

ESHB 1173 - S COMM AMD

By Committee on Environment, Energy & Technology

NOT ADOPTED 04/07/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires
5 otherwise.

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

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

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

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

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

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

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

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

3 NEW SECTION. **Sec. 2.** (1) On and after July 1, 2023, no new
4 utility-scale wind energy facility shall commence operations unless
5 the developer, owner, or operator of the facility applies to the
6 federal aviation administration for installation of a light-
7 mitigating technology system that complies with federal aviation
8 administration regulations, 14 C.F.R. § 1.1 et seq. If approved by
9 the federal aviation administration, the developer, owner, or
10 operator of such utility-scale wind energy facility shall install the
11 light-mitigating technology system on approved turbines within 24
12 months after receipt of such approval.

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

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

37 NEW SECTION. **Sec. 3.** (1) A violation of the requirements of
38 this chapter is punishable by a civil penalty of up to \$5,000 per day

1 per violation. Penalties are appealable to the pollution control
2 hearings board.

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

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

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

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

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

26 (B) Lack of contractor availability;

27 (C) Lighting system permitting delays; or

28 (D) Technological feasibility considerations.

29 **Sec. 4.** RCW 43.21B.110 and 2022 c 180 s 812 are each amended to
30 read as follows:

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

38 (a) Civil penalties imposed pursuant to RCW 18.104.155,
39 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,

1 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,
2 70A.65.200, 70A.455.090, section 3 of this act, 76.09.170, 77.55.440,
3 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
4 90.56.330, and 90.64.102.

5 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
6 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
7 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250,
8 90.48.120, and 90.56.330.

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

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

19 (e) Decisions of local health departments regarding the issuance
20 and enforcement of permits to use or dispose of biosolids under RCW
21 70A.226.090.

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

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

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

35 (i) Decisions of the department of natural resources, the
36 department of fish and wildlife, and the department that are
37 reviewable under chapter 76.09 RCW, and the department of natural
38 resources' appeals of county, city, or town objections under RCW
39 76.09.050(7).

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

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

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

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

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

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

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

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

24 (b) Hearings conducted by the department pursuant to RCW
25 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
26 70A.15.3110, and 90.44.180.

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

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

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

34 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.21C
35 RCW to read as follows:

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

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

3 NEW SECTION. **Sec. 6.** Sections 1 through 3 of this act
4 constitute a new chapter in Title 70A RCW.

5 NEW SECTION. **Sec. 7.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of
11 the state government and its existing public institutions, and takes
12 effect immediately."

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13 On page 1, line 2 of the title, after "infrastructure;" strike
14 the remainder of the title and insert "amending RCW 43.21B.110;
15 adding a new section to chapter 43.21C RCW; adding a new chapter to
16 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.

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