HOUSE BILL REPORT
ESHB 1173

As Amended by the Senate

Title: An act relating to reducing light pollution associated with certain energy infrastructure.

Brief Description: Reducing light pollution associated with certain energy infrastructure.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Connors, Klicker and Rude).

Brief History:
Committee Activity:
Environment & Energy: 1/16/23, 2/2/23 [DPS].
Floor Activity:
Passed House: 2/27/23, 94-1.
Senate Amended.
Passed Senate: 4/7/23, 48-1.

Brief Summary of Engrossed Substitute Bill

- Requires new and existing wind energy facilities to mitigate light pollution through the use of aircraft detection lighting systems, or through alternative forms of light mitigation if federal requirements preclude the installation of an aircraft detection lighting system at a facility.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Doglio, Chair; Mena, Vice Chair; Dye, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; Abbarno, Barnard, Berry, Couture, Duerr, Fey, Goehner, Lekanoff, Ramel, Slatter and Street.

Staff: Jacob Lipson (786-7196).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Energy Facility Siting.

The Energy Facility Site Evaluation Council (EFSEC) was established in 1970 to provide a single siting process for major energy facilities located in the state. The EFSEC coordinates all evaluation and licensing steps for siting certain energy facilities, as well as specifies the conditions of construction and operation. After evaluating an application, the EFSEC submits a recommendation either approving or rejecting an application to the Governor, who makes the final decision on site certification. This recommendation must be reported to the Governor within 12 months of application receipt, or at a later time if agreed to by the applicant and the EFSEC. The recommendation must include a draft certification agreement, which must include various conditions including conditions to protect state, local, and community interests affected by the construction or operation of the energy facility. If approved by the Governor, a site certification agreement is issued in lieu of any other individual state or local agency permits.

The laws that require or allow a facility to seek certification through the EFSEC process apply to the construction, reconstruction, and enlargement of energy facilities, biorefineries, and electrical transmission facilities, with many specifications. Energy facilities of any size that exclusively use alternative energy resources such as wind or solar energy may opt into the EFSEC review and certification process. Energy facilities that exclusively use alternative energy resources that choose not to opt in to the EFSEC review and certification process must instead receive applicable state and local agency development and environmental permits for their projects directly from each agency.

Light Pollution and Mitigation.
The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. Projects and government decisions undergoing environmental review under SEPA must evaluate associated potential impacts to light and glare, aesthetics, and scenic resources, among other elements of the environment covered by SEPA review.

Some cities and counties have adopted ordinances that regulate aspects of outdoor lighting. Ordinances adopted by local governments in Washington to limit outdoor lighting include measures that:

- limit the illuminating power of outdoor lights;
- specifically restrict certain uses of lighting, such as illuminated athletic fields or industrial sources of light; or
- require that outdoor lights be positioned or shaded so as to limit illumination of neighboring properties or other features.

Federal Aviation Administration Requirements.

The Federal Aviation Administration (FAA) has adopted rules and advisory standards that apply to obstructions that have been deemed a hazard to air navigation, including structures that reach at least 500 feet above the ground. Specific FAA standards apply to the lighting of wind turbines, and also establish performance specifications for aircraft detection lighting systems, which are sensor-based systems designed to detect aircraft as they approach an obstruction or group of obstructions.

Summary of Engrossed Substitute Bill:

Utility-scale wind energy owners or operators must operate with an aircraft detection lighting system (ADLS) to mitigate light pollution from the facility consistent with the following:

- ADLSs are defined as sensor-bases systems that detect approaching aircraft, automatically activate obstruction lights until no longer needed by aircraft, and that the Federal Aviation Administration (FAA) has approved as meeting 2020 FAA standards for ADLSs. By rule, the Department of Ecology (Ecology) may update light mitigation standards to reference ADLS standards that incorporate more a recent version of an FAA regulation, guideline, circular, or standard.
- Utility-scale wind energy facilities include any facilities for which the FAA requires obstruction lights or any facility with at least one wind turbine of at least 75 feet in height, and obstruction lights.

If a facility is precluded from using an ADLS as a consequence of federal requirements, the facility must mitigate light pollution through the best practicable light mitigation means, as demonstrated to Ecology.

ADLS light mitigation requirements apply beginning January 1, 2027, for existing wind energy facilities that have received site certification through the Energy Facility Site Evaluation Council (EFSEC) or all applicable permits from state agencies and local governments. For all other facilities, the requirements begin upon completion of construction of the facility.

Ecology must prepare and distribute information regarding light mitigation requirements to wind energy facility owners and operators. Ecology is authorized to enforce light mitigation requirements, and violations of light mitigation requirements are subject to a $5,000 penalty per violation per day. Penalties may not be issued until at least 60 days after the issuance of a written notification letter of a violation to a facility owner or operator. Ecology may delay issuing pre-penalty warning notices or penalties for good cause shown due to supply chain constraints, lack of contractor availability, lighting system permitting delays, or technological feasibility considerations. Penalties are appealable to the Pollution Control Hearings Board. Ecology may not penalize a wind energy facility operator that submits an ADLS application to the FAA by January 1, 2026, but that has not received an FAA determination as of July 1, 2026, until six months after the FAA issues a determination on the application.

Actions to mitigate light pollution at an existing wind energy facility are exempt from review under the State Environmental Policy Act.

A severability clause is included.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment makes the following changes:

- authorizes utility-scale wind energy facilities to meet light pollution mitigation requirements through light mitigating technology systems other than aircraft detection lighting systems (ADLS);
- limits light pollution mitigation requirements to apply only to utility-scale wind energy facilities with at least five turbines;
- requires utility-scale wind energy facilities that commence operations after July 1, 2023, to apply to the Federal Aviation Administration (FAA) for the installation of a light mitigating technology system, and install a light pollution mitigating system within 24 months of FAA approval;
- requires utility-scale wind energy facilities that commenced operations without an ADLS to apply to the FAA to install a light mitigating technology system that achieves comparable light mitigation outcomes to an ADLS, and to install a light pollution mitigation system with 24 months of FAA approval, beginning January 1, 2028, or upon the repowering of a facility, whichever is earlier;
- authorizes county legislative authorities to adopt a wind energy ordnance that includes specifications for aviation obstruction light-mitigating technology systems, and requires utility-scale wind energy facility owners, operators, and developers to comply with such county ordinances;
- eliminates the requirement that facilities that do not obtain FAA approval for an ADLS instead use the best practicable means of light pollution mitigation; and
- expands the State Environmental Policy Act (SEPA) exemption to apply to all required light pollution mitigation actions by utility-scale wind energy facilities, rather than just those occurring at facilities that had received permits or been site certified as of 2023.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) The blinking lights on windmills can be a distraction and detract from the beauty of the communities that they are situated in. Other states have enacted laws to

require motion sensors to be attached to windmill lights in order to reduce the number of hours that they remain on. Warning lights need to be on windmills for aircraft safety, but do not need to be activated more than two or three percent of the time in some cases. These aircraft detection lighting systems turn the lights on when planes are nearby, and then shut them off as soon as the airplane is a safe distance away. Many new windmill facilities are anticipated to be sited in Eastern Washington, and a particularly large windfarm is slated to be sited within a few miles of the Tri-Cities that will have significant impacts on a large number of people. Blinking windmill lights and other impacts from the project have the potential to affect the mental health of nearby residents and hurt the tourism industry. It is not cost-prohibitive to install aircraft detection lighting systems, and represents a small fraction of the overall cost of a wind energy development project. The people of the Tri-Cities will appreciate the Legislature for making this step to reduce the public health impacts on them.

(Opposed) None.

(Other) Businesses would be concerned if the requirements to retrofit existing wind energy facilities resulted in higher electric power rates. The requirements on wind energy facilities to mitigate light pollution should not be so stringent that it results in facilities being sited outside of Washington instead of in Washington.

Persons Testifying: (In support) Representative April Connors, prime sponsor; Paul Krupin; and James Conca, UFA Ventures.

(Other) Peter Godlewski, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.