**1173-S.E AMS ENET S2684.1 - NOT FOR FLOOR USE**

**ESHB 1173** - S COMM AMD

By Committee on Environment, Energy & Technology

**NOT ADOPTED 04/07/2023**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)"Department" means the department of ecology.

(2) "Hub height" means the distance from the ground to the middle of a wind turbine's rotor.

(3) "Light-mitigating technology system" means aircraft detection lighting or any other comparable system capable of reducing the impact of facility obstruction lighting while maintaining conspicuity sufficient to assist aircraft in identifying and avoiding collision with a utility-scale wind energy facility.

(4) "Power offtake agreement" means a long-term contract that provides for the provision of the whole or any part of the available capacity or the sale or other disposal of the whole or any part of the output of a utility-scale wind energy facility.

(5) "Repowering" means a rebuild or refurbishment of a turbine or facility that is required due to the turbine or facility reaching the end of its useful life or useful reasonable economic life. The rebuild or refurbishment does not constitute repowering if it is part of routine major maintenance or the maintenance of or replacement of equipment that does not materially affect the expected physical or economical life of the turbine or facility.

(6) "Utility-scale wind energy facility" means a facility used in the generation of electricity by means of turbines or other devices that capture and employ the kinetic energy of the wind and:

(a) Is required under federal aviation administration regulations, guidelines, circulars, or standards, as they existed as of January 1, 2023, to have obstruction lights; or

(b) Has at least one obstruction light and at least one wind turbine with a hub height of at least 75 feet above ground level.

NEW SECTION. **Sec.**  (1) On and after July 1, 2023, no new utility-scale wind energy facility shall commence operations unless the developer, owner, or operator of the facility applies to the federal aviation administration for installation of a light-mitigating technology system that complies with federal aviation administration regulations, 14 C.F.R. § 1.1 et seq. If approved by the federal aviation administration, the developer, owner, or operator of such utility-scale wind energy facility shall install the light-mitigating technology system on approved turbines within 24 months after receipt of such approval.

(2) On and after January 1, 2025, or upon the completion of repowering, whichever is earlier, any developer, owner, or operator of a utility-scale wind energy facility that has commenced operations without a light-mitigating technology system shall apply to the federal aviation administration for installation and operation of a light-mitigating technology system that complies with federal aviation administration regulations, 14 C.F.R. § 1.1 et seq., within six months after the execution of a new power offtake agreement related to such utility-scale wind energy facility. If approved by the federal aviation administration, the developer, owner, or operator of such utility-scale wind energy facility shall install the light-mitigating technology system on approved turbines within 24 months following such approval.

(3) Prior to construction, operation, or repowering of any utility scale wind energy facility, the board of county commissioners of any county in which construction is proposed may determine the type of light-mitigating technology system that shall be used on such wind energy facility. The developer shall submit an application to the board on a form and in the manner specified by the board proposing the light-mitigating technology system that such developer will install and maintain upon such wind energy facility. The board shall have the authority to approve the proposed light-mitigating technology system or to require the installation of another light-mitigating technology system to serve the public interest.

NEW SECTION. **Sec.**  (1) A violation of the requirements of this chapter is punishable by a civil penalty of up to $5,000 per day per violation. Penalties are appealable to the pollution control hearings board.

(2)(a) The department may enforce the requirements of this chapter.

(b) Enforcement of this chapter by the department must rely on notification and information exchange between the department and utility-scale wind energy facility owners or operators. The department must prepare and distribute information regarding this chapter to utility-scale wind energy facility owners and operators to help facility owners and operators in their advance planning to meet the deadlines.

(c)(i) If the department obtains information that a facility is not in compliance with the requirements of this chapter, the department may issue a notification letter by certified mail to the facility owner or operator and offer information or other appropriate assistance regarding compliance with this chapter. If compliance is not achieved within 60 days of the issuance of a notification letter under this subsection, the department may assess penalties under this section.

(ii) The department may delay any combination of the issuance of a notification letter under this subsection (2)(c), the 60-day period in which compliance with the requirements of this chapter must be achieved, or the imposition of penalties for good cause shown due to:

(A) Supply chain constraints, including lack of light-mitigating technology system availability;

(B) Lack of contractor availability;

(C) Lighting system permitting delays; or

(D) Technological feasibility considerations.

**Sec.**  RCW 43.21B.110 and 2022 c 180 s 812 are each amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70A.15 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.65.200, 70A.455.090, section 3 of this act, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070, 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70A.205.260.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70A.205 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70A.226.090.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70A.205.145.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(i) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(j) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(k) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW, to issue a stop work order, to issue a notice to comply, to issue a civil penalty, or to issue a notice of intent to disapprove applications.

(l) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(m) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(n) Decisions of the department of ecology that are appealable under RCW 70A.245.020 to set recycled minimum postconsumer content for covered products or to temporarily exclude types of covered products in plastic containers from minimum postconsumer recycled content requirements.

(o) Orders by the department of ecology under RCW 70A.455.080.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100, 70A.15.3110, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

NEW SECTION. **Sec.**  A new section is added to chapter 43.21C RCW to read as follows:

(1) Actions to mitigate light pollution at a utility-scale wind energy facility as required under section 2 of this act, are categorically exempt from the requirements of this chapter.

(2) For the purposes of this section, "utility-scale wind energy facility" has the same meaning as defined in section 1 of this act.

NEW SECTION. **Sec.**  Sections 1 through 3 of this act constitute a new chapter in Title 70A RCW.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

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On page 1, line 2 of the title, after "infrastructure;" strike the remainder of the title and insert "amending RCW 43.21B.110; adding a new section to chapter 43.21C RCW; adding a new chapter to Title 70A RCW; prescribing penalties; and declaring an emergency."

EFFECT: (1) Removes the definition for aircraft detection lighting system.

(2) Provides definitions for light-mitigating technology system, power offtake management, and repowering.

(3) Removes the provisions related to requiring an owner or operator of existing and new utility-scale wind energy facilities to operate with an aircraft detection lighting system to mitigate light pollution.

(4) Specifies no new utility-scale wind energy facility, on and after July 1, 2023, shall commence operations unless the facility applies to the Federal Aviation Administration (FAA) for installation of a light-mitigating technology system that complies with FAA requirements.

(5) Specifies any developer, owner, or operator of a utility-scale wind energy facility, on and after January 1, 2025, or upon completion of repowering, that has commenced operations without a light-mitigating technology system shall apply to the FAA for installation of a light-mitigating technology system that complies with FAA requirements.

(6) Authorizes the board of county commissioners of any county in which construction is proposed, prior to construction, operation, or repowering of any utility-scale wind energy facility, to determine the type of light-mitigating technology system that shall be used on such facility.

(7) Removes the specification that a utility-scale wind energy facility owner or operator that applies for approval of an aircraft detection lighting system prior to January 1, 2026, but has not received FAA approval by July 1, 2026, may not be assessed a penalty until at least six months after the FAA issues its determination.

(8) Removes the Department of Ecology's authority to adopt by rule a light mitigation standard that references a more recent version of any FAA regulation.

(9) Removes the specification that only a utility-scale wind energy facility that has received site certification from Energy Facility Site Evaluation Council or all applicable permits from state agencies and local governments are exempt from review under the State Environmental Policy Act.