)(i) Reach out to tribal or federal jurisdictions responsible for issuing a permit for the project and invite them to participate in the coordinated permitting process or to receive periodic updates of the project;

(ii) Reach out to local jurisdictions responsible for issuing a permit for the project and inform them of their obligations under section 207 of this act.

(4) Within 30 days, or longer with agreement of the project proponent, of the date that the department of ecology determines a project is eligible for the fully coordinated permitting process, the department of ecology shall convene a work plan meeting with the project proponent, local government, and the participating permit agencies to develop a coordinated permitting process schedule. The work plan meeting agenda may include any of the following:

(a) Review of the permits that are anticipated for the project;

(b) A review of the permit application forms and other application requirements of the agencies that are participating in the coordinated permitting process;

(c) An estimation of the timelines that will be used by each participating permit agency to make permit decisions, including the estimated time periods required to determine if the permit applications are complete and to review or respond to each application or submittal of new information. In the development of this timeline, full attention must be given to achieving the maximum efficiencies possible through concurrent studies and consolidated applications, hearings, and comment periods; or

(d) An estimation of reasonable costs for the department of ecology, participating agencies, and the county, city, or town in which the project is proposed for environmental review and permitting, based on known information about the project.

(5) Each participating agency and the lead agency under chapter 43.21C RCW must send at least one representative qualified to discuss the applicability and timelines associated with all permits administered by that agency or jurisdiction to the work plan meeting. At the request of the project proponent, the department of ecology must notify any relevant federal agency or federally recognized Indian tribe of the date of the meeting and invite them to participate in the process.

(6) Any accelerated time period for the consideration of a permit application or for the completion of the environmental review process under chapter 43.21C RCW must be consistent with any statute, rule, or regulation, or adopted state policy, standard, or guideline that requires the participation of other agencies, federally recognized Indian tribes, or interested persons in the application process.

(7) Upon the completion of the work plan meeting under subsection (4) of this section, the department of ecology must finalize the coordinated permitting process schedule, share it in writing with the project proponent, participating state agencies, lead agencies under chapter 43.21C RCW, and cities and counties subject to an agreement specified in section 207 of this act, and make the schedule available to the public.

(8) As part of the coordinated permit process, the developer may prepare a community benefit agreement or other similar document to identify how to mitigate potential community impacts. The agreement should include benefits in addition to jobs or tax revenues resulting from the project. Approval of any benefit agreement or other legal document stipulating the benefits that the developer agrees to fund or furnish, in exchange for community support of the project, must be made by the local government legislative authority of the county, city, or town in which the project is proposed.

(9) If a lead agency under chapter 43.21C RCW, a permit agency, or the project proponent foresees, at any time, that it will be unable to meet the estimated timelines or other obligations under the schedule agreement, it must notify the department of ecology of the reasons for the delay and offer potential solutions or an amended timeline. The department of ecology must notify the participating agencies and the project proponent and, upon agreement of all parties, adjust the schedule or, if necessary, schedule another work plan meeting.

(10) The project proponent may withdraw from the coordinated permitting process by submitting to the department of ecology a written request that the process be terminated. Upon receipt of the request, the department of ecology must notify each participating agency that a coordinated permitting process is no longer applicable to the project.

NEW SECTION. **Sec.**  CLEAN ENERGY COORDINATED PERMITTING PROCESS—LOCAL JURISDICTION AGREEMENTS. (1)(a) Counties and cities with clean energy projects that are determined to be eligible for the fully coordinated permit process shall enter into an agreement with the department of ecology or with the project proponents of clean energy projects for expediting the completion of projects.

(b) For the purposes of this section, "expedite" means that a county or city will develop and implement a method to accelerate the process for permitting and environmental review. Expediting should not disrupt or otherwise delay the permitting and environmental review of other projects or require the county or city to incur additional costs that are not compensated.

(2) Agreements required by this section must include requirements that the county or city coordinate with the department of ecology and conduct environmental review and permitting to align with the work plan described in section 206(4) of this act and:

(a) Expedite permit processing for the design and construction of the project;

(b) Expedite environmental review processing;

(c) Expedite processing of requests for street, right-of-way, or easement vacations necessary for the construction of the project;

(d) Develop and follow a plan for consultation with potentially affected federally recognized Indian tribes; and

(e) Carry out such other actions identified by the department of ecology as needed for the fully coordinated permitting process.

NEW SECTION. **Sec.**  CLEAN ENERGY COORDINATED PERMITTING PROCESS—COST-REIMBURSEMENT AGREEMENTS. (1) For a fully coordinated permitting process, a project proponent must enter into a cost-reimbursement agreement with the department of ecology in accordance with RCW 43.21A.690. The cost-reimbursement agreement is to recover reasonable costs incurred by the department of ecology and participating agencies in carrying out the coordinated permitting process.

(2) The cost-reimbursement agreement may include deliverables and schedules for invoicing and reimbursement.

(3) For a fully coordinated permitting process, a project proponent must enter into a development agreement with the county, city, or town in which the project is proposed, in accordance with the authorization and requirements in RCW 36.70B.170 through 36.70B.210. The development agreement must detail the obligations of the local jurisdiction and the project applicant. It must also include, but not be limited to, the process the county, city, or town will implement for meeting its obligation to expedite the application, other clarifications for project phasing, and an estimate of reasonable costs.

(4) If a project proponent foresees, at any time, that it will be unable to meet its obligations under the agreement, it must notify the department of ecology and state the reasons, along with proposals for resolution.

NEW SECTION. **Sec.**  CLEAN ENERGY COORDINATED PERMITTING PROCESS—TRIBAL CONSULTATION AND OVERBURDENED COMMUNITY ENGAGEMENT. (1)(a) The department of ecology must offer early, meaningful, and individual consultation with any affected federally recognized Indian tribe on designated clean energy projects participating in the coordinated permitting process for the purpose of understanding potential impacts to tribal rights, interests, and resources, including tribal cultural resources, archaeological sites, sacred sites, fisheries, or other rights and interests in tribal lands and lands within which an Indian tribe or tribes possess rights reserved or protected by federal treaty, statute, or executive order. The consultation is independent of, and in addition to, any public participation process required by state law, or by a state agency. The goal of the consultation process is to support the coordinated permitting process by early identification of tribal rights, interests, and resources, including tribal cultural resources, potentially affected by the project, and identifying solutions, when possible, to avoid, minimize, or mitigate any adverse effects on tribal rights, interests, or resources, including tribal cultural resources, based on environmental or permit reviews.

(b) At the earliest possible date after the initiation of the coordinated permitting process under this chapter, the department of ecology shall engage in a preapplication process with all affected federally recognized Indian tribes.

(i) The department of ecology must notify the department of archaeology and historic preservation, the department of fish and wildlife, and all affected federally recognized Indian tribes within the project area. The notification must include geographical location, detailed scope of the proposed project, preliminary proposed project details available to federal, state, or local governmental jurisdictions, and all publicly available materials.

(ii) The department of ecology must also offer to discuss the project with the department of archaeology and historic preservation, the department of fish and wildlife, and all affected federally recognized Indian tribes within the project area. Discussions may include the project's impact to tribal rights, interests, and resources, including tribal cultural resources, archaeological sites, sacred sites, fisheries, or other rights and interests in tribal lands and lands within which a tribe or tribes possess rights reserved or protected by federal treaty, statute, or executive order.

(iii) All affected federally recognized Indian tribes may submit to the department of ecology a summary of tribal issues, questions, concerns, or other statements regarding the project, which must become part of the official files maintained by the department of ecology for the coordinated permitting process. The summary does not limit what issues affected federally recognized Indian tribes may raise in the consultation process.

(iv) The notification and offer to initiate discussion must be documented by the department of ecology and delivered to the department of archaeology and historic preservation, the department of fish and wildlife, and to the affected federally recognized Indian tribe or tribes. If the discussions pursuant to (b)(ii) of this subsection do not occur, the department of ecology must document the reason why the discussion or discussions did not occur.

(v) Nothing in this section may be interpreted to require the disclosure of information that is exempt from disclosure pursuant to RCW 42.56.300 or federal law, including section 304 of the national historic preservation act of 1966. Any information that is exempt from disclosure pursuant to RCW 42.56.300 or federal law, including section 304 of the national historic preservation act of 1966, shall not become part of publicly available coordinated permitting process files.

(2) The department of ecology must identify overburdened communities, as defined in RCW 70A.02.010, which may be potentially affected by clean energy projects participating in the coordinated permitting process. The department of ecology must verify these communities have been meaningfully engaged in the regulatory processes in a timely manner by participating agencies and their comments considered for determining potential impacts.

NEW SECTION. **Sec.**  MISCELLANEOUS. (1) Nothing in this chapter:

(a) Prohibits an applicant, a project proponent, or a state agency from entering into a nondisclosure agreement to protect confidential business information, trade secrets, financial information, or other proprietary information;

(b) Limits or affects other statutory provisions specific to any state agency related to that agency's procedures and protocols related to the identification, designation, or disclosure of information identified as confidential business information, trade secrets, financial information, or other proprietary information; or

(c) Limits or affects the provisions of chapter 42.56 RCW as they apply to information or nondisclosure agreements obtained by a state agency under this chapter.

(2) The decisions by the department of commerce to designate a clean energy project of statewide significance must be made available to the public. Regardless of any exemptions otherwise set forth in RCW 42.56.270, publicly shared information must include the designee's name, a brief description of the project, the intended project location, a description of climate and economic development benefits to the state and communities therein, a tribal engagement plan, a community engagement plan, and a community benefit agreement if applicable.

(3) The department of commerce may terminate a designation of a clean energy project of statewide significance for reasons that include, but are not limited to, failure to comply with requirements of the designation or the emergence of new information that significantly alters the department of commerce's assessment of the applicant's application, project, or project proponent. The department of commerce must notify the applicant, project proponent, and the department of ecology of the termination in writing within 30 days.

(4) Nothing in this chapter affects the jurisdiction of the energy facility site evaluation council under chapter 80.50 RCW.

(5) This chapter does not limit or abridge the powers and duties granted to a participating permit agency under the law or laws that authorizes or requires the agency to issue a permit for a project. Each participating permit agency retains its authority to make all decisions on all substantive matters with regard to the respective component permit that is within its scope of its responsibility including, but not limited to, the determination of permit application completeness, permit approval or approval with conditions, or permit denial.

**PART 3**

**PERMITTING AND ENVIRONMENTAL REVIEW PROVISIONS FOR CLEAN ENERGY PROJECTS**

NEW SECTION. **Sec.**  A new section is added to chapter 43.21C RCW to read as follows:

SEPA CLEAN ENERGY FACILITIES.

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alternative energy resource" has the same meaning as defined in RCW 80.50.020.

(b) "Alternative jet fuel" has the same meaning as defined in section 201 of this act.

(c) "Associated facilities" has the same meaning as defined in section 201 of this act.

(d) "Clean energy product manufacturing facility" has the same meaning as defined in section 201 of this act.

(e) "Clean energy project" has the same meaning as defined in section 201 of this act.

(f) "Closely related proposals" means proposals that:

(i) Cannot or will not proceed unless the other proposals, or parts of proposals, are implemented simultaneously with them; or

(ii) Are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation.

(g) "Green electrolytic hydrogen" has the same meaning as defined in RCW 80.50.020.

(h) "Green hydrogen carrier" has the same meaning as defined in RCW 80.50.020.

(i) "Renewable hydrogen" has the same meaning as defined in RCW 80.50.020.

(j) "Renewable natural gas" has the same meaning as defined in RCW 80.50.020.

(k) "Renewable resource" has the same meaning as defined in RCW 80.50.020.

(l) "Storage facility" has the same meaning as defined in RCW 80.50.020.

(2)(a) After the submission of an environmental checklist and prior to issuing a threshold determination that a clean energy project proposal is likely to cause a probable significant adverse environmental impact consistent with RCW 43.21C.033, the lead agency must notify the project applicant and explain in writing the basis for its anticipated determination of significance. Prior to issuing the threshold determination of significance, the lead agency must give the project applicant the option of withdrawing and revising its application and the associated environmental checklist. The lead agency shall make its threshold determination based upon the changed or clarified application and associated environmental checklist. The responsible official has no more than 30 days from the date of the resubmission of a clarified or changed application to make a threshold determination, unless the applicant makes material changes that substantially modify the impact of the proposal, in which case the responsible official must treat the resubmitted clarified or changed application as new, and is subject to the timelines established in RCW 43.21C.033.

(b) The notification required under (a) of this subsection is not an official determination by the lead agency and is not subject to appeal under this chapter.

(c) Nothing in this subsection amends the requirements of RCW 43.21C.033 as they apply to proposals that are not for clean energy projects and nothing in this subsection precludes the lead agency from allowing an applicant for a proposal that is not a clean energy project to follow application processes similar to or the same as the application processes identified in this subsection.

(3)(a) When an environmental impact statement is required, a lead agency shall prepare a final environmental impact statement for clean energy projects within 24 months of a threshold determination of a probable significant, adverse environmental impact.

(b) A lead agency may work with clean energy project applicants to set or extend a time limit longer than 24 months under (a) of this subsection, provided the:

(i) Applicant agrees to a longer time limit; and

(ii) Responsible official for the lead agency maintains an updated schedule available for public review.

(c) For all clean energy projects that require the preparation of an environmental impact statement, the lead agency shall work collaboratively with applicants and all agencies that will have actions requiring review under this chapter to develop a schedule that shall:

(i) Include a list of, and roles and responsibilities for, all entities that have actions requiring review under this chapter for the project;

(ii) Include a comprehensive schedule of dates by which review under this chapter will be completed, all actions requiring review under this chapter will be taken, and the public will have an opportunity to participate;

(iii) Be completed within 60 days of issuance of a determination of significance;

(iv) Be updated as needed, but no later than 30 days of missing a date on the schedule; and

(v) Be available for public review on the state environmental policy act register.

(d) A lead agency may fulfill its responsibilities under this subsection with a coordinated project plan prepared pursuant to 42 U.S.C. Sec. 4370m–2(c)(1) if it includes all dates identified under (c)(ii) of this subsection.

(e) A failure to comply with the requirements in this subsection is not subject to appeal and does not provide a basis for the invalidation of the review by an agency under this chapter. Nothing in this subsection creates any civil liability for an agency or creates a new cause of action against an agency.

(f) For clean energy projects, the provisions of this subsection are in addition to the requirements of RCW 43.21C.0311.

(4) This subsection provides clarifications on the content of review under this chapter specific to clean energy projects.

(a) In defining the proposal that is the subject of review under this chapter, a lead agency may not combine the evaluation of a clean energy project proposal with other proposals unless the:

(i) Proposals are closely related; or

(ii) Applicant agrees to combining the proposals' evaluation.

(b) An agency with authority to impose mitigation under RCW 43.21C.060 may require mitigation measures for clean energy projects only to address the environmental impacts that are attributable to and caused by a proposal.

NEW SECTION. **Sec.**  A new section is added to chapter 43.21C RCW to read as follows:

NONPROJECT ENVIRONMENTAL IMPACT STATEMENTS.

(1) The department of ecology shall prepare nonproject environmental impact statements, pursuant to RCW 43.21C.030, that assess and disclose the probable significant adverse environmental impacts, and that identify related mitigation measures, for each of the following categories of clean energy projects, and colocated battery energy storage projects that may be included in such projects:

(a) Green electrolytic or renewable hydrogen projects;

(b) Utility-scale solar energy projects, which will consider the findings of the Washington State University least-conflict solar siting process; and

(c) Onshore utility-scale wind energy projects.

(2) The scope of a nonproject environmental review shall be limited to the probable, significant adverse environmental impacts in geographic areas that are suitable for the applicable clean energy type. The department of ecology may consider standard attributes for likely development, proximity to existing transmission or complementary facilities, and planned corridors for transmission capacity construction, reconstruction, or enlargement. The nonproject review is not required to evaluate geographic areas that lack the characteristics necessary for the applicable clean energy project type.

(3)(a) The scope of nonproject environmental impact statements must consider, as appropriate, analysis of the following probable significant adverse environmental impacts, including direct, indirect, and cumulative impacts to:

(i) Historic and cultural resources;

(ii) Species designated for protection under RCW 77.12.020 or the federal endangered species act;

(iii) Landscape scale habitat connectivity and wildlife migration corridors;

(iv) Environmental justice and overburdened communities as defined in RCW 70A.02.010;

(v) Cultural resources and elements of the environment relevant to tribal rights, interests, and resources including tribal cultural resources, and fish, wildlife, and their habitat;

(vi) Land uses, including agricultural and ranching uses; and

(vii) Military installations and operations.

(b) The nonproject environmental impact statements must identify measures to avoid, minimize, and mitigate probable significant adverse environmental impacts identified during the review. These include measures to mitigate probable significant adverse environmental impacts to elements of the environment as defined in WAC 197-11-444 as it existed as of January 1, 2023, tribal rights, interests, and resources, including tribal cultural resources, as identified in RCW 70A.65.305, and overburdened communities as defined in RCW 70A.02.010. The department of ecology shall consult with other agencies with expertise in identification and mitigation of probable, significant adverse environmental impacts including, but not limited to, the department of fish and wildlife. The department of ecology shall further specify when probable, significant adverse environmental impacts cannot be mitigated.

(4) In defining the scope of nonproject review of clean energy projects, the department of ecology shall request input from agencies, federally recognized Indian tribes, industry, stakeholders, local governments, and the public to identify the geographic areas suitable for the applicable clean energy project type, based on the climatic and geophysical attributes conducive to or required for project development. The department of ecology will provide opportunities for the engagement of tribes, overburdened communities, and stakeholders that self-identify an interest in participating in the processes.

(5) The department of ecology will offer early and meaningful consultation with any affected federally recognized Indian tribe on the nonproject review under this section for the purpose of understanding potential impacts to tribal rights and resources, including tribal cultural resources, archaeological sites, sacred sites, fisheries, or other rights and interests in tribal lands and lands within which an Indian tribe or tribes possess rights reserved or protected by federal treaty, statute, or executive order. The consultation is independent of, and in addition to, any public participation process required by state law, or by a state agency. The goal of the consultation process is to support the nonproject review by early identification of tribal rights, interests, or resources, including tribal cultural resources, potentially affected by the project type, and identifying solutions, when possible, to avoid, minimize, or mitigate any adverse effects on tribal rights, interests, or resources, including tribal cultural resources, based on environmental or permit review.

(6) Final nonproject environmental review documents for the clean energy projects identified in subsection (1) of this section, where applicable, shall include maps identifying probable, significant adverse environmental impacts for the resources evaluated. Maps must be prepared with the intention to illustrate probable, significant impacts, creating a tool that may be used by project proponents, tribes, and government to inform decision making.

(7) Following the completion of a nonproject review subject to this section, the interagency clean energy siting coordinating council created in section 101 of this act must consider the findings and make recommendations to the legislature and governor on potential areas to designate as clean energy preferred zones for the clean energy project technology analyzed, and any taxation, regulatory, environmental review, or other benefits that should accrue to projects in such designated preferred zones.

NEW SECTION. **Sec.**  A new section is added to chapter 43.21C RCW to read as follows:

LEAD AGENCY USE OF NONPROJECT ENVIRONMENTAL IMPACT STATEMENT.

(1) A lead agency conducting a project-level environmental review under this chapter of a clean energy project identified in section 302(1) of this act must consider a nonproject environmental impact statement prepared pursuant to section 302 of this act in order to identify and mitigate project-level probable significant adverse environmental impacts.

(2)(a) Project-level environmental review conducted pursuant to this chapter of a clean energy project identified in section 302(1) of this act must begin with review of the applicable nonproject environmental impact statement prepared pursuant to section 302 of this act. The review must address any probable significant adverse environmental impacts associated with the proposal that were not analyzed in the nonproject environmental impact statements prepared pursuant to section 302 of this act. The review must identify any mitigation measures specific to the project for probable significant adverse environmental impacts.

(b) Lead agencies reviewing site-specific project proposals for clean energy projects under this chapter shall use the nonproject review described in this section through one of the following methods and in accordance with WAC 197-11-600, as it existed as of January 1, 2023:

(i) Use of the nonproject review unchanged, in accordance with RCW 43.21C.034**,** if the project does not cause probable significant adverse environmental impact not identified in the nonproject review;

(ii) Preparation of an addendum;

(iii) Incorporation by reference; or

(iv) Preparation of a supplemental environmental impact statement.

(3) Clean energy project proposals following the recommendations developed in the nonproject environment review completed pursuant to section 302 of this act must be considered to have mitigated the probable significant adverse project-specific environmental impacts under this chapter for which recommendations were specifically developed unless the project-specific environmental review identifies project-level probable significant adverse environmental impacts not addressed in the nonproject environmental review.

NEW SECTION. **Sec.**  A new section is added to chapter 36.70B RCW to read as follows:

PROHIBITION ON DEMONSTRATION OF NEED.

During project review of a project to construct or improve facilities for the generation, transmission, or distribution of electricity, a local government may not require a project applicant to demonstrate the necessity or utility of the project other than to require, as part of a completed application under RCW 36.70B.070(2), submission of any publicly available documentation required by the federal energy regulatory commission or its delegees or the utilities and transportation commission or its delegees, or from any other federal agency with regulatory authority over the assessment of electric power transmission and distribution needs as applicable.

NEW SECTION. **Sec.**  A new section is added to chapter 36.01 RCW to read as follows:

(1) In order to encourage greater development and use of renewable energy, a county may not require an application for or the acquisition of a grading permit or any other ministerial or discretionary permit for the following activities associated with a renewable energy project:

(a) Site investigation work, including the installation of wind and solar resource evaluation equipment, exploratory excavations, and fill pads necessary for the project, design, environmental planning, or land use applications such as surveys, geotechnical or hydrogeological investigations, infiltration tests and other soil tests, and other related activities; and

(b) Clearing, grading, and excavation of less than 500 cubic yards of material for each location conducted on natural terrain with a slope flatter than one unit vertical in five units horizontal, undertaken to determine project feasibility and preliminary design details.

(2) The activities identified in subsection (1) of this section may be undertaken prior to issuance of discretionary land use permits, including conditional use permits.

(3) This section does not apply to activities involving work in-water or fill of wetlands.

(4) Local critical areas ordinances and state permitting requirements apply to activities in this section.

(5) The prohibitions on application requirements under this section apply only to a person who, prior to commencing the activities specified in subsection (1)(a) and (b) of this section, has inquired with the department of archaeology and historic preservation to obtain information on the probability or existence of tribal cultural resources, archaeological sites, and sacred sites within the potential site area. The department of archaeology and historic preservation must provide information to the person carrying out activities described in subsection (1) of this section regarding the federally recognized Indian tribes that would need to be contacted and that agencies would need to offer consultation to in the event that any project development permit applications were to proceed.

NEW SECTION. **Sec.**  LEAST-CONFLICT PUMPED STORAGE SITING PROCESS. (1) Washington State University energy program shall conduct a least-conflict pumped storage siting process for Washington state, to support expanded capacity to store intermittently produced renewable energy such as from wind and solar, as part of the state's transition from fossil fuel to 100 percent clean energy. The Washington State University energy program may decide to include within the process's scope the colocation of pumped storage with wind or solar energy generation. The goal of the process is to identify areas where there is the least amount of potential conflict in the siting of pumped storage.

(2) In carrying out this process, the Washington State University energy program shall provide ample opportunities for the engagement of federally recognized Indian tribes and stakeholders that self-identify as interested in participating in the process.

(3) The Washington State University energy program must develop and make available a map and associated GIS data layers, highlighting areas identified through the process.

(4) Any information provided by tribes will help to inform the map product, but the Washington State University energy program may not include sensitive tribal information, as identified by federally recognized Indian tribes, in the publicly available map or GIS data layers. The siting process and creation of the map under this section does not supplant the need for project developers to conduct early and individual outreach to federally recognized Indian tribes. The Washington State University energy program must take precautions to prevent disclosure of any sensitive tribal information it receives during the process, consistent with RCW 42.56.300.

(5) The least-conflict pumped storage process must be completed by June 30, 2025.

**PART 4**

**MISCELLANEOUS PROVISIONS**

NEW SECTION. **Sec.**  Sections 101 and 102 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec.**  Sections 201 through 210 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**