

its review with any interim study efforts by the senate and house commerce committees.

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CHAPTER 371

[Engrossed Substitute Senate Bill No. 2910]

ENERGY FACILITY SITES

AN ACT Relating to energy facility sites; amending section 1, chapter 45, Laws of 1970 ex. sess. as amended by section 29, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.010; amending section 2, chapter 45, Laws of 1970 ex. sess. as amended by section 30, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.020; amending section 3, chapter 45, Laws of 1970 ex. sess. as last amended by section 31, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.030; amending section 4, chapter 45, Laws of 1970 ex. sess. as amended by section 32, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.040; amending section 6, chapter 45, Laws of 1970 ex. sess. as amended by section 34, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.060; amending section 8, chapter 45, Laws of 1970 ex. sess. and RCW 80.50.080; amending section 9, chapter 45, Laws of 1970 ex. sess. and RCW 80.50.090; amending section 10, chapter 45, Laws of 1970 ex. sess. as amended by section 36, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.100; amending section 11, chapter 45, Laws of 1970 ex. sess. as amended by section 37, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.110; amending section 12, chapter 45, Laws of 1970 ex. sess. as amended by section 38, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.120; amending section 14, chapter 45, Laws of 1970 ex. sess. and RCW 80.50.140; amending section 15, chapter 45, Laws of 1970 ex. sess. and RCW 80.50.150; adding new sections to chapter 80.50 RCW; repealing section 5, chapter 45, Laws of 1970 ex. sess., section 33, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.050; repealing section 7, chapter 45, Laws of 1970 ex. sess., section 35, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.070; repealing section 1, chapter 110, Laws of 1974 ex. sess., section 39, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.170; amending section 2, chapter 110, Laws of 1974 ex. sess. as amended by section 40, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.175; making an appropriation; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

****Section 1. Section 1, chapter 45, Laws of 1970 ex. sess. as amended by section 29, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.010 are each amended to read as follows:***

The legislature finds that the present and predicted growth in energy demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment((= ecology)) of the land and its wildlife, and ((the ecology)) of state waters and their aquatic life.

It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:

(1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.

(2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.

(3) To provide abundant energy at reasonable cost.

(4) To require compliance with local land use plans and zoning ordinances with respect to energy facility sites.

It is the intent of this chapter to expedite the certification of sites for energy facilities subject to this chapter, to minimize duplication of effort in conducting studies of and preparing environmental impact statements relating to such sites, to authorize and encourage cooperation between the council and counties, other governmental agencies, and municipal or public corporations in connection with such sites, and to provide for a single detailed statement in accordance with RCW 43.21C.030(2)(c) where any proposed energy facilities are subject to certification pursuant to chapter 80.50 RCW, and to further the development of facilities to meet pressing needs.

*Section 1. was vetoed, see message at end of chapter.

Sec. 2. Section 2, chapter 45, Laws of 1970 ex. sess. as amended by section 30, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.020 are each amended to read as follows:

(1) "Applicant" means any person who makes application for a site ((location)) certification pursuant to the provisions of this chapter;

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

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized;

(4) "Site" means any proposed or approved location((,-for)) of an energy facility;

(5) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW ((80.50.050)) 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility;

(6) "Associated facilities" means ((new)) storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary 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 in excess of 200,000 volts to connect a

thermal power plant to the northwest power grid: PROVIDED, That common carrier railroads or motor vehicles shall not be included;

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

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

(b) Natural gas, synthetic fuel gas, or liquified petroleum gas transmission pipeline of the following dimensions: A pipeline larger than fourteen inches minimum inside diameter between valves, for the transmission of these products, with a total length of at least fifteen miles for the purpose of delivering gas to a distribution facility (~~(or more specifically, a "gas transmission line" as defined by the office of pipeline safety, United States department of transportation)~~), except an interstate natural gas pipeline regulated by the United States federal power commission;

(8) (~~"Energy transmission corridor" means land jointly used for more than one new transmission facility;~~

~~(9)))~~ "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies;

~~((+10)))~~ (9) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel, including nuclear materials, for distribution of electricity by electric utilities;

~~((+11)))~~ (10) "Energy facility" means an energy plant(~~(;)~~) or transmission facilities(~~(; or an energy transmission corridor)~~): PROVIDED, That the following are excluded from the provisions of this chapter:

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

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

~~((+12)))~~ (11) "Council" means the energy facility site evaluation council created by RCW 80.50.030;

~~((+13)))~~ (12) "Counsel for environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080;

~~((+14)))~~ (13) "Construction" means (~~(on-site work and construction shall not be deemed to have commenced until there has been an expenditure of not less than two hundred fifty thousand dollars in)~~) on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars;

~~((+15))~~ "Chairman" means the chairman of the council;

~~(+16)~~ "Member agency" means departments, agencies and commissions enumerated in RCW 80.50.030(3) as now or hereafter amended;

~~(+17)))~~ (14) "Energy plant" means the following facilities together with their associated facilities:

(a) Any stationary thermal power plant with generating capacity of two hundred fifty thousand kilowatts or more and floating thermal power plants of fifty thousand kilowatts or more, including associated facilities;

(b) Facilities which will ~~((result in receipt of))~~ have the capacity to receive liquified natural gas in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;

(c) Facilities which will ~~((result in the receipt of))~~ have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquified petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

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

(e) Facilities ~~((which will result in the))~~ capable of processing ~~((of))~~ more than twenty-five thousand barrels per day of petroleum into refined products;

(15) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapters 35.63, 35A.63, or 36.70 RCW;

(16) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapters 35.63, 35A.63, or 36.70 RCW or Article XI of the state Constitution.

Sec. 3. Section 3, chapter 45, Laws of 1970 ex. sess. as last amended by section 31, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.030 are each amended to read as follows:

(1) There is hereby created and established the "energy facility site evaluation council".

(2) The ~~((nonvoting))~~ chairman of the council shall be ~~((the director of the state energy office. PROVIDED, That the director may designate a deputy director or assistant director to serve as chairman))~~ appointed by the governor with the advice and consent of the senate, shall have a vote on matters before the council, shall serve for a term coextensive with the term of the governor and shall be removable for cause. The chairman may designate a member of the council to serve as acting chairman in the event of the chairman's absence. The salary of the chairman shall be determined pursuant to the provisions of RCW 43.03.040. The chairman shall be deemed a "state employee" for the purposes of chapter 42.18 RCW.

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

- (a) Department of ecology
- (b) Department of fisheries
- (c) Department of game
- (d) Department of parks and recreation
- (e) Department of social and health services
- (f) ~~((Interagency committee for outdoor recreation))~~ State energy office
- (g) Department of commerce and economic development
- (h) Utilities and transportation commission

- (i) Office of program planning and fiscal management
- (j) Department of natural resources
- (k) Planning and community affairs agency
- (l) Department of emergency services
- (m) Department of agriculture
- (n) Department of highways.

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

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

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

Sec. 4. Section 4, chapter 45, Laws of 1970 ex. sess. as amended by section 32, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.040 are each amended to read as follows:

The council shall have the following powers:

(1) To adopt, promulgate, amend, or rescind suitable rules and regulations, pursuant to chapter 34.04 RCW, to carry out the provisions of this chapter, and the policies and practices of the council in connection therewith;

(2) To appoint an executive secretary to serve at the pleasure of the council;

(3) To appoint and prescribe the duties of such clerks, employees and agents as may be necessary to carry out the provisions of this chapter: PROVIDED, That such persons shall be employed pursuant to the provisions of chapter 41.06 RCW;

(4) To develop and apply ~~((topical))~~ environmental and ecological guidelines in relation to the type, design, ~~((and))~~ location, construction, and operational conditions of certification of energy facilities subject to this chapter;

(5) To establish rules of practice for the conduct of public hearings pursuant to the provisions of the Administrative Procedure Act, as found in chapter 34.04 RCW;

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

(7) To receive applications for ~~((site))~~ energy facility locations and to investigate the sufficiency thereof;

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

(9) To conduct hearings on the proposed location of the ~~((sites))~~ energy facilities;

(10) To prepare written reports to the governor which shall include: (a) a statement indicating whether the application is in compliance with the council's ~~((topical))~~ guidelines, (b) criteria specific to the site and transmission line routing, ~~((and))~~ (c) a council recommendation as to the disposition of the application, and (d) a draft certification agreement when the council recommends approval of the application;

(11) To prescribe the means for monitoring of the effects arising from the construction and the operation of energy facilities to assure continued compliance with terms of certification: PROVIDED, That any on-site inspection required by the council shall be performed by other state agencies pursuant to interagency agreement: PROVIDED FURTHER, That the council shall retain authority for determining compliance relative to monitoring;

(12) To integrate its site evaluation activity with activities of federal agencies having jurisdiction in such matters to avoid unnecessary duplication; and

(13) To present state concerns and interests to other states, regional organizations, and the federal government on the location, construction, and operation of any energy facility which may affect the environment, health, or safety of the citizens of the state of Washington.

Sec. 5. Section 6, chapter 45, Laws of 1970 ex. sess. as amended by section 34, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.060 are each amended to read as follows:

(1) The provisions of this chapter shall apply to ~~((those energy facilities to be newly constructed or installed anywhere within the state of Washington, or to))~~ the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of ~~((such))~~ existing energy facilities where the ~~((new))~~ net increase in physical capacity ~~((being added))~~ or dimensions resulting from such reconstruction or enlargement meets or exceeds those capacities or dimensions ~~((defined in RCW 80.50.020))~~ set forth in RCW 80.50.020(7) and (17), as now or hereafter amended. No construction of such energy facilities ~~((or energy transmission corridors))~~ may be undertaken, except as otherwise provided in this chapter, after ~~((March 15, 1976))~~ the effective date of this 1977 amendatory act, without first obtaining certification in the manner provided in this chapter.

(2) The provisions of this chapter shall not apply to normal maintenance and repairs which do not increase the capacity or dimensions ~~((of an energy facility))~~ beyond those set forth in RCW 80.50.020 (7) and (17), as now or hereafter amended.

(3) Applications for certification of ~~((thermal power plants and associated transmission lines))~~ energy facilities made prior to ~~((March 15, 1976;))~~ the effective date of this 1977 amendatory act shall continue to be governed by the applicable provisions of law in effect on the day immediately preceding ~~((March 15,~~

+1976)) the effective date of this 1977 amendatory act with the exceptions of sections 15 and 16 of this 1977 amendatory act which shall apply to such prior applications and to site certifications prospectively from the effective date of this 1977 amendatory act.

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

Sec. 6. Section 8, chapter 45, Laws of 1970 ex. sess. and RCW 80.50.080 are each amended to read as follows:

After the council has received a site application, the attorney general shall appoint an assistant attorney general ~~((or a special assistant attorney general as a counsel for the environment who shall be a member of the bar of the state of Washington))~~ as a counsel for the environment. The counsel for the environment shall represent the public and its interest in protecting the quality of the environment ~~((for the duration of the certification proceedings, until such time as the certification is issued or denied)).~~ Costs incurred by the counsel for the environment in the performance of these duties shall be charged to the office of the attorney general, and shall not be a charge against the appropriation to the energy facility site evaluation council. He shall be accorded all the rights, privileges and responsibilities of an attorney representing a party in a formal action. This section shall not be construed to prevent any person from being heard or represented by counsel in accordance with the other provisions of this chapter.

**Sec. 7. Section 9, chapter 45, Laws of 1970 ex. sess. and RCW 80.50.090 are each amended to read as follows:*

(1) The council shall conduct a public ~~((hearing))~~ meeting in ~~((the county of the proposed site))~~ each county within which an energy facility is proposed to be located within sixty days of receipt of an application for site certification~~((: PROVIDED, That))~~ to provide information to the public concerning the nature and purpose of the energy facility and the review process to be undertaken by the council and to provide an opportunity for the public to present its views. The place of such public ~~((hearing))~~ meeting shall be as close as practical to the proposed site. For an application for an energy facility with a multi-county site, the series of meetings in the several counties shall begin within sixty days of receipt of an application for site certification. The council may consolidate meetings among counties when such consolidation is approved by the appropriate county legislative authorities.

(2) The council ~~((must))~~ shall determine ~~((at the initial public hearing)), before commencing a hearing pursuant to subsection (3) of this section, whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances. Upon receipt of notification from the council that an application has been filed, a city, county, or regional planning authority shall file with the council within ten days certified copies of applicable land use plans and/or zoning ordinances in effect as of the date of application. If it is determined that the proposed site ~~((does conform))~~ is consistent and in compliance with existing land use plans or zoning ordinances applicable to the location of the energy facility in effect as of the date of the application, the city, county, or regional planning authority shall not thereafter change ~~((such))~~ applicable land use plans or zoning ordinances so~~

as to affect the proposed site unless the application for certification is subsequently rejected or withdrawn.

If it is determined that the site is not consistent or in compliance with existing land use plans or zoning ordinances in effect as of the date of the application, the applicant may request a change in, or permission under, such plans or ordinances by the local legislative authority, which shall determine within one hundred twenty days whether to grant or deny the request. Further processing of the application by the council shall terminate and unexpended portions of any fees paid by the applicant shall be returned upon a decision to deny the request. Until such decision is made, the council may, at the applicant's request, continue processing the application: PROVIDED, That the council shall not report its recommendation to the governor pursuant to RCW 80.50.100(1) as now or hereafter amended. Upon a decision to grant the request, processing of the application shall proceed.

(3) Except as provided in section 17 of this 1977 amendatory act, prior to the issuance of a council recommendation to the governor under RCW 80.50.100, a public hearing, conducted as a contested case under chapter 34.04 RCW, shall be held. At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification.

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

*Sec. 7. was vetoed, see message at end of chapter.

Sec. 8. Section 10, chapter 45, Laws of 1970 ex. sess. as amended by section 36, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.100 are each amended to read as follows:

(1) The council shall report to the governor its recommendations as to the approval or ((disapproval)) rejection of an application for certification within twelve months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant. If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

(2) Within sixty days of receipt of the council's report the governor shall ((approve or reject the application for certification)) take one of the following actions:

- (a) Approve the application and execute the draft certification agreement; or
- (b) Reject the application; or
- (c) Direct the council to reconsider certain aspects of the draft certification agreement.

The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the contested case for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon

reconsideration. Within sixty days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

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

~~((4)) Upon approval by the governor of the application for certification the chairman of the council shall within thirty days compose and submit a certification agreement for execution by the governor and the applicant:))~~

***Sec. 9. Section 11, chapter 45, Laws of 1970 ex. sess. as amended by section 37, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.110 are each amended to read as follows:**

(1) If any provision of this chapter is in conflict with any other provision, limitation, or restriction which is now in effect under any other law of this state, or any rule or regulation promulgated thereunder, this chapter shall govern and control and such other law or rule or regulation promulgated thereunder shall be deemed superseded for the purposes of this chapter.

(2) The state hereby preempts the regulation and certification of the ~~((location,))~~ type, design, construction, and operational conditions of certification of the energy facilities included under RCW 80.50.060 as now or hereafter amended.

The state shall not preempt land use plans or zoning ordinances governing the site of an energy facility.

***Sec. 9. was vetoed, see message at end of chapter.**

Sec. 10. Section 12, chapter 45, Laws of 1970 ex. sess. as amended by section 38, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.120 are each amended to read as follows:

(1) Subject to the conditions set forth therein any certification ~~((signed by the governor))~~ shall bind the state and each of its departments, agencies, divisions, bureaus, commissions ~~((or)),~~ boards ~~((of this state)),~~ and political subdivisions, whether a member of the council or not, as to the approval of the site and the construction and operation of the proposed energy facility.

(2) The certification shall authorize the person named therein to construct and operate the proposed energy facility subject only to the conditions set forth in such certification.

(3) The issuance of a certification shall be in lieu of any permit, certificate or similar document required by any department, agency, division, bureau, commission ~~((or)),~~ board, or political subdivision of this state, whether a member of the council or not.

Sec. 11. Section 14, chapter 45, Laws of 1970 ex. sess. and RCW 80.50.140 are each amended to read as follows:

(1) The approval or rejection of an application for certification by the governor shall be subject to judicial review pursuant to the provisions of chapter 34.04 RCW.

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

~~((2))~~ (3) The rules and regulations adopted by the council shall be subject to judicial review pursuant to the provisions of chapter 34.04 RCW.

Sec. 12. Section 15, chapter 45, Laws of 1970 ex. sess. and RCW 80.50.150 are each amended to read as follows:

(1) The courts are authorized to grant such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with this chapter and/or with a site certification agreement issued pursuant to this chapter. The court may assess civil penalties in an amount not less than one thousand dollars per day nor more than twenty-five thousand dollars per day for each day of construction or operation in material violation of this chapter, or in material violation of any site certification agreement issued pursuant to this chapter. The court may charge the expenses of an enforcement action relating to a site certification agreement under this section, including, but not limited to, expenses incurred for legal services and expert testimony, against any person found to be in material violation of the provisions of such certification: PROVIDED, That the expenses of a person found not to be in material violation of the provisions of such certification, including, but not limited to, expenses incurred for legal services and expert testimony, may be charged against the person or persons bringing an enforcement action or other action under this section.

(2) Wilful violation of any provision of this chapter shall be a gross misdemeanor.

(3) Civil ~~((or criminal))~~ proceedings to enforce this chapter may be brought ~~((through))~~ by the attorney general ~~((by))~~ or the prosecuting attorney of any county affected by the violation on his own motion or at the request of the council. Criminal proceedings to enforce this chapter may be brought by the prosecuting attorney of any county affected by the violation on his own motion or at the request of the council.

(4) The remedies and penalties in this section, both civil and criminal, shall be cumulative and shall be in addition to any other penalties and remedies available at law, or in equity, to any person.

Sec. 13. Section 2, chapter 110, Laws of 1974 ex. sess. as amended by section 40, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.175 are each amended to read as follows:

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

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

(3) After receiving a request to study a potential site, the council shall commission its own independent consultant to study matters relative to the potential site. The study shall include, but need not be limited to, the preparation and analysis of environmental impact information for the proposed potential site and any other matter the council and the potential applicant deem essential to an adequate appraisal of the potential site. In conducting the study, the council is authorized to cooperate and work jointly with the county or counties in which the potential site is located, any federal, state, or local governmental agency that might be requested to comment upon the potential site, and any municipal or public corporation having an interest in the matter. The full cost of the study shall be paid by the potential applicant: PROVIDED, That such costs exceeding a total of ten thousand dollars shall be payable subject to the potential applicant giving prior approval to such excess amount.

(4) Any study prepared by the council pursuant to subsection (3) of this section may be used in place of the "detailed statement" required by RCW 43.21C.030(2)(c) by any branch of government except the council created pursuant to chapter 80.50 RCW. (~~Except for actions of the council under chapter 80.50 RCW, all proposals for legislation and other actions of any branch of government of this state, including state agencies, municipal and public corporations, and counties, to the extent the legislation or other action involved approves, authorizes, permits, or establishes procedures solely for approving, authorizing or permitting, the location, financing or construction of any energy facility subject to certification under chapter 80.50 RCW, shall be exempt from the "detailed statement" required by RCW 43.21C.030. Nothing in this subsection shall be construed as exempting any action of the council from any provision of chapter 43.21C RCW.~~)

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

(6) Nothing in this section shall change the requirements for an application for site certification or the requirement of payment of a fee as provided in RCW 80.50.070, or change the time for disposition of an application for certification as provided in RCW 80.50.100.

(7) Nothing in this section shall be construed as preventing a city or county from requiring any information it deems appropriate to make a decision approving a particular location.

NEW SECTION. Sec. 14. There is added to chapter 80.50 RCW a new section to read as follows:

Except for actions of the council under chapter 80.50 RCW, all proposals for legislation and other actions of any branch of government of this state, including state agencies, municipal and public corporations, and counties, to the extent the legislation or other action involved approves, authorizes, permits, or establishes procedures solely for approving, authorizing or permitting, the location, financing or construction of any energy facility subject to certification under chapter 80.50 RCW, shall be exempt from the "detailed statement" required by RCW 43.21C.030. Nothing in this section shall be construed as exempting any action of the council from any provision of chapter 43.21C RCW.

NEW SECTION. Sec. 15. There is added to chapter 80.50 RCW a new section to read as follows:

The state general fund shall be credited with all receipts from applicants paid to the state pursuant to chapter 80.50 RCW. Such funds shall be used only by the council for the purposes set forth in chapter 80.50 RCW. All expenditures shall be authorized by law.

NEW SECTION. Sec. 16. There is added to chapter 80.50 RCW a new section to read as follows:

(1) The council shall receive all applications for energy facility site certification. The following fees or charges for application processing or certification monitoring shall be paid by the applicant or certificate holder:

(a) A fee of twenty-five thousand dollars for each proposed site, to be applied toward the cost of the independent consultant study authorized in this subsection, shall accompany the application and shall be a condition precedent to any further consideration or action on the application by the council. The council shall commission its own independent consultant study to measure the consequences of the proposed energy facility on the environment for each site application. The council shall direct the consultant to study any matter which it deems essential to an adequate appraisal of the site. The full cost of the study shall be paid by the applicant: **PROVIDED**, That said costs exceeding a total of the twenty-five thousand dollars paid pursuant to subsection (1)(a) of this section shall be payable subject to the applicant giving prior approval to such excess amount.

(b) Each applicant shall, in addition to the costs of the independent consultant provided by subsection (1)(a) of this section, pay such reasonable costs as are actually and necessarily incurred by the council in processing the application. Such costs shall include, but are not limited to, costs of a hearing examiner, a court reporter, additional staff salaries, wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses, as arise directly from processing such application.

Each applicant shall, at the time of application submission, deposit twenty thousand dollars, or such lesser amount as may be specified by council rule, to cover costs provided for by subsection (1)(b) of this section. Reasonable and necessary costs of the council directly attributable to application processing shall be charged against such deposit.

The council shall submit to each applicant a statement of such expenditures actually made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The applicant shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: **PROVIDED**, That such applicant may, at the request of the council, increase the amount of funds on deposit to cover anticipated expenses during peak periods of application processing. Any funds remaining unexpended at the conclusion of application processing shall be refunded to the applicant, or at the applicant's option, credited against required deposits of certificate holders.

(c) Each certificate holder shall pay such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction and operation of the facility.

Each certificate holder, within thirty days of execution of the site certification agreement, shall deposit twenty thousand dollars, or such other amount as may be specified by council rule, to cover costs provided for by subsection (1)(c) of this section. Reasonable and necessary costs of the council directly attributable to inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction and operation of the facility shall be charged against such deposit.

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

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

(3) All payments required of the applicant or certificate holder under this section are to be made to the state treasurer who shall make payments as instructed by the council from the funds submitted. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the applicant or certificate holder.

NEW SECTION. Sec. 17. There is added to chapter 80.50 RCW a new section to read as follows:

(1) Any person required to file an application for certification of an energy facility pursuant to this chapter may apply to the council for an expedited processing of such an application. The application for expedited processing shall be submitted to the council in such form and manner and accompanied by such information as may be prescribed by council rule. The council may grant an applicant expedited processing of an application for certification upon finding that:

(a) The environmental impact of the proposed energy facility;

(b) The area potentially affected;

(c) The cost and magnitude of the proposed energy facility; and

(d) The degree to which the proposed energy facility represents a change in use of the proposed site

are not significant enough to warrant a full review of the application for certification under the provisions of this chapter.

(2) Upon granting an applicant expedited processing of an application for certification, the council shall not be required to:

(a) Commission an independent study, notwithstanding the provisions of section 16 of this 1977 amendatory act; nor

(b) Hold a contested case hearing under chapter 34.04 RCW on the application.

(3) The council shall adopt rules governing the expedited processing of an application for certification pursuant to this section.

NEW SECTION. Sec. 18. There is appropriated to the energy facility site evaluation council from the general fund the sum of one hundred sixteen thousand three hundred seventeen dollars, or so much thereof as may be necessary, for the biennium ending June 30, 1979, to carry out the provisions of sections 3(2) and 17 of this 1977 amendatory act.

NEW SECTION. Sec. 19. The following acts or parts of acts are each repealed:

(1) Section 5, chapter 45, Laws of 1970 ex. sess., section 33, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.050;

(2) Section 7, chapter 45, Laws of 1970 ex. sess., section 35, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.070; and

(3) Section 1, chapter 110, Laws of 1974 ex. sess., section 39, chapter 108, Laws of 1975-'76 2nd ex. sess. and RCW 80.50.170.

NEW SECTION. Sec. 20. If any provision of this 1977 amendatory 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.

NEW SECTION. Sec. 21. This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate June 17, 1977.

Passed the House June 14, 1977.

Approved by the Governor July 15, 1977, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State July 15, 1977.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith without my approval as to certain sections, Engrossed Substitute Senate Bill No. 2910 entitled:

"AN ACT Relating to energy facility sites;"

This bill makes a number of changes to Chapter 80.50 RCW relative to the Energy Facility Site Evaluation Council. Section 1 amends existing legislative intent, as set out in Section 80.50.010 RCW, to require the Council to comply with local land use plans and zoning ordinances, in balancing the broad interests of the public with the increasing demands for energy facility location and operation.

Section 7 amends Section 80.50.090 RCW, relating to public hearings. The amendatory language is basically non-substantive except for the provision that prohibits the Council from recommending site certification if the local legislative authority decides not to change the provisions of its land use plan or zoning ordinance with which the application is inconsistent.

Section 9 amends existing preemption language in Section 80.50.110 RCW to specifically preclude the state from preempting local land use plans and zoning ordinances.

The original Senate Bill No. 2910, an Executive Request bill, contained provisions that required the applicant to "...exhaust all reasonable, available methods and remedies to reach agreement with the city and/or county governments before the state [would] consider preemptive action". The purpose of that language was to codify the Council's operating policy established during the Satsop hearings, which policy encouraged the applicant and local governmental authorities to deal with each other at arm's length. I strongly endorse this policy because I believe state government should become involved in these issues, only when

there are overriding state concerns that are being handled unreasonably at the local governmental level. The provisions of the three sections mentioned above would shift the balance of power too far in favor of local government, contrary to the established policy.

In keeping with my concern for local determination, I intend to request the Council to adopt and promulgate regulations similar to the language in Senate Bill No. 2910 as originally introduced to ensure that the applicant makes a good faith effort to work with local governmental authorities to resolve disputes. In addition, I will request the Council to develop guidelines for determining when the interests of the state are such as to require preemptive action.

With the exception of Sections 1, 7 and 9 which I have vetoed for the above reasons, the remainder of Engrossed Substitute Senate Bill No. 2910."

CHAPTER 372

[Engrossed Senate Bill No. 2441]

HORSE RACE COURSES—FISCAL SUPPORT

AN ACT Relating to horse race courses; amending section 3, chapter 233, Laws of 1969 ex. sess. and RCW 67.16.102; and adding a new section to chapter 67.16 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. There is added to chapter 67.16 RCW a new section to read as follows:

The legislature finds that:

(1) A primary responsibility of the horse racing commission is the encouragement of the training and development of the equine industry in the state of Washington whether the result of this training and development results in legalized horse racing or in the recreational use of horses;

(2) The horse racing commission has a further major responsibility to assure that any facility used as a race course should be maintained and upgraded to insure the continued safety of both the public and the horse at any time the facility is used for the training or contesting of these animals;

(3) Small race courses within the state have difficulty in obtaining sufficient funds to provide the maintenance and upgrading necessary to assure this safety at these facilities, or to permit frequent use of these facilities by 4-H children or other horse owners involved in training; and

(4) The one percent of the parimutuel machine gross receipts used to pay a special purse to the licensed owners of Washington bred horses is available for the purpose of drawing interest, thereby obtaining sufficient funds to be disbursed to achieve the necessary support to these small race courses.

Sec. 2. Section 3, chapter 233, Laws of 1969 ex. sess. and RCW 67.16.102 are each amended to read as follows:

Notwithstanding any other provision of chapter 67.16 RCW to the contrary the licensee shall withhold and shall pay daily to the commission, in addition to the fifteen percent authorized by this chapter, one percent of the gross receipts of all parimutuel machines at each race meet which sums shall, at the end of each meet, be paid by the commission to the licensed owners of those horses finishing first, second, third and fourth Washington bred only at each meet from which the additional one percent is derived in accordance with an equitable distribution formula to be promulgated by the commission prior to the commencement of each race