

**ESHB 1173 - S AMD 324**  
By Senator Boehnke

**ADOPTED AS AMENDED 04/07/2023**

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

23 (5) "Repowering" means a rebuild or refurbishment of a turbine or  
24 facility that is required due to the turbine or facility reaching the  
25 end of its useful life or useful reasonable economic life. The  
26 rebuild or refurbishment does not constitute repowering if it is part  
27 of routine major maintenance or the maintenance of or replacement of  
28 equipment that does not materially affect the expected physical or  
29 economical life of the turbine or facility.

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

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

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

6 NEW SECTION. **Sec. 2.** (1) Except as provided in section 3 of  
7 this act, beginning July 1, 2023, no new utility-scale wind energy  
8 facility shall commence operations unless the developer, owner, or  
9 operator of the facility applies to the federal aviation  
10 administration for installation of a light-mitigating technology  
11 system that complies with federal aviation administration  
12 regulations, as they existed as of the effective date of this  
13 section. If approved by the federal aviation administration, the  
14 developer, owner, or operator of such utility-scale wind energy  
15 facility shall install the light-mitigating technology system on  
16 approved turbines within 24 months after receipt of such approval. If  
17 not approved by the federal aviation administration, the developer,  
18 owner, or operator of such utility-scale wind energy facility is not  
19 subject to this chapter.

20 (2) Except as provided in section 3 of this act, beginning  
21 January 1, 2028, or upon the completion of repowering, whichever is  
22 earlier, any developer, owner, or operator of a utility-scale wind  
23 energy facility that has commenced operations without an aircraft  
24 detection lighting system shall apply to the federal aviation  
25 administration for installation and operation of a light-mitigating  
26 technology system that achieves comparable light mitigation outcomes  
27 to an aircraft detection lighting system and that complies with  
28 federal aviation administration regulations, as they existed as of  
29 the effective date of this section. If approved by the federal  
30 aviation administration, the developer, owner, or operator of such  
31 utility-scale wind energy facility shall install the light-mitigating  
32 technology system on approved turbines within 24 months following  
33 such approval. If not approved by the federal aviation  
34 administration, the developer, owner, or operator of such utility-  
35 scale wind energy facility is not subject to this chapter.

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

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

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.01  
6 RCW to read as follows:

7 (1) A legislative authority of any county may adopt a wind energy  
8 ordinance that includes specifications for aviation obstruction  
9 light-mitigating technology systems only when there is more than one  
10 technology approved by the federal aviation administration. In  
11 adopting an ordinance under this section, the county legislative  
12 authority shall consider whether affected wind energy facilities have  
13 caused, or will cause, light impacts requiring mitigation. Additional  
14 practicability criteria related to the selection of light-mitigating  
15 technology systems may include the costs associated with the  
16 installation of such a system, the economic impact to a developer,  
17 owner, or operator of the installation of such a system, conditions  
18 under which light mitigation is required, and the type of system that  
19 best serves the public interest of the county. Nothing in this  
20 section authorizes a county to deny a permit application for a wind  
21 energy facility where the use of a light-mitigating technology system  
22 is not allowed by the federal aviation administration, United States  
23 department of defense, or if it is determined by the county to be  
24 impracticable.

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

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

31 (2)(a) The department may enforce the requirements of this  
32 chapter.

33 (b) Enforcement of this chapter by the department must rely on  
34 notification and information exchange between the department and  
35 utility-scale wind energy facility owners or operators. The  
36 department must prepare and distribute information regarding this  
37 chapter to utility-scale wind energy facility owners and operators to

1 help facility owners and operators in their advance planning to meet  
2 the deadlines.

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

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

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

17 (B) Lack of contractor availability;

18 (C) Lighting system permitting delays; or

19 (D) Technological feasibility considerations.

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

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

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

37 (1) The hearings board shall only have jurisdiction to hear and  
38 decide appeals from the following decisions of the department, the  
39 director, local conservation districts, the air pollution control

1 boards or authorities as established pursuant to chapter 70A.15 RCW,  
2 local health departments, the department of natural resources, the  
3 department of fish and wildlife, the parks and recreation commission,  
4 and authorized public entities described in chapter 79.100 RCW:

5 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
6 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,  
7 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,  
8 70A.65.200, 70A.455.090, section 4 of this act, 76.09.170, 77.55.440,  
9 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,  
10 90.56.330, and 90.64.102.

11 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
12 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,  
13 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250,  
14 90.48.120, and 90.56.330.

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

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

25 (e) Decisions of local health departments regarding the issuance  
26 and enforcement of permits to use or dispose of biosolids under RCW  
27 70A.226.090.

28 (f) Decisions of the department regarding waste-derived  
29 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
30 decisions of the department regarding waste-derived soil amendments  
31 under RCW 70A.205.145.

32 (g) Decisions of local conservation districts related to the  
33 denial of approval or denial of certification of a dairy nutrient  
34 management plan; conditions contained in a plan; application of any  
35 dairy nutrient management practices, standards, methods, and  
36 technologies to a particular dairy farm; and failure to adhere to the  
37 plan review and approval timelines in RCW 90.64.026.

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

1 (i) Decisions of the department of natural resources, the  
2 department of fish and wildlife, and the department that are  
3 reviewable under chapter 76.09 RCW, and the department of natural  
4 resources' appeals of county, city, or town objections under RCW  
5 76.09.050(7).

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

8 (k) Decisions of the department of fish and wildlife to issue,  
9 deny, condition, or modify a hydraulic project approval permit under  
10 chapter 77.55 RCW, to issue a stop work order, to issue a notice to  
11 comply, to issue a civil penalty, or to issue a notice of intent to  
12 disapprove applications.

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

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

19 (n) Decisions of the department of ecology that are appealable  
20 under RCW 70A.245.020 to set recycled minimum postconsumer content  
21 for covered products or to temporarily exclude types of covered  
22 products in plastic containers from minimum postconsumer recycled  
23 content requirements.

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

25 (2) The following hearings shall not be conducted by the hearings  
26 board:

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

29 (b) Hearings conducted by the department pursuant to RCW  
30 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,  
31 70A.15.3110, and 90.44.180.

32 (c) Appeals of decisions by the department under RCW 90.03.110  
33 and 90.44.220.

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

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

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

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

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

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

10       NEW SECTION.    **Sec. 8.**    If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected.

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

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18        On page 1, line 2 of the title, after "infrastructure;" strike  
19 the remainder of the title and insert "amending RCW 43.21B.110;  
20 adding a new section to chapter 36.01 RCW; adding a new section to  
21 chapter 43.21C RCW; adding a new chapter to Title 70A RCW;  
22 prescribing penalties; and declaring an emergency."

EFFECT: (1) Provides definitions for light-mitigating technology system and repowering.

(2) 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.

(3) Specifies no new utility-scale wind energy facility, beginning July 1, 2023, shall commence operations unless the facility applies to the Federal Aviation Administration (FAA) for installation of a light-mitigating technology system that complies with FAA requirements.

(4) Specifies any developer, owner, or operator of an existing utility-scale wind energy facility, beginning January 1, 2028, 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.

(5) Specifies that a developer, owner, or operator of a utility-scale wind energy facility is not subject to the bill if its application for installing a light-mitigating technology system is not approved by the FAA.

(6) Authorizes a legislative authority of a county to adopt a wind energy ordinance that includes specifications for aviation obstruction light-mitigating technology systems only when there is more than one technology approved by the FAA.

(7) Provides that an owner or operator of an existing utility-scale wind energy facility that has applied to the FAA for approval of a light-mitigating technology system as of July 1, 2027, may not be assessed a penalty until at least 24 months, rather than 6 months, after the FAA issues its determination on the application.

(8) Removes the specification that only a utility-scale wind energy facility that has received site certification from the Energy Facility Site Evaluation Council or all applicable permits from state agencies and local governments are exempt from review under the State Environmental Policy Act.

(9) Specifies this act does not require mitigation of light pollution to be carried out in a manner that conflicts with the Department of Defense.

(10) Makes technical corrections.

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