
SENATE BILL 5415

State of Washington

67th Legislature

2021 Regular Session

By Senator Lovelett

1 AN ACT Relating to the energy facility site evaluation council;
2 amending RCW 80.50.040, 80.50.060, 80.50.071, 80.50.100, 80.50.140,
3 80.50.175, and 43.79A.040; reenacting and amending RCW 80.50.020,
4 80.50.030, and 80.50.090; adding new sections to chapter 80.50 RCW;
5 repealing RCW 80.50.190; providing an effective date; and declaring
6 an emergency.

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

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

10 The definitions in this section apply throughout this chapter
11 unless the context clearly requires otherwise.

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

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

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

4 (4) "Associated facilities" means storage, transmission,
5 handling, or other related and supporting facilities connecting an
6 energy plant or clean energy project with the existing infrastructure
7 and energy supply, processing, or distribution system, including, but
8 not limited to, communications, controls, mobilizing or maintenance
9 equipment, instrumentation, and other types of ancillary transmission
10 equipment, off-line storage or venting required for efficient
11 operation or safety of the transmission system and overhead, and
12 surface or subsurface lines of physical access for the inspection,
13 maintenance, and safe operations of the transmission facility and new
14 transmission lines constructed to operate at nominal voltages of at
15 least 115,000 volts to connect a thermal power plant or alternative
16 energy facilities to the northwest power grid. However, common
17 carrier railroads or motor vehicles shall not be included.

18 (5) "Biofuel" (~~(has the same meaning as defined in RCW~~
19 ~~43.325.010)~~) includes, but is not limited to, biodiesel, ethanol, and
20 ethanol blend fuels and renewable liquid natural gas or liquid
21 compressed natural gas made from biogas.

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

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

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

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

36 (10) "Electrical transmission facilities" means electrical power
37 lines and related equipment.

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

1 (a) Facilities for the extraction, conversion, transmission or
2 storage of water, other than water specifically consumed or
3 discharged by energy production or conversion for energy purposes;
4 and

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

8 (12) "Energy plant" means the following facilities together with
9 their associated facilities:

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

12 (b) Any nonnuclear stationary thermal power plant with generating
13 capacity of three hundred fifty thousand kilowatts or more, measured
14 using maximum continuous electric generating capacity, less minimum
15 auxiliary load, at average ambient temperature and pressure, and
16 floating thermal power plants of one hundred thousand kilowatts or
17 more suspended on the surface of water by means of a barge, vessel,
18 or other floating platform;

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

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

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

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

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

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

5 (15) "Person" means an individual, partnership, joint venture,
6 private or public corporation, association, firm, public service
7 company, political subdivision, municipal corporation, government
8 agency, public utility district, or any other entity, public or
9 private, however organized.

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

12 (17) "Preapplication process" means the process which is
13 initiated by written correspondence from the preapplicant to the
14 council, and includes the process adopted by the council for
15 consulting with the preapplicant and with cities, towns, and counties
16 prior to accepting applications for all transmission facilities.

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

19 (19) "Site" means any proposed or approved location of an energy
20 facility, (~~alternative~~) clean energy (~~resource~~) project, or
21 electrical transmission facility.

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

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

27 (a) Crude or refined petroleum or liquid petroleum product
28 transmission pipeline of the following dimensions: A pipeline larger
29 than six inches minimum inside diameter between valves for the
30 transmission of these products with a total length of at least
31 fifteen miles;

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

39 (22) "Zoning ordinance" means an ordinance of a unit of local
40 government regulating the use of land and adopted pursuant to chapter

1 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state
2 Constitution, or as otherwise designated by chapter 325, Laws of
3 2007.

4 (23) "Biogas" includes waste gases derived from landfills and
5 wastewater treatment plants and dairy and farm wastes.

6 (24) "Clean energy manufacturing project" means a facility that
7 manufactures products, equipment, or components used for:

8 (a) Renewable energy generation and electricity storage;

9 (b) The production of electric, hydrogen, or other vehicle type
10 that emits no exhaust gas from the onboard source of power, other
11 than water vapor; or

12 (c) Charging and fueling infrastructure for electric, hydrogen,
13 or other vehicle type that emits no exhaust gas from the onboard
14 source of power, other than water vapor.

15 (25) "Clean energy project" means a project is one of the
16 following types of facilities together with its associated
17 facilities:

18 (a) Alternative energy resource;

19 (b) Electric energy storage;

20 (c) Facilities capable of processing more than 1,500 barrels per
21 day of biofuel into refined products except where this biofuel
22 production is undertaken at existing industrial facilities;

23 (d) Projects capable of producing replacements for natural gas
24 from renewable sources, including renewable natural gas and renewable
25 hydrogen; and

26 (e) Clean energy manufacturing projects.

27 (26) "Renewable hydrogen" has the same meaning as provided in RCW
28 19.405.020.

29 (27) "Renewable natural gas" has the same meaning as provided in
30 RCW 19.405.020.

31 **Sec. 2.** RCW 80.50.030 and 2010 c 271 s 601 and 2010 c 152 s 2
32 are each reenacted and amended to read as follows:

33 (1) There is created and established the energy facility site
34 evaluation council.

35 (2)(a) The chair of the council shall be appointed by the
36 governor with the advice and consent of the senate, shall have a vote
37 on matters before the council, shall serve for a term coextensive
38 with the term of the governor, and is removable for cause. The chair
39 may designate a member of the council to serve as acting chair in the

1 event of the chair's absence. The salary of the chair shall be
2 determined under RCW 43.03.040. The chair is a "state employee" for
3 the purposes of chapter 42.52 RCW. As applicable, when attending
4 meetings of the council, members may receive reimbursement for travel
5 expenses in accordance with RCW 43.03.050 and 43.03.060, and are
6 eligible for compensation under RCW 43.03.250.

7 (b) The chair or a designee shall execute all official documents,
8 contracts, and other materials on behalf of the council. (~~The~~
9 ~~Washington utilities and transportation commission shall provide all~~
10 ~~administrative and staff support for the council.~~) The
11 (~~commission~~) chair is the appointing authority and has supervisory
12 authority over the staff of the council and shall employ such
13 personnel as are necessary to implement this chapter. Not more than
14 three such employees may be exempt from chapter 41.06 RCW. The
15 Washington utilities and transportation commission shall provide
16 administrative support for the council. The council shall
17 (~~otherwise~~) retain its independence in exercising its powers,
18 functions, and duties and its supervisory control over
19 (~~nonadministrative~~) council staff (~~support~~). Membership, powers,
20 functions, and duties of the Washington state utilities and
21 transportation commission and the council shall otherwise remain as
22 provided by law.

23 (3) (~~(a)~~) The council shall consist of the (~~directors,~~
24 ~~administrators, or their designees, of the following departments,~~
25 ~~agencies, commissions, and committees or their statutory successors:~~

- 26 ~~(i) Department of ecology;~~
- 27 ~~(ii) Department of fish and wildlife;~~
- 28 ~~(iii) Department of commerce;~~
- 29 ~~(iv) Utilities and transportation commission; and~~
- 30 ~~(v) Department of natural resources.~~

31 ~~(b) The directors, administrators, or their designees, of the~~
32 ~~following departments, agencies, and commissions, or their statutory~~
33 ~~successors, may participate as councilmembers at their own discretion~~
34 ~~provided they elect to participate no later than sixty days after an~~
35 ~~application is filed:~~

- 36 ~~(i) Department of agriculture;~~
- 37 ~~(ii) Department of health;~~
- 38 ~~(iii) Military department; and~~
- 39 ~~(iv) Department of transportation.~~

1 ~~(c) Council membership is discretionary for agencies that choose~~
2 ~~to participate under (b) of this subsection only for applications~~
3 ~~that are filed with the council on or after May 8, 2001. For~~
4 ~~applications filed before May 8, 2001, council membership is~~
5 ~~mandatory for those agencies listed in (b) of this subsection.~~

6 ~~(4) The appropriate county legislative authority of every county~~
7 ~~wherein an application for a proposed site is filed shall appoint a~~
8 ~~member or designee as a voting member to the council. The member or~~
9 ~~designee so appointed shall sit with the council only at such times~~
10 ~~as the council considers the proposed site for the county which he or~~
11 ~~she represents, and such member or designee shall serve until there~~
12 ~~has been a final acceptance or rejection of the proposed site.~~

13 ~~(5) The city legislative authority of every city within whose~~
14 ~~corporate limits an energy facility is proposed to be located shall~~
15 ~~appoint a member or designee as a voting member to the council. The~~
16 ~~member or designee so appointed shall sit with the council only at~~
17 ~~such times as the council considers the proposed site for the city~~
18 ~~which he or she represents, and such member or designee shall serve~~
19 ~~until there has been a final acceptance or rejection of the proposed~~
20 ~~site.~~

21 ~~(6) For any port district wherein an application for a proposed~~
22 ~~port facility is filed subject to this chapter, the port district~~
23 ~~shall appoint a member or designee as a nonvoting member to the~~
24 ~~council. The member or designee so appointed shall sit with the~~
25 ~~council only at such times as the council considers the proposed site~~
26 ~~for the port district which he or she represents, and such member or~~
27 ~~designee shall serve until there has been a final acceptance or~~
28 ~~rejection of the proposed site. The provisions of this subsection~~
29 ~~shall not apply if the port district is the applicant, either singly~~
30 ~~or in partnership or association with any other person)) chair and:~~

31 ~~(a) The director of the department of ecology or the director's~~
32 ~~designee;~~

33 ~~(b) The director of the department of fish and wildlife or the~~
34 ~~director's designee;~~

35 ~~(c) The director of the department of commerce or the director's~~
36 ~~designee;~~

37 ~~(d) The chair of the utilities and transportation commission or~~
38 ~~the chair's designee;~~

39 ~~(e) The commissioner of public lands or the commissioner's~~
40 ~~designee;~~

1 (f) One member designated by the board of directors of the
2 Washington state association of counties or its successor; and

3 (g) Two members selected by federally recognized tribes within
4 the state of Washington.

5 (4) The city legislative authority of every city within whose
6 corporate limits an energy facility is proposed to be located may
7 appoint a member or designee as a voting member to the council. The
8 city legislative authority must make the appointment no later than 90
9 days after notification from the council. The member or designee so
10 appointed may sit with the council only at such times as the council
11 considers the proposed site for the city that the member represents.

12 (5) A quorum of the council consists of a majority of members
13 appointed for business to be conducted.

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

16 The council shall have the following powers:

17 (1) To adopt, promulgate, amend, or rescind suitable rules and
18 regulations, pursuant to chapter 34.05 RCW, to carry out the
19 provisions of this chapter, and the policies and practices of the
20 council in connection therewith;

21 (2) To develop and apply environmental and ecological guidelines
22 in relation to the type, design, location, construction, ~~((and))~~
23 initial operational conditions of certification, and ongoing
24 regulatory oversight of energy facilities subject to this chapter;

25 (3) To establish rules of practice for the conduct of public
26 hearings pursuant to the provisions of the Administrative Procedure
27 Act, as found in chapter 34.05 RCW;

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

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

32 (6) To ~~((make and contract, when applicable, for independent~~
33 ~~studies of sites proposed by the applicant))~~ enter into contracts to
34 carry out the provisions of this chapter;

35 (7) To conduct hearings on the proposed location and operational
36 conditions of the energy facilities;

37 (8) To prepare written reports to the governor which shall
38 include: (a) A statement indicating whether the application is in
39 compliance with the council's guidelines, (b) criteria specific to

1 the site and transmission line routing, (c) a council recommendation
2 as to the disposition of the application, and (d) a draft
3 certification agreement when the council recommends approval of the
4 application;

5 (9) To prescribe the means for monitoring of the effects arising
6 from the construction and the operation of energy facilities to
7 assure continued compliance with terms of certification and/or
8 permits issued by the council pursuant to chapter 90.48 RCW or
9 subsection (12) of this section: PROVIDED, That any on-site
10 inspection required by the council shall be performed by other state
11 agencies pursuant to interagency agreement: PROVIDED FURTHER, That
12 the council may retain authority for determining compliance relative
13 to monitoring;

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

17 (11) To present state concerns and interests to other states,
18 regional organizations, and the federal government on the location,
19 construction, and operation of any energy facility which may affect
20 the environment, health, or safety of the citizens of the state of
21 Washington;

22 (12) To issue permits in compliance with applicable provisions of
23 the federally approved state implementation plan adopted in
24 accordance with the Federal Clean Air Act, as now existing or
25 hereafter amended, for the new construction, reconstruction, or
26 enlargement or operation of energy facilities: PROVIDED, That such
27 permits shall become effective only if the governor approves an
28 application for certification and executes a certification agreement
29 pursuant to this chapter: AND PROVIDED FURTHER, That all such permits
30 be conditioned upon compliance with all provisions of the federally
31 approved state implementation plan which apply to energy facilities
32 covered within the provisions of this chapter; and

33 (13) To serve as an interagency coordinating body for energy-
34 related issues.

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

37 (1) The provisions of this chapter apply to the construction of
38 energy facilities which includes the new construction of energy
39 facilities and the reconstruction or enlargement of existing energy

1 facilities where the net increase in physical capacity or dimensions
2 resulting from such reconstruction or enlargement meets or exceeds
3 those capacities or dimensions set forth in RCW 80.50.020 (~~((7))~~)
4 (12) and (~~((15))~~) (21). No construction of such energy facilities may
5 be undertaken, except as otherwise provided in this chapter, after
6 July 15, 1977, without first obtaining certification in the manner
7 provided in this chapter.

8 (2) The provisions of this chapter apply to the construction,
9 reconstruction, or enlargement of a new or existing clean energy
10 (~~(facility that exclusively uses alternative energy resources)~~)
11 project and the applicant chooses to receive certification under this
12 chapter(~~(, regardless of the generating capacity of the project)~~).

13 (3) (a) The provisions of this chapter apply to the construction,
14 reconstruction, or modification of electrical transmission facilities
15 when:

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

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

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

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

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

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

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

14 (7) Upon receipt of an application for certification under this
15 chapter, the chair shall notify the:

16 (a) Department of agriculture;

17 (b) Department of health;

18 (c) Military department;

19 (d) Department of transportation;

20 (e) Appropriate county legislative authority where the proposed
21 facility is located; and

22 (f) Appropriate federally recognized tribal governments affected
23 by the proposed facility.

24 (8) The council shall work with local governments where a project
25 is proposed to be sited in order to ensure meaningful participation
26 and input during siting review and compliance monitoring.

27 (9) The council must work with all federally recognized tribal
28 governments affected by a proposed facility in order to ensure
29 meaningful participation and input during siting review and
30 compliance monitoring. Consistent with RCW 43.376.020, the chair and
31 designated staff must conduct government-to-government meetings to
32 the council throughout the application review process. The report
33 required in RCW 80.50.100 must include a summary of the government-
34 to-government meetings, including the issues and resolutions.

35 **Sec. 5.** RCW 80.50.071 and 2016 sp.s. c 10 s 1 are each amended
36 to read as follows:

37 (1) The council shall receive all applications for energy
38 facility site certification. Each applicant shall pay actual costs

1 incurred by the council and the utilities and transportation
2 commission in processing an application.

3 (a) Each applicant shall, at the time of application submission,
4 (~~deposit with the utilities and transportation commission~~) pay to
5 the council for deposit into the energy facility site evaluation
6 account an amount up to fifty thousand dollars, or such greater
7 amount as specified by the council after consultation with the
8 applicant. The council and the utilities and transportation
9 commission shall charge costs against the deposit if the applicant
10 withdraws its application and has not reimbursed the commission, on
11 behalf of the council, for all actual expenditures incurred in
12 considering the application.

13 (b) The council may commission its own independent consultant
14 study to measure the consequences of the proposed energy facility on
15 the environment or any matter that it deems essential to an adequate
16 appraisal of the site. The council, after consultation with the
17 utilities and transportation commission, shall provide an estimate of
18 the cost of the study to the applicant and consider applicant
19 comments.

20 (c) In addition to the deposit required under (a) of this
21 subsection, applicants must reimburse the utilities and
22 transportation commission, on behalf of the council, for actual
23 expenditures that arise in considering the application, including the
24 cost of any independent consultant study. The utilities and
25 transportation commission, on behalf of the council, shall submit to
26 each applicant an invoice of actual expenditures made during the
27 preceding calendar quarter in sufficient detail to explain the
28 expenditures. The applicant shall pay the utilities and
29 transportation commission the amount of the invoice by the due date.

30 (2) Each certificate holder shall pay to the utilities and
31 transportation commission the actual costs incurred by the council
32 for inspection and determination of compliance by the certificate
33 holder with the terms of the certification relative to monitoring the
34 effects of construction, operation, and site restoration of the
35 facility.

36 (a) Each certificate holder shall, within thirty days of
37 execution of the site certification agreement, (~~deposit with the~~
38 ~~utilities and transportation commission~~) pay to the council for
39 deposit into the energy facility site evaluation account an amount up
40 to fifty thousand dollars, or such greater amount as specified by the

1 council after consultation with the certificate holder. The council
2 and the utilities and transportation commission shall charge costs
3 against the deposit if the certificate holder ceases operations and
4 has not reimbursed the commission, on behalf of the council, for all
5 actual expenditures incurred in conducting inspections and
6 determining compliance with the terms of the certification.

7 (b) In addition to the deposit required under (a) of this
8 subsection, certificate holders must reimburse the utilities and
9 transportation commission, on behalf of the council, for actual
10 expenditures that arise in administering this chapter and determining
11 compliance. The council, after consultation with the utilities and
12 transportation commission, shall submit to each certificate holder an
13 invoice of the expenditures actually made during the preceding
14 calendar quarter in sufficient detail to explain the expenditures.
15 The certificate holder shall pay the utilities and transportation
16 commission the amount of the invoice by the due date.

17 (3) If an applicant or certificate holder fails to provide the
18 initial deposit, or if subsequently required payments are not
19 received within thirty days following receipt of the invoice from the
20 council, the council may (a) in the case of the applicant, suspend
21 processing of the application until payment is received; or (b) in
22 the case of a certificate holder, suspend the certification.

23 (4) All payments required of the applicant or certificate holder
24 under this section are to be made to the utilities and transportation
25 commission who shall make payments as instructed by the council from
26 the funds submitted. All such funds shall be subject to state
27 auditing procedures. Any unexpended portions of the deposit shall be
28 returned to the applicant within sixty days following the conclusion
29 of the application process or to the certificate holder within sixty
30 days after a determination by the council that the certificate is no
31 longer required and there is no continuing need for compliance with
32 its terms. For purposes of this section, "conclusion of the
33 application process" means after the governor's decision granting or
34 denying a certificate and the expiration of any opportunities for
35 judicial review.

36 (5) (a) Upon receipt of an application for an energy facility site
37 certification proposing an energy plant or alternative energy
38 resource that is connected to electrical transmission facilities of a
39 nominal voltage of at least one hundred fifteen thousand volts, the
40 council shall notify in writing the United States department of

1 defense. The notification shall include, but not be limited to, the
2 following:

3 (i) A description of the proposed energy plant or alternative
4 energy resource;

5 (ii) The location of the site;

6 (iii) The placement of the energy plant or alternative energy
7 resource on the site;

8 (iv) The date and time by which comments must be received by the
9 council; and

10 (v) Contact information of the council and the applicant.

11 (b) The purpose of the written notification is to provide an
12 opportunity for the United States department of defense to comment
13 upon the application, and to identify potential issues relating to
14 the placement and operations of the energy plant or alternative
15 energy resource, before a site certification application is approved.
16 The time period set forth by the council for receipt of such comments
17 shall not extend the time period for the council's processing of the
18 application.

19 (c) In order to assist local governments required to notify the
20 United States department of defense under RCW 35.63.270, 35A.63.290,
21 and 36.01.320, the council shall post on its website the appropriate
22 information for contacting the United States department of defense.

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

25 (1) The council shall conduct an informational public hearing in
26 the county of the proposed site as soon as practicable but not later
27 than sixty days after receipt of an application for site
28 certification. However, the place of such public hearing shall be as
29 close as practical to the proposed site. At this hearing, the council
30 must take public comment on the application for site certification,
31 as well as whether or not the proposed site is consistent and in
32 compliance with city, county, or regional land use plans or zoning
33 ordinances in effect on the date of the application.

34 ~~(2) ((Subsequent to the informational public hearing, the council~~
35 ~~shall conduct a public hearing to determine whether or not the~~
36 ~~proposed site is consistent and in compliance with city, county, or~~
37 ~~regional land use plans or zoning ordinances. If it is determined~~
38 ~~that the proposed site does conform with existing land use plans or~~
39 ~~zoning ordinances in effect as of the date of the application, the~~

1 ~~city, county, or regional planning authority shall not thereafter~~
2 ~~change such land use plans or zoning ordinances so as to affect the~~
3 ~~proposed site.)~~ After the completion of tribal consultation and its
4 environmental review under chapter 43.21C RCW, the council shall
5 determine whether genuine issues of fact exist on matters the council
6 deems material to its recommendation to the governor. A council
7 determination that such issues do not exist may only be made after
8 holding a hearing to take public comment on the question and after
9 tribal consultation is complete. If the council determines that such
10 issues do not exist and that under subsection (1) of this section the
11 proposed site is consistent and in compliance with city, county, or
12 regional land use plans or zoning ordinances, the council may waive
13 the adjudicative proceeding required by subsection (3) of this
14 section. Waiving the adjudicative proceeding requires a vote of the
15 council.

16 (3) Prior to the issuance of a council recommendation to the
17 governor under RCW 80.50.100 a public hearing, conducted as an
18 adjudicative proceeding under chapter 34.05 RCW, the administrative
19 procedure act, shall be held unless previously waived in accordance
20 with subsection (2) of this section. At such a public hearing any
21 person shall be entitled to be heard in support of or in opposition
22 to the application for certification.

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

26 **Sec. 7.** RCW 80.50.100 and 2011 c 180 s 109 are each amended to
27 read as follows:

28 (1)(a) The council shall report to the governor its
29 recommendations as to the approval or rejection of an application for
30 certification within twelve months of receipt by the council of
31 ~~((such))~~ an application deemed complete by the council, or such later
32 time as is mutually agreed by the council and the applicant.

33 (b) In the case of an application filed prior to December 31,
34 2025, for certification of an energy facility proposed for
35 construction, modification, or expansion for the purpose of providing
36 generating facilities that meet the requirements of RCW 80.80.040 and
37 are located in a county with a coal-fired electric ~~((generating~~
38 ~~[generation]))~~ generation facility subject to RCW 80.80.040(3)(c),
39 the council shall expedite the processing of the application pursuant

1 to RCW 80.50.075 and shall report its recommendations to the governor
2 within one hundred eighty days of receipt by the council of such an
3 application, or a later time as is mutually agreed by the council and
4 the applicant.

5 (2) If the council recommends approval of an application for
6 certification, it shall also submit a draft certification agreement
7 with the report. The council shall include conditions in the draft
8 certification agreement to implement the provisions of this chapter,
9 including, but not limited to, conditions to protect state or local
10 governmental or community interests affected by the construction or
11 operation of the energy facility, and conditions designed to
12 recognize the purpose of laws or ordinances, or rules or regulations
13 promulgated thereunder, that are preempted or superseded pursuant to
14 RCW 80.50.110 as now or hereafter amended.

15 (3) (a) Within sixty days of receipt of the council's report the
16 governor shall take one of the following actions:

17 (i) Approve the application and execute the draft certification
18 agreement; or

19 (ii) Reject the application; or

20 (iii) Direct the council to reconsider certain aspects of the
21 draft certification agreement.

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

33 (4) The rejection of an application for certification by the
34 governor shall be final as to that application but shall not preclude
35 submission of a subsequent application for the same site on the basis
36 of changed conditions or new information.

37 (5) Objections raised by any party in interest concerning
38 procedural error by the council must be filed with the council within
39 60 days of the commission of such an error, or within 30 days of the
40 first public hearing or meeting of the council at which the general

1 subject matter to which the error is related is discussed, whichever
2 comes later, or such an objection is deemed waived for purposes of
3 judicial review as provided in this section.

4 (6) The rules and regulations adopted by the council are subject
5 to judicial review pursuant to the provisions of chapter 34.05 RCW.

6 **Sec. 8.** RCW 80.50.140 and 1988 c 202 s 62 are each amended to
7 read as follows:

8 (1) A final decision pursuant to RCW 80.50.100 on an application
9 for certification shall be subject to judicial review pursuant to
10 provisions of chapter 34.05 RCW and this section. Petitions for
11 review of such a decision shall be filed in the Thurston county
12 superior court. All petitions for review of a decision under RCW
13 80.50.100 shall be consolidated into a single proceeding before the
14 Thurston county superior court. The Thurston county superior court
15 shall certify the petition for review to the supreme court upon the
16 following conditions:

17 (a) Review can be made on the administrative record;

18 (b) Fundamental and urgent interests affecting the public
19 interest and development of energy facilities are involved which
20 require a prompt determination;

21 (c) Review by the supreme court would likely be sought regardless
22 of the determination of the Thurston county superior court; and

23 (d) The record is complete for review.

24 The Thurston county superior court shall assign a petition for
25 review of a decision under RCW 80.50.100 for hearing at the earliest
26 possible date and shall expedite such petition in every way possible.
27 If the court finds that review cannot be limited to the
28 administrative record as set forth in ~~((subparagraph))~~ (a) of this
29 subsection because there are alleged irregularities in the procedure
30 before the council not found in the record, but finds that the
31 standards set forth in ~~((subparagraphs))~~ (b), (c), and (d) of this
32 subsection are met, the court shall proceed to take testimony and
33 determine such factual issues raised by the alleged irregularities
34 and certify the petition and its determination of such factual issues
35 to the supreme court. For clean energy projects, the Thurston county
36 superior court shall schedule a hearing within 60 days of receiving a
37 completed petition. Upon certification, the supreme court shall
38 assign the petition for hearing at the earliest possible date, and it
39 shall expedite its review and decision in every way possible. For

1 clean energy projects, the supreme court shall complete its review
2 and issue a final determination in a time frame not to exceed six
3 months after certification by the Thurston county superior court.

4 (2) Objections raised by any party in interest concerning
5 procedural error by the council shall be filed with the council
6 within sixty days of the commission of such error, or within thirty
7 days of the first public hearing or meeting of the council at which
8 the general subject matter to which the error is related is
9 discussed, whichever comes later, or such objection shall be deemed
10 waived for purposes of judicial review as provided in this section.

11 (3) The rules and regulations adopted by the council shall be
12 subject to judicial review pursuant to the provisions of chapter
13 34.05 RCW.

14 **Sec. 9.** RCW 80.50.175 and 1983 c 3 s 205 are each amended to
15 read as follows:

16 (1) In addition to all other powers conferred on the council
17 under this chapter, the council shall have the powers set forth in
18 this section.

19 ~~(2) ((The council, upon request of any potential applicant, is~~
20 ~~authorized, as provided in this section, to conduct a preliminary~~
21 ~~study of any potential site prior to receipt of an application for~~
22 ~~site certification. A fee of ten thousand dollars for each potential~~
23 ~~site, to be applied toward the cost of any study agreed upon pursuant~~
24 ~~to subsection (3) of this section, shall accompany the request and~~
25 ~~shall be a condition precedent to any action on the request by the~~
26 ~~council.~~

27 ~~(3) After receiving a request to study a potential site, the~~
28 ~~council shall commission its own independent consultant to study~~
29 ~~matters relative to the potential site. The study shall include, but~~
30 ~~need not be limited to, the preparation and analysis of environmental~~
31 ~~impact information for the proposed potential site and any other~~
32 ~~matter the council and the potential applicant deem essential to an~~
33 ~~adequate appraisal of the potential site. In conducting the study,~~
34 ~~the council is authorized to cooperate and work jointly with the~~
35 ~~county or counties in which the potential site is located, any~~
36 ~~federal, state, or local governmental agency that might be requested~~
37 ~~to comment upon the potential site, and any municipal or public~~
38 ~~corporation having an interest in the matter. The full cost of the~~
39 ~~study shall be paid by the potential applicant: PROVIDED, That such~~

1 costs exceeding a total of ten thousand dollars shall be payable
2 subject to the potential applicant giving prior approval to such
3 excess amount.

4 ~~(4) Any study prepared by the council pursuant to subsection (3)~~
5 ~~of this section may be used in place of the "detailed statement"~~
6 ~~required by RCW 43.21C.030(2)(c) by any branch of government except~~
7 ~~the council created pursuant to chapter 80.50 RCW.~~

8 ~~(5) All payments required of the potential applicant under this~~
9 ~~section are to be made to the state treasurer, who in turn shall pay~~
10 ~~the consultant as instructed by the council. All such funds shall be~~
11 ~~subject to state auditing procedures. Any unexpended portions thereof~~
12 ~~shall be returned to the potential applicant.~~

13 ~~(6) Nothing in this section shall change the requirements for an~~
14 ~~application for site certification or the requirement of payment of a~~
15 ~~fee as provided in RCW 80.50.071, or change the time for disposition~~
16 ~~of an application for certification as provided in RCW 80.50.100.~~

17 ~~(7) Nothing in this section shall be construed as preventing a~~
18 ~~city or county from requiring any information it deems appropriate to~~
19 ~~make a decision approving a particular location))~~ (a) The council,
20 upon agreement with any potential applicant, is authorized as
21 provided in this section to conduct a preliminary study of any
22 potential project prior to receipt of an application for site
23 certification. A fee of \$10,000 for each potential project, to be
24 applied toward the cost of any study agreed upon pursuant to (b) of
25 this subsection, must accompany the agreement and is a condition
26 precedent to any action on the agreement by the council.

27 (b) Upon agreement with the potential applicant, the council may
28 commission its own independent consultant to study matters relative
29 to the potential project. The study must include, but need not be
30 limited to, the preparation and analysis of environmental impact
31 information for the potential project and any other matter the
32 council and the potential applicant deem essential to an adequate
33 appraisal of the potential project. In conducting the study, the
34 council is authorized to cooperate and work jointly with the county
35 or counties in which the potential project is located, any federal,
36 state, local, or tribal governmental agency that might be requested
37 to comment upon the potential project, and any municipal or public
38 corporation having an interest in the matter. The full cost of the
39 study must be paid by the potential applicant. However, costs

1 exceeding a total of \$10,000 are payable subject to the potential
2 applicant giving prior approval to such an excess amount.

3 (3) All payments required of the potential applicant under this
4 section are to be made to the council for deposit into the energy
5 facility site evaluation account for payment for the consultant. All
6 such funds are subject to state auditing procedures. Any unexpended
7 portions thereof must be returned to the potential applicant.

8 (4) If a potential applicant subsequently submits a formal
9 application for site certification for an energy facility at the site
10 where a preliminary study was conducted, payments made under this
11 section for that study may be considered as payment towards the
12 application fee provided in RCW 80.50.071.

13 NEW SECTION. Sec. 10. A new section is added to chapter 80.50
14 RCW to read as follows:

15 (1) The energy facility site evaluation account is created in the
16 custody of the state treasurer. All receipts from funds received by
17 the council for fees received under this chapter must be deposited
18 into the account. Expenditures from the account may be used for
19 purposes set forth in this chapter. Only the chair of the council or
20 the chair's designee may authorize expenditures from the account. The
21 account is subject to allotment procedures under chapter 43.88 RCW,
22 but an appropriation is not required for expenditures.

23 (2) All funds currently credited to the council from receipt
24 under this chapter as of the effective date of this section must be
25 transferred to the energy facility site evaluation account.

26 NEW SECTION. Sec. 11. A new section is added to chapter 80.50
27 RCW to read as follows:

28 (1) Subject to the availability of amounts appropriated for this
29 specific purpose, the council must initiate, in coordination with its
30 members, a least-conflict priority clean energy project siting
31 program. This program must be carried out by Washington State
32 University's energy program and must engage all relevant stakeholders
33 to identify priority areas where there is the least amount of
34 potential environmental and other conflict in the siting of covered
35 clean energy projects and develop a map highlighting these areas. The
36 program must also compile the latest information on opportunities for
37 dual-use and colocation of clean energy projects with other land use
38 values. The council may create different maps for divergent

1 categories of clean energy projects to address multiple types of
2 environmental and other conflicts for each category.

3 (2) A project sited in an area designated under subsection (1) of
4 this section does not receive a guarantee or assurance of
5 certification under this chapter. Project proponents are not limited
6 to proposing projects in identified least-conflict zones.

7 (3) The council must update the study in subsection (1) of this
8 section at least once every six years.

9 NEW SECTION. **Sec. 12.** A new section is added to chapter 80.50
10 RCW to read as follows:

11 (1) Subject to the availability of amounts appropriated for this
12 specific purpose, the council must, in coordination with its members,
13 develop a list of mitigation measures for significant likely
14 environmental impacts of clean energy projects seeking certification
15 under this chapter including, but not limited to, air quality
16 impacts, impacts to land and aquatic habitats, wildlife, and other
17 impacts that the council or its members identify as likely resulting
18 from clean energy projects. The council shall identify a
19 nonexhaustive list of potential impacts of clean energy projects to
20 develop mitigations for, subject to available capacity and according
21 to the council's best judgment of highest priority impacts to
22 address. A mitigation measure may only be included in the list
23 developed under this subsection if the measure is developed using
24 best available science and has a high likelihood of mitigating the
25 identified environmental impact. The council and its members should
26 consider mitigation banks, siting and design best practices for clean
27 energy projects, and other measures. Development of mitigation
28 measures must include the involvement of local communities and other
29 stakeholders.

30 (2) An applicant may use mitigation measures developed under
31 subsection (1) of this section and may propose other mitigation
32 measures not identified under this subsection. The list of mitigation
33 measures identified pursuant to subsection (1) of this section does
34 not replace the requirement to evaluate applicability to any specific
35 proposal under consideration and, if such measures are not
36 applicable, to develop individualized site-specific mitigation
37 evaluations and requirements for each project or facility.

38 (3) The council may retain a consultant, contract with a state
39 institution of higher education in Washington, delegate to an agency

1 member, or otherwise retain outside assistance in completing the
2 requirements of subsection (1) of this section.

3 (4) The council must update the list developed under subsection
4 (1) of this section at least once every six years.

5 **Sec. 13.** RCW 43.79A.040 and 2020 c 18 s 2 are each amended to
6 read as follows:

7 (1) Money in the treasurer's trust fund may be deposited,
8 invested, and reinvested by the state treasurer in accordance with
9 RCW 43.84.080 in the same manner and to the same extent as if the
10 money were in the state treasury, and may be commingled with moneys
11 in the state treasury for cash management and cash balance purposes.

12 (2) All income received from investment of the treasurer's trust
13 fund must be set aside in an account in the treasury trust fund to be
14 known as the investment income account.

15 (3) The investment income account may be utilized for the payment
16 of purchased banking services on behalf of treasurer's trust funds
17 including, but not limited to, depository, safekeeping, and
18 disbursement functions for the state treasurer or affected state
19 agencies. The investment income account is subject in all respects to
20 chapter 43.88 RCW, but no appropriation is required for payments to
21 financial institutions. Payments must occur prior to distribution of
22 earnings set forth in subsection (4) of this section.

23 (4)(a) Monthly, the state treasurer must distribute the earnings
24 credited to the investment income account to the state general fund
25 except under (b), (c), and (d) of this subsection.

26 (b) The following accounts and funds must receive their
27 proportionate share of earnings based upon each account's or fund's
28 average daily balance for the period: The 24/7 sobriety account, the
29 Washington promise scholarship account, the Gina Grant Bull memorial
30 legislative page scholarship account, the Washington advanced college
31 tuition payment program account, the Washington college savings
32 program account, the accessible communities account, the Washington
33 achieving a better life experience program account, the community and
34 technical college innovation account, the agricultural local fund,
35 the American Indian scholarship endowment fund, the foster care
36 scholarship endowment fund, the foster care endowed scholarship trust
37 fund, the contract harvesting revolving account, the Washington state
38 combined fund drive account, the commemorative works account, the
39 county enhanced 911 excise tax account, the county road

1 administration board emergency loan account, the toll collection
2 account, the developmental disabilities endowment trust fund, the
3 energy account, the energy facility site evaluation account, the fair
4 fund, the family and medical leave insurance account, the fish and
5 wildlife federal lands revolving account, the natural resources
6 federal lands revolving account, the food animal veterinarian
7 conditional scholarship account, the forest health revolving account,
8 the fruit and vegetable inspection account, the educator conditional
9 scholarship account, the game farm alternative account, the GET ready
10 for math and science scholarship account, the Washington global
11 health technologies and product development account, the grain
12 inspection revolving fund, the Washington history day account, the
13 industrial insurance rainy day fund, the juvenile accountability
14 incentive account, the law enforcement officers' and firefighters'
15 plan 2 expense fund, the local tourism promotion account, the low-
16 income home rehabilitation revolving loan program account, the
17 multiagency permitting team account, the northeast Washington wolf-
18 livestock management account, the produce railcar pool account, the
19 regional transportation investment district account, the rural
20 rehabilitation account, the Washington sexual assault kit account,
21 the stadium and exhibition center account, the youth athletic
22 facility account, the self-insurance revolving fund, the children's
23 trust fund, the Washington horse racing commission Washington bred
24 owners' bonus fund and breeder awards account, the Washington horse
25 racing commission class C purse fund account, the individual
26 development account program account, the Washington horse racing
27 commission operating account, the life sciences discovery fund, the
28 Washington state library-archives building account, the reduced
29 cigarette ignition propensity account, the center for deaf and hard
30 of hearing youth account, the school for the blind account, the
31 Millersylvania park trust fund, the public employees' and retirees'
32 insurance reserve fund, the school employees' benefits board
33 insurance reserve fund, the public employees' and retirees' insurance
34 account, the school employees' insurance account, the long-term
35 services and supports trust account, the radiation perpetual
36 maintenance fund, the Indian health improvement reinvestment account,
37 the department of licensing tuition recovery trust fund, the student
38 achievement council tuition recovery trust fund, the tuition recovery
39 trust fund, the industrial insurance premium refund account, the
40 mobile home park relocation fund, the natural resources deposit fund,

1 the Washington state health insurance pool account, the federal
2 forest revolving account, and the library operations account.

3 (c) The following accounts and funds must receive eighty percent
4 of their proportionate share of earnings based upon each account's or
5 fund's average daily balance for the period: The advance right-of-way
6 revolving fund, the advanced environmental mitigation revolving
7 account, the federal narcotics asset forfeitures account, the high
8 occupancy vehicle account, the local rail service assistance account,
9 and the miscellaneous transportation programs account.

10 (d) Any state agency that has independent authority over accounts
11 or funds not statutorily required to be held in the custody of the
12 state treasurer that deposits funds into a fund or account in the
13 custody of the state treasurer pursuant to an agreement with the
14 office of the state treasurer shall receive its proportionate share
15 of earnings based upon each account's or fund's average daily balance
16 for the period.

17 (5) In conformance with Article II, section 37 of the state
18 Constitution, no trust accounts or funds shall be allocated earnings
19 without the specific affirmative directive of this section.

20 NEW SECTION. **Sec. 14.** RCW 80.50.190 (Disposition of receipts
21 from applicants) and 1977 ex.s. c 371 s 15 are each repealed.

22 NEW SECTION. **Sec. 15.** Section 10 of this act is necessary for
23 the immediate preservation of the public peace, health, or safety, or
24 support of the state government and its existing public institutions,
25 and takes effect July 1, 2021.

--- END ---