

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

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**

Approved May 9, 2023 10:40 AM with  
the exception of sections 3 and 9,  
which are vetoed.

JAY INSLEE

**Governor of the State of Washington**

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**

FILED

May 10, 2023

**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)

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 36.01 RCW; adding a new section to chapter 43.21C  
4 RCW; adding a new chapter to Title 70A RCW; prescribing penalties;  
5 and declaring an emergency.

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

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

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

12           (a) Is designed to detect approaching aircraft;

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

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

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

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

1 (4) "Light-mitigating technology system" means aircraft detection  
2 lighting or another federal aviation administration-approved system  
3 capable of reducing the impact of aviation obstruction lighting while  
4 maintaining conspicuity sufficient to assist aircraft in identifying  
5 and avoiding collision with a utility-scale wind energy facility.

6 (5) "Repowering" means a rebuild or refurbishment of a turbine or  
7 facility that is required due to the turbine or facility reaching the  
8 end of its useful life or useful reasonable economic life. The  
9 rebuild or refurbishment does not constitute repowering if it is part  
10 of routine major maintenance or the maintenance of or replacement of  
11 equipment that does not materially affect the expected physical or  
12 economical life of the turbine or facility.

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

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

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

21 NEW SECTION. **Sec. 2.** (1) Except as provided in section 3 of  
22 this act, beginning July 1, 2023, no new utility-scale wind energy  
23 facility with five or more turbines shall commence operations unless  
24 the developer, owner, or operator of the facility applies to the  
25 federal aviation administration for installation of a light-  
26 mitigating technology system that complies with federal aviation  
27 administration regulations, as they existed as of the effective date  
28 of this section. If approved by the federal aviation administration,  
29 the developer, owner, or operator of such utility-scale wind energy  
30 facility shall install the light-mitigating technology system on  
31 approved turbines within 24 months after receipt of such approval. If  
32 not approved by the federal aviation administration, the developer,  
33 owner, or operator of such utility-scale wind energy facility is not  
34 subject to this chapter.

35 (2) Except as provided in section 3 of this act, beginning  
36 January 1, 2028, or upon the completion of repowering, whichever is  
37 earlier, any developer, owner, or operator of a utility-scale wind  
38 energy facility with five or more turbines that has commenced  
39 operations without an aircraft detection lighting system shall apply

1 to the federal aviation administration for installation and operation  
2 of a light-mitigating technology system that achieves comparable  
3 light mitigation outcomes to an aircraft detection lighting system  
4 and that complies with federal aviation administration regulations,  
5 as they existed as of the effective date of this section. If approved  
6 by the federal aviation administration, the developer, owner, or  
7 operator of such utility-scale wind energy facility shall install the  
8 light-mitigating technology system on approved turbines within 24  
9 months following such approval. If not approved by the federal  
10 aviation administration, the developer, owner, or operator of such  
11 utility-scale wind energy facility is not subject to this chapter.

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

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

20 **\*NEW SECTION. Sec. 3. A new section is added to chapter 36.01**  
21 **RCW to read as follows:**

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

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

*\*Sec. 3 was vetoed. See message at end of chapter.*

1        NEW SECTION.    **Sec. 4.**    (1) A violation of the requirements of  
2 this chapter is punishable by a civil penalty of up to \$5,000 per day  
3 per violation. Penalties are appealable to the pollution control  
4 hearings board.

5        (2) (a) The department may enforce the requirements of this  
6 chapter.

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

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

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

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

28        (B) Lack of contractor availability;

29        (C) Lighting system permitting delays; or

30        (D) Technological feasibility considerations.

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

1 application of the utility-scale wind energy facility's proposed  
2 light-mitigating technology system.

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

8 **Sec. 5.** RCW 43.21B.110 and 2022 c 180 s 812 are each amended to  
9 read as follows:

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

17 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
18 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,  
19 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,  
20 70A.65.200, 70A.455.090, section 4 of this act, 76.09.170, 77.55.440,  
21 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,  
22 90.56.330, and 90.64.102.

23 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
24 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,  
25 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250,  
26 90.48.120, and 90.56.330.

27 (c) Except as provided in RCW 90.03.210(2), the issuance,  
28 modification, or termination of any permit, certificate, or license  
29 by the department or any air authority in the exercise of its  
30 jurisdiction, including the issuance or termination of a waste  
31 disposal permit, the denial of an application for a waste disposal  
32 permit, the modification of the conditions or the terms of a waste  
33 disposal permit, or a decision to approve or deny an application for  
34 a solid waste permit exemption under RCW 70A.205.260.

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

37 (e) Decisions of local health departments regarding the issuance  
38 and enforcement of permits to use or dispose of biosolids under RCW  
39 70A.226.090.

1 (f) Decisions of the department regarding waste-derived  
2 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
3 decisions of the department regarding waste-derived soil amendments  
4 under RCW 70A.205.145.

5 (g) Decisions of local conservation districts related to the  
6 denial of approval or denial of certification of a dairy nutrient  
7 management plan; conditions contained in a plan; application of any  
8 dairy nutrient management practices, standards, methods, and  
9 technologies to a particular dairy farm; and failure to adhere to the  
10 plan review and approval timelines in RCW 90.64.026.

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

14 (i) Decisions of the department of natural resources, the  
15 department of fish and wildlife, and the department that are  
16 reviewable under chapter 76.09 RCW, and the department of natural  
17 resources' appeals of county, city, or town objections under RCW  
18 76.09.050(7).

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

21 (k) Decisions of the department of fish and wildlife to issue,  
22 deny, condition, or modify a hydraulic project approval permit under  
23 chapter 77.55 RCW, to issue a stop work order, to issue a notice to  
24 comply, to issue a civil penalty, or to issue a notice of intent to  
25 disapprove applications.

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

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

32 (n) Decisions of the department of ecology that are appealable  
33 under RCW 70A.245.020 to set recycled minimum postconsumer content  
34 for covered products or to temporarily exclude types of covered  
35 products in plastic containers from minimum postconsumer recycled  
36 content requirements.

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

38 (2) The following hearings shall not be conducted by the hearings  
39 board:

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

3 (b) Hearings conducted by the department pursuant to RCW  
4 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,  
5 70A.15.3110, and 90.44.180.

6 (c) Appeals of decisions by the department under RCW 90.03.110  
7 and 90.44.220.

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

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

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.21C  
14 RCW to read as follows:

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

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

20 NEW SECTION. **Sec. 7.** Sections 1, 2, and 4 of this act  
21 constitute a new chapter in Title 70A RCW.

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

26 ***\*NEW SECTION. Sec. 9. This act is necessary for the immediate***  
27 ***preservation of the public peace, health, or safety, or support of***  
28 ***the state government and its existing public institutions, and takes***  
29 ***effect immediately.***

***\*Sec. 9 was vetoed. See message at end of chapter.***

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."

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