

IN THE SENATE

SENATE BILL NO. 1027

BY WERK, KELLY, BOCK, LEFAVOUR, BILYEU, SAGNESS, THORSON

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.

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

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

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

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

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

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

14 61-1803. SITING CERTIFICATE – EXISTING FACILITIES. (1) On and after the  
15 effective date of this chapter, no person shall commence construction on an energy facility, as  
16 that term is defined in section 61-1802, Idaho Code, in the state without a siting certificate.

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

22 61-1804. STATE SITING PANEL – CREATION – MEMBERS. (1) There is hereby  
23 created in the commission the Idaho energy facility siting panel. Members of the panel shall  
24 consist of:

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

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

34 (c) One (1) member appointed by the board of county commissioners for each county  
35 located within a fifty (50) mile radius of the site where the energy facility is proposed  
36 to be located. The member(s) serving pursuant to this paragraph shall serve only until  
37 the particular application subject to their review is approved, or until the application is  
38 rejected and is no longer subject to their review.

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

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

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

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

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

10 61-1805. PANEL AUTHORITY – RESPONSIBILITIES. (1) The siting panel shall  
 11 review the application of each energy facility proposed within the state after the effective date  
 12 of this chapter. After notice and an opportunity for hearing, the panel shall review and deny or  
 13 approve an application seeking a siting certificate.

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

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

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

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

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

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

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

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

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

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

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

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

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

38 61-1806. APPLICATION FOR A SITING CERTIFICATE. (1) Each application for a  
 39 siting certificate shall contain the following:

40 (a) The exact legal name of the applicant; its principal place of business; whether the  
 41 applicant is an individual, partnership, corporation or otherwise; the state laws under  
 42 which the applicant is organized or authorized; and the name, title, telephone number,  
 43 mailing address and e-mail address of the person or persons to whom communications  
 44 concerning the application are to be addressed;

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

3 (c) Certification that, to the best of the applicant's knowledge, all other facilities  
4 owned or operated by the applicant, including the operations of affiliates, subsidiaries  
5 or any majority owner of the applicant, are in compliance with local, state or federal  
6 requirements or are on a schedule for compliance with such;

7 (d) A description of the proposed design and operations of the energy facility, including  
8 plans, descriptions, specifications and drawings showing the design of the facility, the  
9 nature and amount of any waste, effluent or emissions, including secondary effluent or  
10 emissions, to be generated, if any, and the manner in which it will be operated and  
11 controlled;

12 (e) A description of the amount of electricity to be produced by the energy facility, the  
13 availability or planned availability of transmission capabilities, and the potential market(s)  
14 for the electricity;

15 (f) A description of the project financing;

16 (g) A list of the federal, state, tribal and local permits and licenses required, including  
17 mailing addresses, contact names, telephone numbers and e-mail addresses for the  
18 permitting authorities;

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

20 (i) Identification of any alternative sites, sizes, production processes and environmental  
21 control techniques that have been, or might be, considered for the energy facility;

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

24 (k) Information about any potential risk and impact of an accident during the transport of  
25 fuel to, or waste from, the facility;

26 (l) A description of the infrastructure needed for construction and operation of the facility  
27 including roads, water, power and any other needs;

28 (m) A description of the potential impact on local or state government and consistency of  
29 the proposed facility with local planning and existing development; and

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

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

33 (3) The application shall be accompanied by a siting certificate application fee. The  
34 commission shall establish by rule, the scale for determining the siting certificate application  
35 fee. The fee shall not exceed one hundred thousand dollars (\$100,000) and shall be based  
36 upon the cost of processing the application. Fees received pursuant to this section may be  
37 expended by the commission to pay the actual, reasonable and necessary costs incurred by the  
38 commission and the panel in acting upon a siting certificate application.

39 (4) The commission may promulgate other rules and regulations in compliance with  
40 chapter 52, title 67, Idaho Code, to implement and administer the provisions of this chapter.

41 61-1807. DUTIES OF APPLICANT UPON SUBMITTAL OF AN APPLICATION. (1)  
42 Within seven (7) days of filing the application with the commission, the applicant shall:

43 (a) Make available copies of the application in publicly accessible locations in each  
44 county or city within a fifty (50) mile radius of the proposed site in either electronic or  
45 paper format;

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

3 (c) Cause to be published in a daily or weekly newspaper of general circulation at least  
4 once per week for two (2) weeks in each county or city within a fifty (50) mile radius of  
5 the proposed site public notice that an application has been filed; and

6 (d) Cause to be provided to the city councils and boards of county commissioners in each  
7 city and county within a fifty (50) mile radius of the proposed site, public notice that an  
8 application has been filed.

9 (2) The public notice required by this section shall generally describe the operations and  
10 schedule for the proposed facility, include a map of the site, designate a single point of contact,  
11 explain how the applicant will respond to requests for information from the public and advise  
12 readers how to obtain more information.

13 61-1808. DUTIES OF COMMISSION UPON RECEIPT OF AN APPLICATION. (1)  
14 Within thirty (30) days after receipt of an application, the commission shall determine whether  
15 it is complete. If it is not complete, the commission shall notify the applicant and state the  
16 areas of deficiency. The applicant shall have thirty (30) days to respond to the notice of  
17 deficiency.

18 (2) This process shall continue until the application is deemed complete. If at any time  
19 the applicant does not respond to a notice of deficiency within sixty (60) days of its receipt,  
20 the application shall be considered withdrawn and the applicant will need to submit a new  
21 application.

22 (3) Upon receipt of a complete application, the commission shall issue public notice  
23 to the permanent panel members described in section 61-1804(1)(a), Idaho Code, and to the  
24 city council and board of county commissioners of each city and county described in section  
25 61-1804(1)(b) and (c), Idaho Code. The notice shall set forth the time and place for the first  
26 meeting of the panel and a proposed procedure and schedule for review of the application and  
27 its approval or denial based upon the complexity of the application. Within fourteen (14) days  
28 after receipt of notice pursuant to this section, the board of commissioners of the county(ies)  
29 and the city council(s) shall select their members to serve on the panel.

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

34 (5) Subsequent to the initial meeting, and not less than thirty (30) days before the  
35 date of the public hearing, the commission shall cause to be published in the daily or weekly  
36 newspapers of general circulation, at least once per week for two (2) weeks within a fifty (50)  
37 mile radius of the proposed site, a notice describing the location where the complete application  
38 package may be reviewed and where copies may be obtained. The notice shall describe the  
39 procedure by which the application will be reviewed by the panel and identify the time, place  
40 and location for the public hearing to be held to receive public comment and input on the  
41 application.

42 (6) Comment and input on the proposed facility may be presented orally or in writing by  
43 any interested party at the public hearing, and shall continue to be accepted in writing by the  
44 panel for fifteen (15) days after the public hearing date.

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

7 (8) An applicant or any other person aggrieved by a final decision pursuant to this  
8 chapter may, within twenty-eight (28) days, seek judicial review under the procedures provided  
9 in chapter 52, title 67, Idaho Code.

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

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