
ENGROSSED SUBSTITUTE HOUSE BILL 1173

State of Washington 68th Legislature 2023 Regular Session

By House Environment & Energy (originally sponsored by
Representatives Connors, Klicker, and Rude)

READ FIRST TIME 02/03/23.

1 AN ACT Relating to reducing light pollution associated with
2 certain energy infrastructure; amending RCW 43.21B.110; adding a new
3 section to chapter 43.21C RCW; adding a new chapter to Title 70A RCW;
4 prescribing penalties; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

9 (1) "Aircraft detection lighting system" means a sensor-based
10 system that:

11 (a) Is designed to detect approaching aircraft;

12 (b) Automatically activates appropriate obstruction lights until
13 the lights are no longer needed by the aircraft; and

14 (c) The federal aviation administration has approved as meeting
15 the requirements set forth in chapter 10 of the federal aviation
16 administration's 2020 advisory circular AC 70/7460-1M, "Obstruction
17 marking and lighting."

18 (2) "Department" means the department of ecology.

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

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

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

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

9 NEW SECTION. **Sec. 2.** (1) Except as provided in subsection (2)
10 of this section, an owner or operator of a utility-scale wind energy
11 facility must operate with an aircraft detection lighting system to
12 mitigate light pollution from the facility.

13 (2) The owner or operator of a utility-scale wind energy facility
14 that is precluded from using an aircraft detection lighting system as
15 a consequence of any requirement of federal law must mitigate light
16 pollution from the facility through alternative means demonstrated to
17 the department to be the best practicable light mitigation option for
18 the facility.

19 (3)(a) The requirements of this section apply beginning January
20 1, 2027, to utility-scale wind energy facilities that have received
21 site certification under chapter 80.50 RCW or all applicable land
22 use, environmental, and building permits from state agencies and
23 local governments prior to the effective date of this section.

24 (b) The requirements of this section apply, beginning on the
25 effective date of this section, upon the completion of construction
26 of a facility to all utility-scale wind energy facilities not
27 specified in (a) of this subsection.

28 (4) Nothing in this section requires mitigation of light
29 pollution to be carried out in a manner that conflicts with federal
30 requirements, including requirements of the federal aviation
31 administration.

32 NEW SECTION. **Sec. 3.** (1) A violation of the requirements of
33 this chapter is punishable by a civil penalty of up to \$5,000 per day
34 per violation. Penalties are appealable to the pollution control
35 hearings board.

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

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

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

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

20 (A) Supply chain constraints, including lack of aircraft
21 detection lighting system availability;

22 (B) Lack of contractor availability;

23 (C) Lighting system permitting delays; or

24 (D) Technological feasibility considerations.

25 (d) A utility-scale wind energy facility owner or operator
26 specified in section 2(3)(a) of this act that applies for the
27 approval of an aircraft detection lighting system to the federal
28 aviation administration prior to January 1, 2026, but that has not
29 received a determination to approve the aircraft detection lighting
30 system by the federal aviation administration as of July 1, 2026, may
31 not be assessed a penalty under this chapter until at least six
32 months after the federal aviation administration issues its
33 determination on the application of the utility-scale wind energy
34 facility's proposed aircraft detection lighting system.

35 (3) The department may adopt by rule a light mitigation standard
36 that references a more recent version of any federal aviation
37 regulation, guideline, circular, or standard referenced in section 1
38 of this act in order to maintain consistency between this chapter and
39 federal aviation administration requirements.

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

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

10 (a) Civil penalties imposed pursuant to RCW 18.104.155,
11 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
12 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,
13 70A.65.200, 70A.455.090, section 3 of this act, 76.09.170, 77.55.440,
14 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
15 90.56.330, and 90.64.102.

16 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
17 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
18 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250,
19 90.48.120, and 90.56.330.

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

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

30 (e) Decisions of local health departments regarding the issuance
31 and enforcement of permits to use or dispose of biosolids under RCW
32 70A.226.090.

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

37 (g) Decisions of local conservation districts related to the
38 denial of approval or denial of certification of a dairy nutrient
39 management plan; conditions contained in a plan; application of any
40 dairy nutrient management practices, standards, methods, and

1 technologies to a particular dairy farm; and failure to adhere to the
2 plan review and approval timelines in RCW 90.64.026.

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

6 (i) Decisions of the department of natural resources, the
7 department of fish and wildlife, and the department that are
8 reviewable under chapter 76.09 RCW, and the department of natural
9 resources' appeals of county, city, or town objections under RCW
10 76.09.050(7).

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

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

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

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

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

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

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

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

34 (b) Hearings conducted by the department pursuant to RCW
35 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
36 70A.15.3110, and 90.44.180.

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

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

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

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

6 (1) Actions to mitigate light pollution at a utility-scale wind
7 energy facility that has received site certification under chapter
8 80.50 RCW or all applicable land use, environmental, and building
9 permits from state agencies and local governments prior to the
10 effective date of this section, as required under section 2 of this
11 act, are categorically exempt from the requirements of this chapter.

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

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

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

20 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of
22 the state government and its existing public institutions, and takes
23 effect immediately.

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