

SHB 1173 - H AMD 14

By Representative Connors

ADOPTED 02/27/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires
5 otherwise.

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

8 (a) Is designed to detect approaching aircraft;

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

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

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

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

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

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

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

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

30 (2) The owner or operator of a utility-scale wind energy facility
31 that is precluded from using an aircraft detection lighting system as

1 a consequence of any requirement of federal law must mitigate light
2 pollution from the facility through alternative means demonstrated to
3 the department to be the best practicable light mitigation option for
4 the facility.

5 (3) (a) The requirements of this section apply beginning January
6 1, 2027, to utility-scale wind energy facilities that have received
7 site certification under chapter 80.50 RCW or all applicable land
8 use, environmental, and building permits from state agencies and
9 local governments prior to the effective date of this section.

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

14 (4) Nothing in this section requires mitigation of light
15 pollution to be carried out in a manner that conflicts with federal
16 requirements, including requirements of the federal aviation
17 administration.

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

22 (2) (a) The department may enforce the requirements of this
23 chapter.

24 (b) Enforcement of this chapter by the department must rely on
25 notification and information exchange between the department and
26 utility-scale wind energy facility owners or operators. The
27 department must prepare and distribute information regarding this
28 chapter to utility-scale wind energy facility owners and operators to
29 help facility owners and operators in their advance planning to meet
30 the deadlines.

31 (c) (i) If the department obtains information that a facility is
32 not in compliance with the requirements of this chapter, the
33 department may issue a notification letter by certified mail to the
34 facility owner or operator and offer information or other appropriate
35 assistance regarding compliance with this chapter. If compliance is
36 not achieved within 60 days of the issuance of a notification letter
37 under this subsection, the department may assess penalties under this
38 section.

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

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

7 (B) Lack of contractor availability;

8 (C) Lighting system permitting delays; or

9 (D) Technological feasibility considerations.

10 (d) A utility-scale wind energy facility owner or operator
11 specified in section 2(3)(a) of this act that applies for the
12 approval of an aircraft detection lighting system to the federal
13 aviation administration prior to January 1, 2026, but that has not
14 received a determination to approve the aircraft detection lighting
15 system by the federal aviation administration as of July 1, 2026, may
16 not be assessed a penalty under this chapter until at least six
17 months after the federal aviation administration issues its
18 determination on the application of the utility-scale wind energy
19 facility's proposed aircraft detection lighting system.

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

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

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

34 (a) Civil penalties imposed pursuant to RCW 18.104.155,
35 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
36 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,
37 70A.65.200, 70A.455.090, section 3 of this act, 76.09.170, 77.55.440,
38 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
39 90.56.330, and 90.64.102.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
2 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
3 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250,
4 90.48.120, and 90.56.330.

5 (c) Except as provided in RCW 90.03.210(2), the issuance,
6 modification, or termination of any permit, certificate, or license
7 by the department or any air authority in the exercise of its
8 jurisdiction, including the issuance or termination of a waste
9 disposal permit, the denial of an application for a waste disposal
10 permit, the modification of the conditions or the terms of a waste
11 disposal permit, or a decision to approve or deny an application for
12 a solid waste permit exemption under RCW 70A.205.260.

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

15 (e) Decisions of local health departments regarding the issuance
16 and enforcement of permits to use or dispose of biosolids under RCW
17 70A.226.090.

18 (f) Decisions of the department regarding waste-derived
19 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
20 decisions of the department regarding waste-derived soil amendments
21 under RCW 70A.205.145.

22 (g) Decisions of local conservation districts related to the
23 denial of approval or denial of certification of a dairy nutrient
24 management plan; conditions contained in a plan; application of any
25 dairy nutrient management practices, standards, methods, and
26 technologies to a particular dairy farm; and failure to adhere to the
27 plan review and approval timelines in RCW 90.64.026.

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

31 (i) Decisions of the department of natural resources, the
32 department of fish and wildlife, and the department that are
33 reviewable under chapter 76.09 RCW, and the department of natural
34 resources' appeals of county, city, or town objections under RCW
35 76.09.050(7).

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

38 (k) Decisions of the department of fish and wildlife to issue,
39 deny, condition, or modify a hydraulic project approval permit under
40 chapter 77.55 RCW, to issue a stop work order, to issue a notice to

1 comply, to issue a civil penalty, or to issue a notice of intent to
2 disapprove applications.

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

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

9 (n) Decisions of the department of ecology that are appealable
10 under RCW 70A.245.020 to set recycled minimum postconsumer content
11 for covered products or to temporarily exclude types of covered
12 products in plastic containers from minimum postconsumer recycled
13 content requirements.

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

15 (2) The following hearings shall not be conducted by the hearings
16 board:

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

19 (b) Hearings conducted by the department pursuant to RCW
20 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
21 70A.15.3110, and 90.44.180.

22 (c) Appeals of decisions by the department under RCW 90.03.110
23 and 90.44.220.

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

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

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

31 (1) Actions to mitigate light pollution at a utility-scale wind
32 energy facility that has received site certification under chapter
33 80.50 RCW or all applicable land use, environmental, and building
34 permits from state agencies and local governments prior to the
35 effective date of this section, as required under section 2 of this
36 act, are categorically exempt from the requirements of this chapter.

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

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

3 NEW SECTION. **Sec. 7.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of
9 the state government and its existing public institutions, and takes
10 effect immediately."

11 Correct the title.

EFFECT: Extends by one year the deadline for compliance with light mitigation requirements for existing utility-scale wind energy facilities, which are to apply beginning January 1, 2027. Requires a utility-scale wind energy facility to use best practicable light mitigation technology, rather than best available light mitigation technology, in the event that federal requirements preclude the use of an aircraft detection lighting system at a particular facility. Authorizes the department of ecology to delay enforcement of light mitigation requirements and related penalties for good cause shown due to supply chain constraints, contractor availability, lighting system permitting delays, or technological feasibility considerations. Authorizes the department of ecology to adopt, by rule, light mitigation standards to maintain consistency with any federal aviation administration standards that are updated after January 1, 2023.

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