

SENATE BILL REPORT

ESHB 1173

As Reported by Senate Committee On:
Environment, Energy & Technology, March 28, 2023

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: Passed House: 2/27/23, 94-1.

Committee Activity: Environment, Energy & Technology: 3/17/23, 3/28/23 [DPA].

Brief Summary of Amended Bill

- Requires new and existing utility-scale wind energy facilities to apply to the Federal Aviation Administration (FAA) for installation of a light-mitigating technology system that complies with FAA regulations by specified deadlines.
- Authorizes the Department of Ecology to enforce the light-mitigating technology system requirements.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass as amended.

Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; MacEwen, Ranking Member; Boehnke, Lovick, Short, Trudeau and Wellman.

Staff: Angela Kleis (786-7469)

Background: Energy Facility Siting. The Energy Facility Site Evaluation Council (EFSEC) was established in 1970 to provide a single siting process for major energy

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facilities located in the state. EFSEC coordinates all evaluation and licensing steps for siting certain energy facilities, as well as specifies the conditions of construction and operation. 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 and aesthetics among other elements of the environment covered by SEPA review.

Federal Aviation Administration Requirements. Under federal law, the Federal Aviation Administration (FAA) has exclusive authority to regulate U.S. airspace. The FAA adopted rules and advisory standards that apply to obstructions 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 light-mitigating technology.

Summary of Amended Bill: On and after July 1, 2023, no new utility-scale wind energy facility (facility) shall commence operations unless the developer, owner, or operator of the facility applies to the FAA for installation of a light-mitigating technology system (system) that complies with FAA regulations.

On or after January 1, 2025, or upon the completion of repowering, whichever is earlier, any developer, owner, or operator of a facility that has commenced operations without a system must apply to the FAA for installation and operation of a system that complies with FAA regulations.

Prior to construction, operation, or repowering of any 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 facility.

The Department of Ecology (Ecology) may enforce system requirements and must prepare and distribute information regarding system requirements to owners and operators. A violation of these requirements is subject to a \$5,000 penalty, per day, per violation. Penalties are appealable to the Pollution Control Hearings Board. If Ecology obtains

information that a facility is not in compliance with system requirements, it may issue a notification letter to the facility owner and offer information regarding compliance. If compliance is not achieved within 60 days of the notification letter, Ecology may assess penalties. Ecology may delay enforcement due to specified purposes, such as for good cause shown due to supply chain constraints, lack of contractor availability, lighting system permitting delays, or technological feasibility considerations.

Actions to mitigate light pollution at a facility are exempt from review under SEPA.

EFFECT OF ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE AMENDMENT(S):

- Removes the definition for aircraft detection lighting system.
- Provides definitions for light-mitigating technology system, power offtake management, and repowering.
- 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.
- Specifies no new utility-scale wind energy facility, on and after July 1, 2023, shall commence operations unless the facility applies to the FAA for installation of a light-mitigating technology system that complies with FAA requirements.
- 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.
- 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.
- 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.
- 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.
- Removes the specification that only a utility-scale wind energy facility that has received site certification from EFSEC or all applicable permits from state agencies and local governments are exempt from review under SEPA.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The FAA regulations specify light mitigating technology requirements; however, these systems create unsightly problems during the day and at night. The flashing red lights are an eye-sore, intrusion, and can have impacts on people's health and the economy. There are options available to mitigate the flashing lights and have been successful in other states. The bill provides exemptions for areas where light mitigating technology would not be approved. Dark skies can be safe skies.

CON: This bill needs to provide flexibility for existing facilities that are currently compliant with FAA requirements. It would be appropriate to require compliance at new facilities or when an existing facility is repowering.

OTHER: The bill needs to provide an exemption for projects near military areas as it is not clear if ADLS will be approved by the FAA in those areas.

Persons Testifying: PRO: Representative April Connors, Prime Sponsor; James Conca; Paul Krupin, Tri-Cities Cares.

CON: Spencer Gray, Northwest & Intermountain Power Producers Coalition; Jeff Gombosky, Renewable Northwest.

OTHER: Steve Taylor, Cowlitz Public Utility District No. 1.

Persons Signed In To Testify But Not Testifying: No one.