INFORMATION CIRCULAR NO. 9

ENERGY PLANT SITING LEGISLATION

A Current Appraisal for Idaho

by

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Moscow, Idaho

February, 1975

FOREWORD

The Idaho Water Resources Research Institute has provided the administrative coordination for this study and organized the team that conducted the investigation. It is the Institute policy to make available the results of significant water related research conducted in Idaho's universities and colleges. The Institute neither endorses nor rejects the findings of the authors. It does recommend careful consideration of the accumulated facts by those who are assuredly going to continue to investigate this important field.

ABSTRACT

This brief appraisal of energy siting legislation for Idaho presents in part one an analysis and comparison of drafts of two bills that were drafted prior to the beginning of the First Session of the Forty-Third Legislature of the State of Idaho where the writers consider it important, comments and explanations are presented on particular points of the legislative needs. Part two is a brief survey of other states' legislation with primary emphasis on points that might be worthy of consideration in Idaho. The third part presents two summary tables of comparative information on the legislation, some ideas for alternatives, and reasons for conclusionswe would like to make at this time. It is recognized that this legislation in the draft form will be changing so a caution is made that these studies are still in progress and may change as further study and analysis proceeds.

Addendum

The official bill, House Bill No. 50 became available on January 28, 1975 and a quick appraisal indicates that it is nearly identical to the Attorney General's draft of a bill. Section II of the A.G. draft bill calling for the Attorney

General and the Director of the Department of Health and Welfare to appear on behalf of the public has been deleted. There are also exceptions in time changes in Sections 9 and 10. The Section 14 of the Attorney General's draft bill has been numbered Section 13 in House Bill No. 50 and is expanded on the topic of relating to compliance with other state regulations.

ACKNOWLEDGMENTS

The authors acknowledge the framers of the two drafts of bills identified as the Onweiller Bill and the Attorney General's bill. We appreciate very much the assistance of Mr. Verl G. King of the Idaho Department of Water Resources who supplied summary information and much insight into certain aspects of the energy siting situation in Idaho. We are pleased with the encouragement that, Dr. John S. Gladwell, Director of Idaho Water Resources Research Institute has given and recognize the support given this study through funding from Office of Water Research and Technology as a part of the University of Idaho allotment program.

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INTRODUCTION

This report has originated from the expressed public interest in this state in energy plant siting and as a part of an Idaho Water Resources Research Institute project entitled "Methodology and Criteria for Siting of Energy Centers in Idaho". The approach and the stimulus for the effort has been greatly influenced by the drafts of two bills that have been prepared on energy plant and facility siting.

The purpose of these acts is to provide for more adequate public review of the need and reliability of new facilities for energy production and their location. The legislation would hopefully provide for a better means of taking safeguards to protect Idaho's unique and relatively unspoiled environment for the health and well-being of its citizens. A further purpose would be to find a way of enhancing the integrity and efficiency of a permit application procedure that could be centrally located and coordinated and hopefully assist utilities in expediting the necessary action to proceed with construction under a reasonable time schedule.

Much of this interest in energy plant siting has been brought to the forefront of public attention by the announced program of the Idaho Power Company to build a

power plant at the Orchard site near Boise, Idaho.

This paper has the following objectives:

1. to provide an analysis and comparison of the two different energy siting bills being proposed by the Attorney General's office and by Representative Onweiler (drafted 12-6-74) for possible submission to the First Session of the Forty-Third Legislature of the State of Idaho;

2. to supply comments, explanations and suggestions for possible emphasis or change in the language of the legislation;

3. to suggest alternatives and additional areas of consideration which might be useful in arriving at the best possible energy siting legislation for the State of Idaho; and

4. to present aspects of legislative approaches for energy siting in a few of our sister states and offer opinions as to their value or advisability in Idaho.

The two proposed bills have some provisions which are nearly identical and differ only in style, if at all. Other provisions differ markedly or are contained in one bill but not the other. For the purposes of our analysis we refer to the bill proposed by the Attorney General's office as the "A.G. bill" and give it our primary focus. Thus, where no indication is made as to which bill is being considered it is the A.G. bill. Provisions of the Onweiler bill will be analyzed where the bills present a marked difference

from, or are not covered by, the A.G. bill. We recognize that the drafts of these bills will be changing and caution that our references will soon be outdated.

To better present the information, a reduced printing of the sections of the A.G. bill precedes the discussion or analysis of that section.

ANALYSIS OF PROPOSED ENERGY SITING LEGISLATION

Title of Act

AN ACT

RELATING TO ENERGY FACILITY SITING; PROVIDING A STATEMENT OF LEGISLATIVE FINDINGS; DEFINING TERMS; CREATING AN ENERGY FACILITY EVALUATION COUNCIL AND DESIGNATING THE COUNCIL'S EXECUTIVE DIRECTOR; PROVIDING FOR A RIGHT OF ENTRY UPON ENERGY FACILITY PREMISES; REQUIRING UTILITIES TO SUBMIT ANNUAL LONG-RANGE PLANS TO THE COUNCIL AND THE PUBLIC UTILITIES COMMISSION; PROVIDING FOR AN EXAMINATION OF THE ANNUAL REPORT; REQUIRING AN ENERGY FACILITY PERMIT; STATING THE REQUIREMENTS FOR A PERMIT APPLICATION, INCLUDING THE NECESSARY APPLICATION FEE; PROVIDING FOR A STUDY AND EVALUATION OF APPLICATIONS; PROVIDING FOR PUBLIC HEARINGS AND LISTING THE PARTIES WHO MUST APPEAR AT THE HEARING; GRANTING STANDING TO APPEAR AT THE HEARING; DESCRIBING THE MANNER OF THE COUNCIL'S DECISION ON A PARTICULAR APPLICATION AND REQUIRING CERTAIN FINDINGS OF FACT AND DETERMINATIONS; PRESCRIBING CERTAIN CONDITIONS WHICH WILL PREVENT THE GRANTING OF A PERMIT; PRESERVING THE APPLICATION OF EXISTING STATE AND FEDERAL LAWS; PROVIDING FOR THE REVOCATION AND SUSPENSION OF A PERMIT; PROHIBITING CERTAIN CONDUCT AND ACTIVITIES AND PROVIDING CIVIL AND CRIMINAL PENALTIES AND REMEDIES THEREFOR; PROVIDING THAT ANY PERSON MAY SUE TO ENJOIN PROHIBITED CONDUCT AND RECOVER CIVIL PENALTIES; PROVIDING THAT THE COUNCIL'S FILES ARE PUBLIC RECORDS; PROVIDING A METHOD OF JUDICIAL REVIEW; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.

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

We like the concise wording in general but would make two observations. First, the wording used to summarize or identify subsection (2) of section 4, "...and Designating the Council's Executive Director," might be better phrased as "...and <u>Providing for Designation of the Council's</u>

Executive Director." Second, the wording used to identify subsection (1) of section 6, "Requiring Utilities To Submit Annual Long-Range Plans to the Council..." is ambiguous as to the period covered by the report and should be worded "...Annually To Submit Updated Long-Range Plans...".

Section 1

> SECTION 1. This act may be cited as the "Idaho Utility Siting Act of 1975."

The short title of the Act could perhaps be better stated as the "Idaho Energy Utility Siting Act of 1975." The phrase energy utility siting more accurately describes the scope of the Act than does the term utility siting.

Section 2

> SECTION 2. The legislature finds that the location and construction of energy facilities may have a detrimental effect on Idaho's unique and relatively unspoiled environment and on the health and welfare of the citizens of this state. The legislature further finds that existing laws do not provide an adequate public review of the need for new facilities or their location. Accordingly, the legislature hereby establishes a procedure for the public resolution of the environmental, economic, and technical issues involved in the planning, siting, construction, and operation of energy facilities.

This section states the purpose and reasons for the Act in a very direct and concise manner. Especially good is the phrase recognizing that existing laws do not provide an adequate public review of the need for new facilities. Here

an insert could be made that would strengthen the entire coverage of the Act. This then might be worded as follows, "...existing laws do not provide an adequate public review of the need for and reliability of new facilities or their relocation."

The legislative purposes under the Onweiler bill are set forth in section 1 of that bill and are not too different from those of the A.G. bill. One sentence especially worth noting states, "The Legislature further finds that the efficiency and integrity of permit application and review processes would be enhanced by the implementation of a process whereby application would be centrally located and review would be centrally coordinated." The concept of a one-stop review process for permit applications should be an important purpose of the Act. We would suggest a similar provision altered to read as follows: "The Legislature further finds that the efficiency and integrity of permit application and review procedures, and energy siting evaluation processes, would be enhanced by provisions for a single forum or council, made up of members representing a diversity of views and responsible interests, who could act together for the overall benefit of the citizens of the state." Further justification for this suggestion is presented in later sections.

Section 3

SECTION 3. As used in this act:

(1) "Applicant" means any person who applies for a siting permit pursuant to the provisions of this act.

(2) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established by this act.

(3) "Associated facility" means an ancillary facility used or useful in transporting, storing or otherwise providing for the raw materials, wastes or products of energy facilities.

(4) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the site or route of an energy facility except investigations or experiments which are necessary to gather research data;

(b) the fracturing of underground formations by any means if related to the future development of geothermal resources except the gathering of geological data by boring test holes or other underground exploration, investigation, or experimentation.

(5) "Council" means the energy facility evaluation council established by this act.

(6) "Energy" means power derived from a natural resource, including, but not limited to, oil, gas, coal, steam and radioactive materials.

(7) "Energy facility" or "facility" means:

(a) any energy-generating or conversion plant and associated facilities,

(i) designed for, or capable of, generating fifty (50) megawatts of electricity or more, or any addition thereto (except pollution control facilities approved by the Department of Health and Welfare) having an estimated cost in excess of two hundred and fifty thousand dollars ($250,000), or

(ii) designed for, or capable of, producing one hundred million ($100,000,000) cubic feet of gas per day or more, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000) or

(iii) designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydrocarbon products per day or more, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(iv) designed for, or capable of, enriching radioactive minerals;

(b) an electric transmission line and associated facilities with a length exceeding ten (10) miles or a designed capacity of thirty-four and one-half (34.5) kilovolts or more;

(c) a gas or liquid transmission line and associated facilities designed for, or capable of, transporting gas or liquid hydro-carbon products from or to a gasification or liquefaction facility of the size indicated in subsections (a)(ii) or (a) (iii) of this section;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy;

(e) any installation designed to store radioactive wastes.

(8) "Independent consultant" means any person who has no direct or indirect financial interest in the applicant's proposals and who is retained by the council to conduct studies or evaluate the applicant's proposals.

(9) "Permit" means the certificate of environmental compatibility and public need issued by the council.

(10) "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.

(11) "Site" means the location of a proposed energy facility or associated facility.

(12) "Utility" or "public utility" means any person engaged in the generating, distributing, sale, delivery or furnishing of electricity for public use.

In general, the definitions in section 3 are well presented. Under subsection 4(a) defining "commence to construct" there is an exception made for "investigations or experiments which are necessary to gather research data." It would be wise to expand this phrase to read, "...to gather feasibility, planning and research data." It is contended that there may be a tendency to place too restrictive of an interpretation on what 'research' includes. It will be necessary in some cases to do physical activity, such as drilling or excavating, to determine the feasibility of a site for use.

Subsection 4(b) excepts from the meaning of 'commence to construct' the "gathering of geological data by boring test holes or other underground exploration, investigation, or experimentation." This provision raises the question, whether its intent is to permit exploratory drilling even to discover new sources of power without applying for a permit?

Subsection 6 defines 'energy'. It would seem wise to list water, wind and solar radiation as well as oil, gas, coal, steam and radioactive materials within the definition of energy.

Subsection 7(a)(i) excepts from the meaning of additions to 'energy facilities' any 'pollution control facilities approved by the Department of Health and Welfare...". We

are confused with the language in the Act here and see no real justification for exemption of additions to energy plants and facilities for approved pollution control facilities. We think there is confusion as to whether pollution control facilities are energy facilities. The language needs to be improved. As an observation, we believe pollution control measures and energy uses for that purpose should be accountable for supporting good environmental protection practices and should be expected to measure up to fulfilling social and economic goals along with other programs of conservation and development.

Subsection 7(a)(ii) excepts from the meaning of 'energy facility' any facility incapable of producing "100,000,000 cubic feet of gas per day or more,..." This figure of one hundred million cubic feet per day appears to be very high as an exemption. A typographical error of a dollar sign should be removed from before the figure.

Subsection 7(c) includes within the definition of 'facility' a gas or liquid transmission line and associated facilities designed for, or capable of, transmitting gas or liquid hydro-carbon products. This is desirable but we suggest elaborating on this subsection or adding a new subsection which would include water transmission facilities, such as canals and pipelines, necessary to convey water for cooling or waste water disposal that might be necessary in connection with an energy plant.

Subsection 7(e) mentions any installation designed to store radioactive wastes. We call attention to the fact that this involves a responsibility greater than just energy production. We concur, however, that somewhere in the state this needs to be studied before waste storage becomes a reality. We suggest an additional subsection that would be concerned with any facilities for the storage of energy that might be necessary, such as large blocks of space for storage batteries or hot water that might be kept in storage.

Special terms in the Onweiler bill are defined under section 2 of that bill. Generally, we find the list of terms defined under the A.G. bill more extensive and the definitions provided more complete.

Section 4

SECTION 4. (1) There is hereby created the energy facility evaluation council. The Governor shall appoint six (6) public members to the council to represent the interests of the people of this state. The chairperson of the public utilities commission shall serve as an ex-officio member and chairperson of the council.

(2) The director of the state office of energy shall serve as the council's executive director. The executive director shall, pursuant to the directions of the council, implement the provisions of this act and any rules or regulations hereunder:

(3) The public members shall serve for a term of six (6) years, but the original appointments shall be made two (2) for a term of six (6) years, two (2) for a term of four (4) years, and two (2) for a term of two (2) years. The public members shall be entitled to twenty-five dollars ($25.00) per day in furtherance of the business of the council, plus reimbursement for actual and necessary expenses incurred.

> (4) No person shall be a member or employee of the council who, during the two years prior to appointment or designation, received any substantial portion of his income directly or indirectly from any public utility or any person who engages in the sale or manufacture of any major component of any facility. No member or employee of the council shall be employed by a utility, applicant, or person who engages in the sale or manufacture of any major component of any facility within two years after he ceases to be a member of the council.

Subsection 4(1) provides for the creation of an energy facility evaluation council consisting of six public members appointed by the Governor, and chaired by the chairperson of the Public Utilities Commission who will be an ex-officio member of the council.

It appears that 'council' is a new term in Idaho state government designation and that it is not a commission or board quite like other departments operate under. In our opinion, the council should include representatives of the several state agencies having particular responsibility or expertise in certain areas concerned with energy siting. It is hoped that the heads of each state department will recognize the importance of the council's mission and be willing to commit themselves and their agency to cooperating in this important need for concerted action.

We would favor a council composed of the director or administrator, or their representative, from the following units of state government: Public Utilities Commission, Department of Health and Welfare, Department of Lands,

Department of Water Resources, Department of Fish and Game, Department of Planning and Community Affairs, Department of Parks and Recreation, Nuclear Energy Commission, Department of Agriculture and Department of Transportation, plus two public members. These two public members would be state residents selected at large by the Governor to serve for six-year terms with the initial appointments being one for three years and one for six years. The Governor would also appoint one special member from each of the localities in which a major facility was being seriously proposed. This special member would serve on the council as a voting member only when matters relating to that proposed facility were being passed on by the council. There could be more than one special member if more than one application were under consideration.

This is a large council but we feel that it is the only way to insure representation from the different disciplines and public interests. The two public members will be in a position to represent the general public, and combined with the agency representatives, provide diversity in the decision making process. The function of a special member would be to represent his or her local area, especially by furnishing imput to the council on local problems and attitudes.

The agency representatives, public members and special members should have qualifications that include objectivity,

a strong interest in planning and a demonstrated sensitivity to environmental concerns.

The designation of chairperson of the Public Utilities Commission to serve as chairperson of the council appears to be a good designation.

The designation of the director of the State Office of Energy as the council's executive director does not appear to be wise because the Office of Energy is not a statutory office and can be altered or abolished with a change in administration. It would appear better to have the council recommend two or three persons to the Governor from which to make the appointment of an executive director. Qualifications for the executive director should inlcude a strong professional background in planning and a demonstrated sensitivity to environmental concerns.

We note that section 4 of the Onweiler bill favors the council's staff work being carried on under the Public Utility Commission. We would favor a small well-qualified separate staff operating directly under the council, but utilizing expertise from the various state agencies as guided by council direction.

Subsection 4(3) provides for the terms of office and compensation to be paid the public members serving on the

council. The entitlement of $25 per day in furtherance of the business of the council appears to be low. Even though other boards are operating on such a basis it does not encourage just compensation. It may also be desirable to reimburse agency heads a like amount for all time spent when meeting on other than regular works days. It is logical that it may be necessary to meet on other than regular work days to provide a time for agency administrators to meet together.

Subsection 4(4) prohibiting persons financially interested in the operations of any public utility from serving on the council appears to be a good public safeguard.

Section 5

SECTION 5. (1) The Council shall have the authority to:

(a) adopt, promulgate, amend, or repeal suitable rules and regulations to carry out the provisions of this act, and the policies and practices of the council in connection therewith;

(b) promulgate rules of practice for the conduct of hearings;

(c) appoint and supervise such clerks, employees, and agents as may be necessary to carry out the provisions of this act;

(d) receive and investigate annual reports and applications for permits;

(e) commission independent studies of energy facilities and associated transmission lines proposed in annual reports or permit applications;

(f) conduct public hearings on the proposed location of energy facilities and associated transmission lines;

(g) issue or deny any permit hereunder;

(h) determine the terms and conditions of any permit issued hereunder;

(i) monitor the construction and operation of any energy facility granted a permit hereunder; and

(j) enforce this act and the terms and conditions of any permit issued hereunder.

(2) Any council member or authorized representative or delegate of the council shall have the right to enter upon the premises of any part of an energy facility during business hours to ascertain if the facility is being constructed or operated in continuing compliance with the terms and conditions of the permit. Any council member or authorized representative or delegate of the council shall have the right, during business hours, to inspect and copy such records of the permit holder as he or she may deem relevant to the approval or rejection of an application, the terms and conditions of a permit, or the enforcement of the provisions of this act.

This section enumerates the various powers to be possessed by the council and generally appears to be well written and comprehensive. However, it would appear that one function of planning and research that should be carried out by the council has been overlooked. Subsection 5 (1)(e) allows for independent studies but seems to be limited to those suggested by the utility reports or applications. If the council is to be knowledgeable on the advantages or disadvantages of alternative sites, such sites should be identified in advance and studied in detail to give the council a basis to support any comparisons and judgments that it makes. This is a planning function that needs to be provided for in the legislation. It is possible that this type of study may need to be financed by general funds rather than from application fees alone.

Subsection 5(1)(c) providing for the promulgation of rules for conducting hearings should specify that such rules be in accord with the state administrative procedures act, chapter 52, title 67, Idaho Code.

Section 6

SECTION 6. (1) On or before July 1 of each calendar year, every utility shall submit a report to the public utilities commission and to the council. This report shall include a detailed, verified statement of all long-range planning activities conducted by the utility during the preceding year, and shall contain a detailed description of:

(a) estimated peak load demand during each of the next ten (10) years;

(b) estimated average load demand during each of the next ten (10) years;

(c) every energy facility planned for construction during the next ten (10) years;

(d) the economic and environmental impact of each proposed facility;

(e) a cost-benefit and environmental analysis of possible alternatives to each proposed energy facility site;

(f) the utility's proposed energy conservation efforts, if any;

(g) such other information as the council may require by rule or regulation.

(2) The report must be signed under oath by the utility's president, chairman of the board, and the officer in charge of the actual preparation of the report.

(3) Upon receipt of a utility's annual report, the council shall commence an examination of the report and an independent evaluation of each proposed energy facility site included in the plan. Within one hundred and eighty (180) days, the council shall formally accept or reject the report. The information gathered under this section may be used to support findings and recommendations required for the issuance of a permit.

Subsection 6(1) requires every utility annually to submit a report to the council describing all long-range planning activities conducted by the utility during the preceding year. This provision leaves unclear the extent of information a utility must have available on a proposed energy facility to be built at some future date. Often it would seem a utility may merely indicate a facility will be needed but will not have gone further than designating the size. Subsections 6(1)(d) and (e) are particularly in need of qualification on this point.

Subsection 6(3) appears awkward in its language requiring the council to formally accept or reject the report within 180 days. The 180 day period seems to be a long time for the utility to wait for acceptance. It would seem more appropriate for the council to indicate deficiencies in the report as they are found. Use of the word "acceptance" to indicate approval of the report is not a very meaningful term when the council has already in fact received the report. Further, a procedure for formal approval of the report does not seem necessary and may discourage a utility from putting forth information. It may serve to bind a utility to some course of action when they do not need to be bound.

Section 7

SECTION 7. No person may commence construction of an energy facility in this state without a permit from the energy facility evaluation council. A permit may be transferred, subject to the approval of the council, to a person who agrees to comply with the terms, conditions, and modifications contained therein.

This section requiring a permit from the council before commencing construction on an energy facility appears to be complete and well defined.

Section 3 of the Onweiler bill contains a similar provision. Additionally, it contains a sentence stating, "This act shall not apply to any utility facility over which an agency of the federal government has exclusive jurisdiction." We feel this sentence need not be inlcuded. The issue of exclusive federal jurisdiction is best left open until a particular site is proposed or an application is presented to the council for its consideration. In our view, the planning objectives of the council will be more efficiently carried out if there is encouraged federal observance of those state procedures which do not impair the substance of any exclusive federal jurisdictional right.

Section 8

SECTION 8. (1) Each application for a permit shall contain sufficient information to satisfy the application requirements promulgated by the council. At a minimum, the application shall contain the following information:

(a) a detailed description of the design, construction, and operation of the proposed facility;

(b) safety and reliability information including, but not limited to, detailed information on proposed emergency systems, plans for transport, handling, and storage of wastes and fuels, and proposed methods to prevent the illegal diversion of nuclear fuel;

(c) available site information, including maps and descriptions of present and proposed developments and geological, aesthetic, ecological, seismic, water supply, population and load center data;

(d) a description of the comparative merits and failings of alternative locations and a statement explaining why the primary proposed location is best suited for the facility;

(e) a detailed statement explaining the need for the facility;

(f) a summary of the applicant's efforts to encourage or discourage the consumption of energy; and

(g) such other information as the applicant may consider relevant or as the council may by regulation or order require.

(2) Twenty-five (25) copies of the application must be filed with the council at least one (1) year prior to the anticipated commencement of construction.

(3) If the application does not contain sufficient information, the council shall notify the applicant of the deficiency within thirty (30) days after the receipt of the application. If the applicant does not rectify the omission within thirty (30) days after the receipt of notification by the council, the application shall be summarily denied.

(4) An application may be reasonably modified before and during the public hearings with the consent of the council. If any interested party has already made a recommendation, it shall be granted a reasonable time to reconsider its recommendation in response to the modification.

(5) All applications shall be accompanied by a filing fee, which shall be based on the estimated cost of the facility according to the following declining scale. The applicant shall pay the accumulated sums calculated as follows:

(a) three percent (3%) of any estimated cost up to one million dollars ($1,000,000); plus

(b) one percent (1%) of any estimated cost over one million dollars ($1,000,000) and up to twenty million dollars ($20,000,000); plus

(c) one half of one percent (.5%) of any estimated cost over twenty million dollars ($20,000,000) and up to one hundred million ($100,000,000); plus

(d) one quarter of one percent (.25%) of any estimated cost over one hundred million dollars ($100,000,000) and up to three hundred million dollars ($300,000,000); plus

(e) one-tenth of one percent (.1%) of any estimated cost over three hundred million dollars ($300,000,000).

(6) The council shall use the revenues derived from filing fees to compile information required for rendering decisions on permits and for carrying out its continuing supervisory resposibilities under this act.

(7) The application shall be signed under oath by the applicant. If the applicant is a juristic person, the application shall be signed by the applicant's chief executive officer and the officer or officers in charge of the actual preparation of the application.

Section 8 prescribes the minimum information to be included in an application for a permit. Subsection 8(1)(a) requiring a description of the proposed facility, in our opinion, should also require a description of the relationship of the proposed facility to existing facilities and systems.

Under subsection 8(1)(b) concerning safety and reliability information, it may be wise to spell out in more detail the reliability of the program or system the utility has for meeting growth and dealing with emergencies, such as a short water supply or an interruption of the production or transmission system by some catastrophe.

Under subsection 8(3) the 30 days for the council to notify the utility of a deficiency in its application is likely too short because a study may need to be made. Likewise the 30 days for the utility to rectify a deficiency in the application may be too short because it may take time to make studies to correct the deficiency. A question arises under this subsection as to the status of the applicant's filing fee if the application is summarily denied for failure to rectify a deficiency within the prescribed time period.

Subsection 8(5) concerned with the filing fee specifies an amount based on an arrangement of percents for varying magnitudes of cost in constructing the plant. We do not favor this type of financing and discuss this point later.

Subsection 8(6) directs the use of revenues from filing fees for processing permit applications and for carrying out the supervisory responsibilities of the council. It is questioned whether it would be consistent with this provision to also use these filing fees to pay for a staff to review annual reports submitted by each utility. A different approach, using a surcharge on energy use and production, as a means of financing would have merit.

Section 9

SECTION 9. (1) Upon receipt of an application complying with this act, the council shall commence an intensive study and evaluation of the proposed facility. The council may, in its discre-

> tion retain the services of an independent consultant to evaluate the application. The departments of administration, employment, fish and game, health and welfare, transportation, labor and industrial services, lands, parks and recreation, and water resources and the tax commission shall report to the council information relating to the impact of the proposed site on each department or commission's area of expertise within one hundred and eighty (180) days of their notification by the council of the pending application. Such information may include opinions on the advisability of granting or denying a permit. The council shall allocate funds obtained from filing fees to the departments or commissions making reports to reimburse them for the cost of compiling information and issuing the required report.
>
> (2) The council shall notify each local government which may reasonably be expected to be affected by the location of the facility, of the application received by the council. The council shall provide an opportunity for each interested local government to submit studies, information, and recommendations.

Under section 4, we have already indicated our preference for a council which includes as members the heads of all major state agencies whose business may affect or be affected by plant siting. With such a council make-up the interests of the various major state agencies would be automatically represented, to some extent at least, in all council decisions.

It would be appropriate to make provision entitling all state agencies to notification of hearings and encouraging them to submit information helpful in the business of the council. The time limit of 180 days for the agencies to respond to the council's request for information seems reasonable.

Under subsection 9(12) it seems that provision should be made to help finance local government studies. This would insure that local interests get an adequate chance to express their desires. This objective would of course be enhanced by selection of a special local member to serve on the council as has already been suggested under discussion of section 4. Sufficient local government participation needed to insure adequate local input should be provided for and encouraged.

Section 6 of the Onweiler bill contains provisions similar to those under section 9 of the A.G. bill. In place of the provisions in both bills for mandatory submission of information from a select list of state agencies we favor provision for mandatory submittal of information from any state agency upon specific request of the council. We also favor a provision that any state agency may submit information to the council without request. However, to be reimbursed for costs on voluntary submittals of information the agency would need prior approval from the council. Agencies from whom the council requested information would be reimbursed for the cost of compiling information and issuing the required report.

We favor the provision in the A.G. bill authorizing the council to retain independent consultants to evaluate the application. We also approve of the longer time period

(180 days vs 150 days) provided in the A.G. bill for the agencies to furnish the council with information after notice of the pending application. There should be some provision for the council to extend this time limit where good cause is shown, such as more time needed to get information essential to making a decision.

Section 7 of the Onweiler bill contains provisions for holding a referendum vote in the county in which the proposed energy facility is to be located. If the number voting against location of the facility within the county constitutes a majority of those voting in the last gubernatorial election then the council shall not issue a permit.

Some sort of procedure to measure local public acceptance of a proposed facility seems desirable. However, we question whether such local sentiment should be allowed to completely tie the hands of the council. It may be in the best interest of the state that a particular site be the one selected for an energy facility. The thought of providing some sort of compensation to a local area in mitigation of current or anticipated losses incurred because of placement of the facility therein is worth considering.

Section 10

SECTION 10. (1) The council shall initiate a public hearing on each application within nine (9) months from the date the application is filed with the council. Each department, agency, commission, or local government entitled to notice under section nine (9) of this act shall be notified of the hearing. In addition, the council shall publish a notice of the hearing for three (3) consecutive weeks in a newspaper of general circulation within the county in which the proposed facility will be located.

> (2) The council must determine at the conclusion of the public hearings whether or not the proposed facility is in compliance with municipal, county, or regional land use plans and zoning ordinances. If the council finds that the proposed facility conforms to existing land use plans or zoning ordinances, no subsequent change of such plans or ordinances shall affect the proposed site.
>
> (3) Hearings on an application for an amendment to a permit shall be held in the same manner as hearings on an original permit.

Section 10 requires the council to hold public hearings on each application within 9 months of the filing. Under subsection 10(1) it would seem appropriate to specify that a hearing be held in the county in which the proposed facility is to be located.

Under subsection 10(2) the wording that the council must determine whether or not the proposed facility is in compliance with existing local land use plans and zoning ordinances needs clarification with regard to what the word 'existing' means. We wonder if efforts to change zoning might be successfully carried out after a utility has filed an application with the council, but before the hearing has been initiated. This seems inappropriate. The word 'existing' in our interpretation should refer to those land use plans and zoning ordinances in effect at the time the application is filed with the council.

Also under subsection 10(2), we question the intended consequences if the council determines that the proposed

facility is not in compliance with local land use plans and zoning ordinances. We feel that if a permit is granted, although the proposed facility does not comply with local land use plans and zoning ordinances, the council should be obligated to explain its decision. The council may require specific statutory authority to override local zoning ordinances and land use plans.

The language of subsection 10(3) requiring hearings on an amendment to a permit may be too restrictive. The council should be given discretion to approve very minor amendments which do not merit the cost of conducting a hearing.

Section 11

> SECTION 11. Upon notification of the receipt of an application by the council, the attorney general and the director of health and welfare, or his or her designee, shall appear on behalf of the public. They shall be accorded the rights, privileges, and responsibilities of parties to a formal action. This section shall not be construed to prevent any person from being heard or represented by counsel in accordance with this act.

This section assigns to the Attorney General and the director of the Department of Health and Welfare the responsibility to appear on behalf of the public upon notification of the receipt of an application by the council. We like the idea of obligating someone to appear on behalf of the public. However, we wonder whether any one particular agency

head can represent the broad spectrum of public interests. Each state agency head probably feels he is the defender of the public interest. Since our suggested composition of the council, discussed under section 4, includes the head of the Department of Health and Welfare, we would favor having only the Attorney General, or his or her designee, appear on behalf of the public.

Section 12

> SECTION 12. Any person who files with the council a timely notice of an intent to participate in the hearing on a particular application shall have standing to appear and present testimony.

This section allows any person filing timely notice with the council the right to participate in the hearing upon an application for a permit. This is a good provision.

Section 8 of the Onweiler bill limits the right to be a party to certification proceedings to persons residing in an affected local government or to representatives of certain non-profit organizations. We favor the less restrictive provision of the A.G. bill which would give to any resident of the state standing to appear and present testimony upon filing of timely notice.

Section 13

> SECTION 13. (1) Within ninety (90) days after completion of the hearings, the council shall make complete findings, issue an opinion, and render a decision upon the record, either

granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the energy facility as the council may deem appropriate. The council must make its decision by an affirmative vote of a majority of the members present, but at least five (5) members must be in attendance to constitute a quorum. Council members shall be afforded an opportunity to issue dissenting opinions.

(2) The council's decision regarding the granting or denial of a permit must be supported by findings of fact and determinations on the following issues:

(a) Energy needs:

(1) projected average, seasonal, and peak load demands on the applicant's system,

(2) availability and desirability of power from other sources, particularly during periods of peak load demand,

(3) beneficial and detrimental uses of the output of the facility,

(4) promotional activities of the applicant which may have contributed to the need for the facility,

(5) conservation measures which could or should reduce the need for more energy,

(6) research activites of the applicant concerning new environmental protection technology.

(b) Land use impacts:

(1) area of land required in ultimate use,

(2) consistency with state and regional land use plans,

(3) consistency with existing and projected land use,

(4) alternative uses of the site,

(5) impact of the availability of energy from the facility on growth patterns and population dispersal,

(6) geological suitability of the site or route,

(7) seismological characteristics,

(8) construction practices,

(9) extent of erosion, scouring and wasting of land at the site and as a result of fossil fuel demands of the facility,

(10) corridor design and construction precautions for transmission lines or aqueducts,

(11) scenic impacts,

(12) effects on the ecosystem,

(13) impact on historic, architectural, archaeological, and cultural areas and features,

(14) extent of recreation opportunities and related compatible uses,

(15) public recreation plans for the project,

(16) public facilities and accomodations,

(17) opportunities for joint use with energy intensive industries, or other activities to utilize the waste heat from facility.

(c) Water resource impacts:

(1) adequacy of the water supply and the impact of the facility on stream flow, lakes and reservoirs,

(2) impact of the facility on ground water,

(3) cooling system evaluation including consideration of alternatives,

(4) inventory of effluents including physical, chemical, biological, and radiological characteristics,

(5) effect of effluents on receiving waters,

(6) relationship to water quality standards,

(7) changes in quantity and quality of water used by others,

(8) effects on aquatic plant and animal life,

(9) effects on unique or otherwise significant ecosystems, e.g., wetlands,

(10) monitoring programs.

(d) Air quality impacts:

(1) meteorology, wind direction, velocity, and temperature ranges, precipitation, inversion occurrence, other factors influencing dispersal,

(2) topography -- factors affecting dispersal,

(3) projected emission standards and design capability to meet standards,

(4) emmissions and controls:

(i) stack design,

(ii) particulates,

(iii) sulfur oxides,

(iv) nitrogen oxides,

(v) heavy metals, trace elements, radioactive materials and toxic substances,

(5) relationship to present and projected air quality of the area,

(6) monitoring programs.

(e) Solid wastes impacts:

(1) solid wastes generated,

(2) disposal programs,

(3) capacity of disposal sites,

(4) effect of disposal on environmental quality.

(f) Radiation impacts:

(1) land-use controls over development and population,

(2) disposal program for solid, liquid, gaseous, and radioactive wastes,

(3) adequacy of engineering safeguards and operating procedures,

(4) adequacy of monitoring devices and sampling techniques,

(5) adequacy of precautions against illegal diversion of nuclear materials

(g) Noise impacts:

(1) construction period levels,

(2) operational levels,

(3) relationship of present and projected noise levels to existing and potential noise standards,

(4) adequacy of monitoring devices and methods.

Section 13 directs the council to make findings and issue an opinion within 90 days after completion of the hearings and to support their decision by findings of fact and determinations on a long list of specific issues.

With our suggestion for a different composition of the council the number necessary to constitute a quorum would necessarily change. We think the voting quorum should be at least two-thirds of the total membership of the council.

Under subsection 2(a) entitled "energy needs", no mention is made of evidence being submitted on how reliable

the new facility will be in meeting needs with regard to stand-by power or emergency situations.

We question whether subsection 2(a)(4) requiring the council to weigh the promotional activities of the applicant which have contributed to the need for the new facility is a very realistic measure. We wonder about the criteria to be used in determining whether a company practice is promotional or not. We like the idea of the provision, but can the measure be meaningfully implemented?

Under subsection 2(b) entitled "land use impacts", item (2) requires a determination of "consistency with state and regional land use plans." There is no mention of local or county land use and zoning provisions which should also be considered by the council.

Subsection 2(c) covers water resource impacts. Item (1) directs consideration of the "adequacy of the water supply and the impact of the facility on stream flow, lakes and reservoirs." It would seem wise to add a few qualifying words as follows: "adequacy of the water supply and the impact of the facility on <u>the quantity and quality of</u> stream flow, waters of lakes and reservoirs."

Under water resource impacts we feel that an additional consideration of protecting the proposed facilities from floods should be mentioned. Attention to flood history and flood design should be required.

Subsection 2(d) directs consideration of air quality impacts. We suggest deletion of item (2) and a change of item (1) to read as follows: "meteorology, wind direction, velocity, temperature ranges, precipitation, inversion occurrence, topography influences and other factors influencing dispersal of particles, moisture, and gases,". We would then replace the deleted "topography" from item (2) with "quality of fossil fuel expected to be used,".

Section 14

> SECTION 14. (1) No permit may be granted for a facility which will fail to comply with state and federal standards and implementation plans for air and water quality.
>
> (2) No permit may be granted for a facility which will be constructed, in whole or in part, under cost-plus contracts or contracts subject to price negotiations after rendition of the service or delivery of the goods contracted for. This requirement may be waived with regard to a particular application by a unanimous vote of the council.

Subsection (1) requiring the denial of a permit for noncompliance with state and federal air and water quality standards appears to be a necessary and desirable requirement.

Subsection (2) allows cost-plus construction contracts only with unanimous waiver by the council. This provision may require further study. It is wondered whether cost-plus agreements may not be desirable in some cases to expedite the completion of a project.

Section 15

> SECTION 15. (1) Nothing in this act shall affect the power of state or federal agencies, departments, or commissions to regulate or control the construction, operation, or maintenance of facilities pursuant to law.
>
> (2) Nothing in this act shall prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of an energy facility.

Section 15 provides that this Act shall not affect the existing legal powers of any state or federal agencies to regulate or control energy facilities. We like the idea put forth in the Onweiler bill that would limit the need for separate approval by numerous agencies. The concept of a one-stop permit or certification process is appealing. We doubt, however, that some of the existing requirements for obtaining a water right or an effluent permit can be foregone. We would opt for some language that would ensure no unnecessary time-consuming delay in the council's application and certification process due to other agency requirements.

Sections 16 thru 22

We express no disapproval of the content or wording of the remaining provisions of the proposed Act as drafted. Following the reproduction of all these sections we provide a brief summary of each for quick reference.

SECTION 16. The council may revoke or suspend a permit:

(1) for any material false statement in the application or in accompanying statements or studies submitted by the applicant; or

(2) for a failure to maintain safety standards or to comply with the terms and conditions of the permit; or

(3) for a violation of the provisions of this act, the regulations issued thereunder, or orders of the council.

SECTION 17. (1) Any person who violates any provision of this act, or who fails, neglects, or refuses to comply with the terms of a permit or the limitations or conditions therein, or fails, neglects, or refuses to comply with a rule or an order of the council shall be liable for a civil penalty of not less than ten thousand dollars ($10,000) for each violation, failure, or refusal. Each day of continued violation is a separate offense. While the violated order is suspended, stayed, or enjoined, such penalties shall not accrue.

(2) In addition to other penalties prescribed by this act, whenever the council determines that a person is violating or is about to violate any of the provisions of this act, or any rule or order of the council, the attorney general shall bring a civil action on behalf of the state for injunctive or other appropriate relief. Upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(3) Any person may bring a civil action to enjoin a violation of this act and to recover civil penalties assessed for violations of this act. Any person, except a public officer, who brings a successful action under this subsection shall be entitled to costs, reasonable attorneys fees, and one-half (1/2) of all civil penalties and fines assessed for violations of this act. The remainder of the penalties and fines collected under this act shall be deposited in the state general fund.

SECTION 18. In addition to the civil penalties provided in section seventeen (17) of this act, any person who knowingly makes, causes to be made, or signs a false or misleading material statement in any application, report, statement, or study submitted to the council, or any person who makes, causes to be made, or signs such a false or misleading material statement without making a bona fide effort to ascertain whether the statement is in fact true, may be fined not less than ten thousand dollars ($10,000) or imprisoned for not more than one (1) year or both.

SECTION 19. The contents of the council's files, including statements, studies, reports, or applications prepared by the council or submitted to the council are hereby declared public records which shall be available for public inspection and copying during business hours.

SECTION 20. The council's decision to grant or deny a permit may be appealed in the manner specified by Sections 67-5215 and 67-5216 of the Idaho Code.

SECTION 21. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

SECTION 22. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Section 16 allows the council to revoke or suspend a permit because of material false statements, failure to comply with the conditions of the permit, or violation of the Act or regulations or orders issued by the council.

Section 17 imposes possible civil liability, of not less than $10,000, upon any person who violates the Act or does not comply with the terms of a permit, rule or order of the council. This section also authorizes the Attorney General to seek injunctive relief upon a determination of violation or imminent violation of the Act. A final provision entitles any person, except a public official, who brings a successful action enjoining violation of the Act to costs, reasonable attorneys fees and one-half of all civil penalties assessed against the violator of the Act.

Section 18 threatens both fines and imprisonment as criminal sanctions for any person who makes, causes to be made, or signs a false or misleading material statement submitted to the council without making a bona fide effort to ascertain the truth of the statement.

Section 19 declares the council's files to be public records open to public inspection and copying during business hours.

Section 20 provides for appeal of the council's decisions granting or denying a permit in accord with sections 67-5215 and 67-5216 of the Idaho Code.

Section 21 provides for the severability of any provision of the Act declared to be invalid.

Section 22 provides that the Act shall be in full force and effect immediately upon its passage and approval.

ASPECTS OF OTHER STATE'S LEGISLATION

This portion of the paper presents a limited review of the energy siting legislation of five states, four western and one eastern. Only those provisions considered relevant to the Idaho situation are discussed. We have paid special attention to those provisions which are not covered in either of the two bills proposed for Idaho, or which present a differing approach.

Arizona

Arizona, in 1971, passed an act establishing the Power Plant and Transmission Line Siting Committee.[1] In adopting the act the legislature cited the inadequacy of present procedures for protecting environmental values; the delays in construction of new power facilities due to a lack of adequate statutory procedures; and the importance to the state of economical and reliable electric service to meet continually growing demands. A declared purpose of the legislators was to provide for a single forum to expedite the resolution of all matters relating to power plant and line siting in a single proceeding.

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[1] A.R.S. §§ 40-360 to 40-360.12., effective August 13, 1971.

Following are the provisions of the Arizona statute of which we take special note:

1. Administration. The statute creates a committee consisting of eighteen members. Eleven of the members are officials of various state agencies. Of the remaining seven members, two represent the public, two represent incorporated cities and towns, two represent counties and one is a registered landscape architect. The attorney general, or his designee, acts as chairman of the committee. The committee may utilize the staff resources of its constitutent agencies as well as necessary consultants.[2]

2. Financing. Set fees are collected for each application and deposited in a utility siting fund to be used to meet the costs of processing an application.[3]

3. Evaluation. The committee must consider the following factors, among others, when it processes an application:[4]

(a) Existing plans of the state, local government and private entities for other developments at or in the vicinity of the proposed site; and

(b) The protection of areas unique because of biological wealth or because they are habitats for rare and endangered species.

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[2] Id. § 40-360.01.
[3] Id. § 40-360.09.
[4] Id. § 40-360.06.

Any certificate granted by the committee is conditioned on compliance by the applicant with all applicable ordinances, master plans and regulations of the state, county or municipality, unless found by the committee to be unreasonably restrictive and compliance not feasible in view of technology available.

Maryland

In 1971, Maryland established the State Power Plant Siting Program.[5] The Program consists of four main elements, including evaluation of sites proposed by utility companies; state acquisition of suitable power sites to be provided as alternate sites in the event a utility-owner site is determined to be unsuitable; monitoring of existing plants to evaluate the effect of construction and operating regulations; and finally a long-range research program to provide answers to problems arising under the other three elements of the program.

There has been official satisfaction with the Program to date.[6] One of the current objectives under the Program is to develop a scheme for screening regions of the state to identify areas that show good potential for power plant sites. The goal is to match given power generation technologies with environments that can accommodate the special demands of that type of facility.[7]

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5 Ann. Code Md. §§ 3-301 to 3-307.

6 Letter from K.E. Perkins, Administrator Site Acquisition, Maryland Department of Natural Resources to University of Idaho Water Resources Research Institute, December 2, 1974.

7 Id.

Following are the provisions of the Maryland statute of which we take special note:

1. Administration. The Program is administered by the secretary of natural resources in conjunction with the public service commission and the secretary of health.[8] The Program is staffed by four PhD's, two Master's level and an attorney.[9] Nearly all of the scientific investigations are performed by contractors who are chosen through a rigorous review and selection process.[10]

2. Financing. Rather than being financed by a utility-paid application fee, the entire Program is funded from a surcharge on electricity generated in the state.[11] The maximum surcharge allowed under the law is .3 mill per kilowatt hour. The utility companies are authorized to add the full amount of the surcharge to customers' bills. The amount of the surcharge is fixed each fiscal year after a budget for the Program has been approved by the state's General Assembly. The surcharge rate was initially set in 1972 at .2 mill/Kwh. For 1975 the projected rate is set at .17513 mill/Kwh.

3. Reimbursement For Research. The statute provides that utility companies may be reimbursed from the Program fund for environmental research specifically required to satisfy application and permit requirements.[12]

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8 Ann. Code Md. § 3-304.
9 Letter from K.E. Perkins, Dec. 2, 1974.
10 Id.
11 Ann. Code Md. § 3-302.
12 Id. § 3-303.

4. Site Condemnation. The statute provides for the acquisition of any power plant site by agreement or condemnation under the state condemnation law and for payment from the Program fund. Seventy-five percent of the income earned by the state from a reserved site is applied to the Program fund and twenty-five percent is returned to the county in which the site is located.[13]

5. Zoning. Any property purchased or leased under the Program may be used for power generation purposes without regard to any local zoning ordinances or regulations.[14]

Montana

The Montana legislature, on March 7, 1973, enacted the Montana Utility Siting Act of 1973.[15] The purpose cited was to ensure that the location, construction and operation of new power and energy conversion facilities will produce minimal adverse effects on the environment and citizens of the state.

Following are the provisions of the Montana statute of which we take special note:

1. Administration. The provisions of the Act are administered by the state department of natural resources and conservation through its energy planning division.[16]

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[13] Id. § 3-305.
[14] Id. § 3-305(d).
[15] Mont. Rev. Code Ann. §§ 70-801 to 70-823 (Supp. 1973).
[16] Mont. Admin. Code, 36-2.1-0100(2)(c).

The department is aided in its administration of the Act by the board of natural resources and conservation which consists of seven members appointed by the governor for four-year terms.[17]

2. Financing. Administration of the Act is principally financed through the collection of application fees based upon the estimated cost of the proposed facility.[18] A slight additional surcharge is collected from energy producers by increasing the electrical energy producers' license tax by 0.25% as collected under Chapter 16, Title 84 Montana Code.[19]

3. Local Laws. The board cannot grant a certificate unless it finds that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, such law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of the directly affected governmental subdivision.[20] If the board makes such a finding of unreasonableness regarding a state or local law it must state

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17 Id. 36-2.1-0100(1)(d).
18 Mont. Rev. Code Ann. § 70-806(2).
19 Id. § 70-805.
20 Id. § 70-810(1)(f).

in its written opinion the reasons for that finding.[21]

4. Effect of Certificate. Except for the state air and water quality agencies, no state or local agency or government may require any approval, consent, permit, certificate or other condition for the construction, operation or maintenance of a utility facility authorized by a certificate under the Act.[22]

5. Judicial Review. A party aggrieved by the board's final decision on a certificate may obtain judicial review in a state district court of competent jurisdiction within thirty days after issuance of the decision. A written record of the proceedings before the board, its decision and its opinion constitute the record on judicial review.[23] State court jurisdiction for judicial review of proceedings under the Act is limited to that jurisdiction provided by the Act.[24]

6. Aggrieved Property Holder. An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a utility to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from the operation of a utility facility.[25]

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[21] Id. § 70-811(1).
[22] Id. § 70-817.
[23] Id. § 70-812.
[24] Id. § 70-813.
[25] Id. § 70-819(3).

Oregon

Oregon established its Nuclear and Thermal Energy Council in 1971. As indicated by the title, the Act does not apply to hydroelectric plants but only to thermal or nuclear installations.

Following are the provisions of the Oregon statute of which we take special note:

1. Administration. The council consists of nine members, five appointed by the governor as public members and approved by the senate. The remaining four members are the Public Utility Commissioner, State Engineer, Administrator of the Health Division and the Director of the Department of Environmental Quality.[26]

2. Financing. Applicants for a site certificate are assessed upon application a fee amounting to $0.05 per kilowatt of the net electric capacity in the case of a proposed thermal plant and $1,000 for each $1 million of capital investment in the case of a proposed nuclear installation.[27]

Thereafter, each utility holding a site certificate is assessed an annual fee of 2.5 mills per kilowatt of net electric capacity for a thermal plant or in the case of a nuclear plant $300 for each $1 million of capital investment. The minimum fee, in any case, for each certificate is $250.

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[26] ORS § 453.435.
[27] Id. § 453.405.

3. Evaluation. Copies of site applications are furnished to the major state agencies interested for comment and recommendation.

4. Effect of Certificate. After approval of a certificate, affected state agencies must issue the appropirate permits, licenses and certificates necessary to construction and operation of the proposed facility, subject only to the conditions of the site certificate. The various state agencies, however, continue to exercise enforcement authority over the permit, license or certificate issued by their office.[28]

Washington

In 1970 Washington adopted legislation creating the Thermal Power Plant Site Evaluation Council.[29]

Following are the provisions of the Washington statute of which we take special note:

1. Administration. The council is made up of the directors, administrators, or their designees, of thirteen different state departments, agencies and commissions. A special member from the county in which a proposed site is located also sits with the council when that site is being considered.[30]

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28 Id. 453.395(5).
29 RCW §§ 80.50.010 to 80.50.900.
30 Id. § 80.50.030.

2. Counsel For the Environment. After a site application is received the attorney general appoints a counsel for the environment to represent the public and its interest in protecting the quality of the environment for the duration of the certification proceedings.[31]

3. Preemption. The Act provides that it preempts any conflicting provision, limitation, or restriction in effect under other laws of the state affecting the regulation and certification of thermal power plant sites and plants.[32] A certificate issued by the council and approved by the governor makes unnecessary any permit, certificate or similar document required by any department, agency, division, bureau, commission or board of the state represented on the council. (emphasis added).

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[31] Id. § 80.50.080.
[32] Id. § 80.50.110.

GENERAL COMMENTS AND CONCLUSIONS

To summarize the ideas in this analysis, two tables have been prepared. Table 1 compares sixteen provisions of the two legislative drafts and shows study recommendations. Table 2 is a synopsis of special features from the energy siting legislation of five other states emphasizing characteristics that might be considered in developing legislation for Idaho.

Our study leads us to a strong belief that there is need in Idaho for new power plant siting legislation, based on the following conclusions:

1. Present statutes that define the powers and duties of the Idaho Public Utilities Commission are too vague to give needed authorization to protect the state's resources and to see that proper planning is carried out with regard to power plant siting.

2. There is need for a sustained system of financing the planning, siting and regulation of energy facilities, based primarily on support from those who use the energy.

3. There is need to insure that the energy utilities of the state are protected by providing assurance that their planning and construction of facilities can go forth in an orderly and timely manner without disruption by extended lawsuits and excessive public objection.

4. There is need for a means of getting diversity of viewpoint into both the planning process and the decision-making process and at the same time provide for a harmonious interplay of state agencies which have assigned responsibilities and expertise to assist in the energy siting problem.

5. There is a desire on the part of the public to be informed as to the state's energy needs and any conservation measures provided for, and to be heard on the local desire for a given energy facility.

6. Probably most important of all is the need to develop criteria and methodology for siting facilities that will respond to statewide needs and citizen desires. Such a program should certainly contain provisions for planning and the updating of plans, as needs and technology change.

With regard to the preliminary legislation that has been drafted, we recognize that it is a good start and commend those who have had the foresight to proceed in this rather controversial area of legislative need. We would commend to all who seek to improve legislation, regulation, management and planning for energy siting the following:

1. There is need for a strong council to serve as a decision making body that will provide for diversity of viewpoint; integrated study and review by agencies that have defined responsibilities concerning energy siting; and

input from the public and local entities that are most influenced by a given site location. The preliminary bills only go part way on this need.

2. Neither of the draft bills have called for periodic reports to the governor, the legislature or the public. We believe provision should be made for reporting to the public on particular siting condition changes that occur, long-range plans, projections for energy needs, as well as conservation measures that should be implemented.

3. The problem of financing the objectives of this legislation is best handled, we believe, by a surcharge on energy used in the state and not by a licensing fee that would tend to create a boom or bust fund. The financing should be in compliance with a budgeting procedure under continual review by the legislature. Thus, we see a need for financing which is different from that proposed in the preliminary legislation drafts.

4. The evaluation procedures that are to be adopted need to give particular attention to any irreversible or irretrievable committments of resources and patterns of growth in areas where the environment would not support the development that might be generated. In this respect we commend to the students of the problem the thought that planning for energy can influence our population growth. This supports our contention in justification of new legislation, that of all importance in the siting of energy

facilities is a wise system of study and evaluation. Little emphasis toward planning appears in the preliminary bill drafts.

5. We feel that the preemption of existing licensing and regulatory provisions for power plant siting, as for example, compliance with air quality standards, cannot be effected in the regulation procedure called for in one of the legislative drafts or as specified in the Washington legislation. We ask for an efficient and expeditious licensing and permit procedure and believe that agency representation on the council will encourage the inter-agency coordination required, from the inception of the review process.

6. As a final comment we recognize the all important desire to have public involvement. The Onweiler bill proposes the use of a local referendum to measure local sentiment and allows a negative vote to block construction. We feel a better approach is to opt for the hearing process plus some kind of public attitude survey to obtain a representative sample of local reaction. We question whether the hearing process alone produces the desired objective measurement of public attitude. Some provision for the public input is necessary and another means of getting this is the naming of a special public defender, such as a representative from the Attorney General's office.

Table 1: Comparison of current legislation and recommended alternatives

Topic	Original Attorney General's Draft Bill	Onweiler Early Draft Bill	Alternatives Recommended
Names of Energy Siting Body and Act	Energy Facility Evaluation Council Idaho Utility Siting Act of 1975	Public Utility Siting Board None specified	Energy Facilities Evaluation Council Idaho Energy Facility Act of 1975
Chairperson	Chairperson of Public Utilities Commission	Chairperson of Public Utilities Commission	Chairperson of Idaho Public Utilities Commission
Member of Council	Six public members appointed by the Governor and chairperson of Public Utilities Commission served ex officio (7)	Three members of Public Utilities Commission, Director of Dept. of Water Resources, Director of Dept. of Health and Welfare, two public members appointed by Governor (7)	Chairperson of Public Utilities Commission, Director or his designee from each of the following state agencies: Dept. of Health & Welfare, Dept. of Fish & Game, Dept. of Water Resources, Dept. of Planning & Community Affairs, Dept. of Lands, Nuclear Energy Commission, Dept. of Agriculture, and Dept. of Transportation, a special regional representative and two public members appointed by the Governor
Term of Office (non-agency)	Six years	Six years	Six years
Executive Director	Director of the State Office of Energy	None mentioned	Recommendation from the Council and appointed by the Governor
Staff	Not defined but possible to appoint	Public Utilities Commission Staff	Small separate staff operating under direction of the council
Name of Certificate	Permit	Certification of environmental compatability and public needs	Energy facility permit
Who Must Apply	All persons	All except federal agencies	All persons (entities) including federal agencies where state jurisdiction applies
Minimum Plant Size Requiring Certification Permit	50 megawatts. 50,000 barrels of liquid hydrocarbons. 100,000,000 cubic feet of gas per day. Additions in excess of $250,000. When storage of radioactive wastes are involved. All geothermal resources. Plants enriching radioactive minerals.	50 megawatts. 50,000 barrels of liquid hydrocarbon products. 100,000,000 cubic feet of gas per day.	Same as Attorney General's draft and water facilities to any facilities of the magnitude listed

Table 1 (continued)

Topic	Original Attorney General's Draft Bill	Onweiler Early Draft Bill	Alternatives Recommended
Transmission Lines	In excess of 10 miles or 34.5 KW or more capacity, liquid hydrocarbon or gas	115,000 Volts Liquid hydrocarbon or gas	In excess of 10 miles or 34.5 KW or more capacity. Liquid hydrocarbon or gas for above capacities. Water transmission for energy facilities of above facilities
Fees or Financing	Sum of: 1. 3% of cost estimate up to $1,000,000 2. 1% of cost estimate over $1,000,000 up to $20,000,000 3. 0.5% of estimated cost over $20,000,000 up to $100,000,000 4. 0.25% of estimated cost over $100,000,000 up to $300,000,000 5. 0.1% of estimated cost over $300,000,00 No annual fee indicated	Same as A.G. draft bill with study costs exceeding the amount charged to be applicant. All unexpended money returned to the applicant. No annual fee indicated.	Recommend a surcharge on kilowatt hours of energy used or produced in the state with upper limit set by statute and a budget that must be defined through regular legislative review.
Public Hearings	Within 9 months from date application is filed. Adequate publicity	Not less than 180 days from date of application. Adequate publicity	Within 9 months from date of application is filed and at least one hearing in the local area where site is proposed
County Approval	Nothing specified except local government to be notified and to have standing in hearings	Election to be held on application approval upon proper petitions being filed	Representation in decision making provided for by special number on council. Recommended survey of public attitudes.
Time Limit of Approval	Within 90 days after hearing	Not specified	Within 90 days after hearings and provisions for extension publicly announced.
Independent Studies Sanctioned	Yes	Yes	Yes, through concurrence of the council
State Agency Review	Administration, Employment, Fish & Game, Health & Welfare, Transportation, Labor & Industry, Parks & Recreation, Water Resources and Tax Commission	Administration, Employment, Fish & Game, Health & Welfare, Transportation, Labor & Industry, Parks & Recreation, Water Resources, Tax Commission, Industrial Commission, Public Utilities Commission	All state agencies notified to have review and emphasis in council taking the decision making in a coordinated body giving a maximum of state agency input

Table 2: Synopsis of special provisions of other states' legislation

Provisions for Comment	Washington	Oregon	Montana	Maryland	Arizona
Date of Passage of Act	1970	1971	1973	1971	1971
Composition of Membership	Representatives from 13 state agencies and commissions and county representative separate council	9 members, 5 public members at large, 4 state agency heads	7-member Board of Natural Resources not a separate council	Administer through Department of Natural Resources, Dept. of Health and Public Service Commission	18-member committee, 11 members from state agencies, 2 public at large 2 counties, 2 local government, 1 landscape architect
Nature of Staff	small staff	small staff of consultants and employee	A part of Energy Division of Energy of Natural Resources and Conservation	small independent staff	Use staffs of the constituent agencies
Nature of Financing	Application fee approach	Fee of $0.05 per KW for thermal power plant, $1000 per 1 million dollars of capital investment for nuclear plants. Also an annual fee 2.5 mill/KW	Fee based on cost of energy development	Surcharge on energy generated. Maximum surcharge 0.3 mills per kilowatt hour. Utilities authorized to add to customer bill	Fee deposited in utility siting fund to meet cost of processing permit
Requirement for Other Certification	Preempts restrictions of other laws affecting certification of thermal power plant sites and plants	Conditioned on compliance with all other ordinances, plans and regulations	Local compliance required but exception possible if necessary compliance is not reasonable	Has preemption clause as to local ordinances	Conditioned on compliance but has an exception for unreasonable restraint
Land Acquisition or Land Reservation Program	None	None	None	Has a program	None