

IN THE SENATE

SENATE BILL NO. 1250

BY WERK, MALEPEAI, BILYEU, BOCK, LEFAVOUR, SCHMIDT

AN ACT

RELATING TO ENERGY FACILITY SITING; AMENDING TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 18, TITLE 61, IDAHO CODE, TO PROVIDE LEGISLATIVE PURPOSE AND FINDINGS, TO DEFINE TERMS, TO REQUIRE A SITING CERTIFICATE IN CERTAIN CIRCUMSTANCES, TO CREATE A SITING PANEL, TO PROVIDE AUTHORITY AND RESPONSIBILITIES OF THE PANEL, TO PROVIDE FOR AN APPLICATION FOR A SITING CERTIFICATE, TO PROVIDE DUTIES OF AN APPLICANT UPON SUBMITTAL OF AN APPLICATION AND TO PROVIDE DUTIES OF THE PUBLIC UTILITIES COMMISSION UPON RECEIPT OF AN APPLICATION; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 18, Title 61, Idaho Code, and to read as follows:

CHAPTER 18

SITING OF MAJOR ENERGY FACILITIES

61-1801. LEGISLATIVE PURPOSE AND FINDINGS. (1) The purpose of this chapter is to set forth a process for the efficient and timely review of applications for the siting and expansion of major energy facilities in Idaho. The review is intended to facilitate participation from all interested entities and individuals and to ensure, through available and reasonable methods, that there is consideration which balances the need for low cost, environmentally sound energy with the broad interests of the public.

(2) The legislature finds that the efficient and safe generation of electricity is critical to the well-being of the citizens and the economy of this state, the region and the nation. The legislature further finds that enactment of this chapter is necessary for the protection of the public welfare and public interest.

(3) On and after the effective date of this chapter, no construction or expansion of a major energy facility may be undertaken in the state without a siting certificate granted pursuant to the provisions of this chapter. The siting certificate shall not duplicate or replace other local, state and federal permitting processes, but rather the siting certificate is a preliminary prerequisite for those permitting processes to proceed.

61-1802. DEFINITIONS. As used in this chapter:

(1) "Applicant" means the owner or operator of a facility who files an application for a siting certificate. The owner or operator of the facility rather than the builder shall be responsible for filing the application and obtaining the certificate.

(2) "Application" means an application for an energy facility siting certificate.

(3) "Commission" means the public utilities commission.

(4) "Facility" or "energy facility" means any proposed:

(a) Electrical generating facility with a rated capacity at location and at fifty-nine (59) degrees or more than fifty (50) megawatts regardless of fuel source; or

(b) Expansion of an energy facility in existence on the effective date of this chapter, which expansion will increase the capacity of the facility by more than fifty (50) megawatts regardless of fuel source at location and at fifty-nine (59) degrees.

The definition of "facility" or "energy facility" does not apply to electric generating facilities owned or constructed by a public utility regulated pursuant to title 61, Idaho Code, by a cooperative or a municipality, or by any entity when the facility is constructed within the property boundaries of the Idaho national laboratory.

(5) "Panel" or "siting panel" means the Idaho energy facility siting panel created in section 61-1804, Idaho Code.

(6) "President" means the president of the public utilities commission.

61-1803. SITING CERTIFICATE -- EXISTING FACILITIES. (1) On and after the effective date of this chapter, no person shall commence construction on an energy facility, as that term is defined in section 61-1802, Idaho Code, in the state without a siting certificate.

(2) An energy facility in existence on the effective date of this chapter shall not require a certificate under the provisions of this chapter, except that the expansion of an energy facility in existence on the effective date of this chapter constitutes a new proposal for which a siting certificate is required if the expansion will increase the capacity of the facility by more than fifty (50) megawatts regardless of fuel source at location and at fifty-nine (59) degrees.

61-1804. STATE SITING PANEL -- CREATION -- MEMBERS. (1) There is hereby created in the commission the Idaho energy facility siting panel. Members of the panel shall consist of:

(a) Five (5) members who are the following individuals or their designees: the administrator of the office of energy resources, the director of the department of environmental quality, the president of the public utilities commission, the director of the department of water resources and the director of the department of commerce.

(b) One (1) member appointed by the city council of each city located within a fifty (50) mile radius of the site where the energy facility is proposed to be located. The member(s) serving pursuant to this subsection shall serve only until the particular siting application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(c) One (1) member appointed by the board of county commissioners for each county located within a fifty (50) mile radius of the site where the energy facility is proposed to be located. The member(s) serving pursuant to this paragraph shall serve only until the particular applica-

tion subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(2) No person may serve on the panel if the person has a conflict of interest as that term is defined in section 59-703, Idaho Code, or if that person could derive any economic gain as that term is defined in section 59-703, Idaho Code, from the location or siting of the proposed energy facility.

(3) A majority of the members of the panel shall constitute a quorum for the transaction of business of the panel, and the concurrence of a majority of the members of the panel shall constitute a legal action of the panel.

(4) The public utilities commission and state agencies shall make staff available to assist the panel in carrying out its responsibilities.

(5) A vacancy occurring on the panel shall be filled in the same manner as the original appointment.

(6) The chairman of the panel shall be elected by the members and the chairman shall be a voting member.

61-1805. PANEL AUTHORITY -- RESPONSIBILITIES. (1) The siting panel shall review the application of each energy facility proposed within the state after the effective date of this chapter. After notice and an opportunity for hearing, the panel shall review and deny or approve an application seeking a siting certificate.

(2) In reviewing an application for a siting certificate, the panel shall consider:

(a) The regional or national benefits expected to be achieved;

(b) The benefits to electric consumers expected to be achieved;

(c) The extent to which the proposed construction or expansion is consistent with sound national energy policy and will enhance energy independence;

(d) The extent to which the proposed construction or expansion minimizes consumption of the natural resources of the state and minimizes adverse impacts on the environment of the state and surrounding localities, including the air and water quality;

(e) The potential for harm to scenic, historic, cultural or recreational values;

(f) The potential risk and impact of an accident during transport of fuel to, or waste from, the facility;

(g) The potential impact on local and state government and consistency with local planning and existing development;

(h) The potential risk and impact from any waste, effluent or emissions, including secondary effluent or emissions, to be generated;

(i) The financial ability and experience of the applicant to undertake the construction and operation of the facility;

(j) The extent to which, when compared with available alternatives, the proposed facility, including its location, production processes and environmental controls, minimizes the potential risks and impacts to public health and safety and to the environment;

(k) The extent to which the proposed facility will maximize existing or proposed transmission capabilities; and

(l) The extent to which the proposed construction or expansion is consistent with the public interest.

1       61-1806. APPLICATION FOR A SITING CERTIFICATE. (1) Each application  
2 for a siting certificate shall contain the following:

3       (a) The exact legal name of the applicant; the applicant's principal  
4 place of business; whether the applicant is an individual, partnership,  
5 corporation or otherwise; the state laws under which the applicant is  
6 organized or authorized; and the name, title, telephone number, mailing  
7 address and e-mail address of the person or persons to whom communica-  
8 tions concerning the application are to be addressed;

9       (b) A description of the existing operations owned or operated by the  
10 applicant, including the operations of affiliates, subsidiaries or any  
11 majority owner of the applicant;

12       (c) Certification that, to the best of the applicant's knowledge, all  
13 other facilities owned or operated by the applicant, including the op-  
14 erations of affiliates, subsidiaries or any majority owner of the ap-  
15 plicant, are in compliance with local, state or federal requirements or  
16 are on a schedule for compliance with such;

17       (d) A description of the proposed design and operations of the energy  
18 facility, including plans, descriptions, specifications and drawings  
19 showing the design of the facility, the nature and amount of any waste,  
20 effluent or emissions, including secondary effluent or emissions, to be  
21 generated, if any, and the manner in which it will be operated and con-  
22 trolled;

23       (e) A description of the amount of electricity to be produced by the  
24 energy facility, the availability or planned availability of transmis-  
25 sion capabilities, and the potential market(s) for the electricity;

26       (f) A description of the project financing;

27       (g) A list of the federal, state, tribal and local permits and licenses  
28 required, including mailing addresses, contact names, telephone num-  
29 bers and e-mail addresses for the permitting authorities;

30       (h) The projected schedule for permitting, construction and operation  
31 of the facility;

32       (i) Identification of any alternative sites, sizes, production pro-  
33 cesses and environmental control techniques that have been, or might  
34 be, considered for the energy facility;

35       (j) Information about any potential harm to scenic, historic, cultural  
36 or recreational values;

37       (k) Information about any potential risk and impact of an accident dur-  
38 ing the transport of fuel to, or waste from, the facility;

39       (l) A description of the infrastructure needed for construction and op-  
40 eration of the facility, including roads, water, power and any other  
41 needs;

42       (m) A description of the potential impact on local or state government  
43 and consistency of the proposed facility with local planning and exist-  
44 ing development; and

45       (n) To the extent not otherwise addressed, information responding to  
46 the criteria set out in subsection (2) of section 61-1805, Idaho Code.

47       (2) The applicant shall provide any other information that the panel  
48 requests.

49       (3) The application shall be accompanied by a siting certificate appli-  
50 cation fee. The commission shall establish, by rule, the scale for deter-

1 mining the siting certificate application fee. The fee shall not exceed one  
 2 hundred thousand dollars (\$100,000) and shall be based upon the cost of pro-  
 3 cessing the application. Fees received pursuant to this section may be ex-  
 4 pended by the commission to pay the actual, reasonable and necessary costs  
 5 incurred by the commission and the panel in acting upon a siting certificate  
 6 application.

7 (4) The commission may promulgate other rules in compliance with chap-  
 8 ter 52, title 67, Idaho Code, to implement and administer the provisions of  
 9 this chapter.

10 61-1807. DUTIES OF APPLICANT UPON SUBMITTAL OF AN APPLICATION. (1)  
 11 Within seven (7) days of filing the application with the commission, the  
 12 applicant shall:

13 (a) Make available copies of the application in publicly accessible lo-  
 14 cations in each county or city within a fifty (50) mile radius of the  
 15 proposed site in either electronic or paper format;

16 (b) Create and maintain an up-to-date project website devoted solely to  
 17 dispensing information about the proposed facility;

18 (c) Cause to be published in a daily or weekly newspaper of general cir-  
 19 culation, at least once per week for two (2) weeks in each county or city  
 20 within a fifty (50) mile radius of the proposed site, public notice that  
 21 an application has been filed; and

22 (d) Cause to be provided to the city councils and boards of county com-  
 23 missioners in each city and county within a fifty (50) mile radius of the  
 24 proposed site, public notice that an application has been filed.

25 (2) The public notice required by this section shall generally describe  
 26 the operations and schedule for the proposed facility, include a map of the  
 27 site, designate a single point of contact, explain how the applicant will re-  
 28 spond to requests for information from the public and advise readers how to  
 29 obtain more information.

30 61-1808. DUTIES OF COMMISSION UPON RECEIPT OF AN APPLICATION. (1)  
 31 Within thirty (30) days after receipt of an application, the commission  
 32 shall determine whether it is complete. If it is not complete, the com-  
 33 mission shall notify the applicant and state the areas of deficiency. The  
 34 applicant shall have thirty (30) days to respond to the notice of deficiency.

35 (2) This process shall continue until the application is deemed com-  
 36 plete. If at any time the applicant does not respond to a notice of defi-  
 37 ciency within sixty (60) days of its receipt, the application shall be con-  
 38 sidered withdrawn and the applicant will need to submit a new application.

39 (3) Upon receipt of a complete application, the commission shall  
 40 issue public notice to the permanent panel members described in section  
 41 61-1804(1)(a), Idaho Code, and to the city council and board of county com-  
 42 missioners of each city and county described in section 61-1804(1)(b) and  
 43 (c), Idaho Code. The notice shall set forth the time and place for the first  
 44 meeting of the panel and a proposed procedure and schedule for review of  
 45 the application and its approval or denial based upon the complexity of the  
 46 application. Within fourteen (14) days after receipt of notice pursuant to  
 47 this section, the board of commissioners of the county or counties and the  
 48 city council(s) shall select their members to serve on the panel.

1       (4) Within forty-five (45) days after submittal of a complete appli-  
2 cation, the panel shall have its initial meeting to review the application  
3 and establish a timetable for review of the application, including setting a  
4 date for at least one (1) public hearing and a target date for a decision.

5       (5) Subsequent to the initial meeting, and not less than thirty (30)  
6 days before the date of the public hearing, the commission shall cause to be  
7 published in the daily or weekly newspapers of general circulation, at least  
8 once per week for two (2) weeks within a fifty (50) mile radius of the pro-  
9 posed site, a notice describing the location where the complete application  
10 package may be reviewed and where copies may be obtained. The notice shall  
11 describe the procedure by which the application will be reviewed by the panel  
12 and identify the time, place and location for the public hearing to be held to  
13 receive public comment and input on the application.

14       (6) Comment and input on the proposed facility may be presented orally  
15 or in writing by any interested party at the public hearing and shall con-  
16 tinue to be accepted in writing by the panel for fifteen (15) days after the  
17 public hearing date.

18       (7) No later than six (6) months after receipt of the complete applica-  
19 tion, unless the applicant agrees to an extension in writing, the panel shall  
20 approve or deny the application in light of the considerations set forth in  
21 section 61-1805, Idaho Code, and based upon the contents of the application,  
22 the support, concerns or objections submitted by the public, and any other  
23 information available to the panel. If the application is denied, a clear  
24 statement of the reasons for the denial shall be included with the decision.

25       (8) An applicant or any other person aggrieved by a final decision pur-  
26 suant to this chapter may, within twenty-eight (28) days, seek judicial re-  
27 view under the procedures provided in chapter 52, title 67, Idaho Code.

28       (9) Nothing in this chapter shall prevent a court from enjoining any  
29 activity at an energy facility that is outside of, or not in compliance with,  
30 the terms and conditions of an approved permit issued pursuant to local,  
31 state or federal law.

32       SECTION 2. An emergency existing therefor, which emergency is hereby  
33 declared to exist, this act shall be in full force and effect on and after its  
34 passage and approval.