CERTIFICATION OF ENROLLMENT

**ENGROSSED SUBSTITUTE HOUSE BILL 1173**

Chapter 344, Laws of 2023

(partial veto)

68th Legislature

2023 Regular Session

WIND ENERGY FACILITIES—LIGHT POLLUTION

EFFECTIVE DATE: July 23, 2023

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| Passed by the House April 14, 2023  Yeas 95 Nays 1  LAURIE JINKINS  **Speaker of the House of Representatives**  Passed by the Senate April 7, 2023  Yeas 48 Nays 1  DENNY HECK  **President of the Senate** | CERTIFICATE  I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1173** as passed by the House of Representatives and the Senate on the dates hereon set forth.  BERNARD DEAN  Chief Clerk |
| Approved May 9, 2023 10:40 AM with the exception of sections 3 and 9, which are vetoed. | May 10, 2023 |
| JAY INSLEE  **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**ENGROSSED SUBSTITUTE HOUSE BILL 1173**

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AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

**State of Washington 68th Legislature 2023 Regular Session**

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

AN ACT Relating to reducing light pollution associated with certain energy infrastructure; amending RCW 43.21B.110; adding a new section to chapter 36.01 RCW; adding a new section to chapter 43.21C RCW; adding a new chapter to Title 70A RCW; prescribing penalties; and declaring an emergency.

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

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

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

(a) Is designed to detect approaching aircraft;

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

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

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

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

(4) "Light-mitigating technology system" means aircraft detection lighting or another federal aviation administration-approved system capable of reducing the impact of aviation obstruction lighting while maintaining conspicuity sufficient to assist aircraft in identifying and avoiding collision with 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) Except as provided in section 3 of this act, beginning July 1, 2023, no new utility-scale wind energy facility with five or more turbines 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, as they existed as of the effective date of this section. 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. If not approved by the federal aviation administration, the developer, owner, or operator of such utility-scale wind energy facility is not subject to this chapter.

(2) Except as provided in section 3 of this act, beginning January 1, 2028, or upon the completion of repowering, whichever is earlier, any developer, owner, or operator of a utility-scale wind energy facility with five or more turbines that has commenced operations without an aircraft detection lighting system shall apply to the federal aviation administration for installation and operation of a light-mitigating technology system that achieves comparable light mitigation outcomes to an aircraft detection lighting system and that complies with federal aviation administration regulations, as they existed as of the effective date of this section. 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. If not approved by the federal aviation administration, the developer, owner, or operator of such utility-scale wind energy facility is not subject to this chapter.

(3) A developer, owner, or operator of a utility-scale wind energy facility shall comply with any wind energy ordinance adopted by a legislative authority of a county pursuant to section 3 of this act.

(4) Nothing in this section requires mitigation of light pollution to be carried out in a manner that conflicts with federal requirements, including requirements of the federal aviation administration or the United States department of defense.

NEW SECTION. **Sec.**  A new section is added to chapter 36.01 RCW to read as follows:

(1) A legislative authority of any county may adopt a wind energy ordinance that includes specifications for aviation obstruction light-mitigating technology systems. In adopting an ordinance under this section, the county legislative authority shall consider whether affected wind energy facilities have caused, or will cause, light impacts requiring mitigation. Additional criteria related to the selection of light-mitigating technology systems may include the costs associated with the installation of such a system, the economic impact to a developer, owner, or operator of the installation of such a system, conditions under which light mitigation is required, and the type of system that best serves the public interest of the county. Nothing in this section authorizes a county to deny a permit application for a wind energy facility where the use of a light-mitigating technology system is not allowed by the federal aviation administration, United States department of defense, or if it is determined by the county to be impracticable.

(2) The definitions in section 1 of this act apply throughout this section unless the context clearly requires otherwise.

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.

(3) A utility-scale wind energy facility owner or operator of a facility that has commenced operations prior to January 1, 2023, that applies for the approval of a light-mitigating technology system to the federal aviation administration prior to January 1, 2027, but that has not received a determination to approve the system by the federal aviation administration as of July 1, 2027, may not be assessed a penalty under this chapter until at least 24 months after the federal aviation administration issues its determination on the application of the utility-scale wind energy facility's proposed light-mitigating technology system.

(4) The department may adopt by rule a light mitigation standard that references a more recent version of any federal requirements referenced in section 2 of this act in order to maintain consistency between this chapter and federal aviation administration requirements.

**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 4 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, 2, and 4 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.

**--- END ---**

Passed by the House April 14, 2023.

Passed by the Senate April 7, 2023.

Approved by the Governor May 9, 2023, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 10, 2023.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Sections 3 and 9, Engrossed Substitute House Bill No. 1173 entitled:

"AN ACT Relating to reducing light pollution associated with certain energy infrastructure."

This bill generally provides clear requirements for installation of FAA-approved light-mitigation systems on both existing and new wind energy facilities. However, Section 3 adds a confusing layer of direction for local governments by stating that they may adopt ordinances that may include specifications for light-mitigating systems. The provision is confusing because it states such ordinances may contain criteria including "conditions under which light mitigation is required", but the underlying bill makes clear that all wind energy facilities require light mitigation. Additionally, such ordinances could dictate which particular light mitigation system a facility-operator must use and could create a patchwork of different requirements that vary by jurisdiction. The bill delivers clearer and more consistent light-mitigation benefits for communities without Section 3.

Section 9 is an emergency clause. However, the requirements of this bill are not "necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions".

For these reasons I have vetoed Sections 3 and 9 of Engrossed Substitute House Bill No. 1173.

With the exception of Sections 3 and 9, Engrossed Substitute House Bill No. 1173 is approved."