

ESHB 1173 - S AMD
By Senator

ADOPTED AND ENGROSSED 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 with five or more turbines shall commence operations unless
9 the developer, owner, or operator of the facility applies to the
10 federal aviation administration for installation of a light-
11 mitigating technology system that complies with federal aviation
12 administration regulations, as they existed as of the effective date
13 of this section. If approved by the federal aviation administration,
14 the 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 with five or more turbines that has commenced
24 operations without an aircraft detection lighting system shall apply
25 to the federal aviation administration for installation and operation
26 of a light-mitigating technology system that achieves comparable
27 light mitigation outcomes to an aircraft detection lighting system
28 and that complies with federal aviation administration regulations,
29 as they existed as of the effective date of this section. If approved
30 by the federal aviation administration, the developer, owner, or
31 operator of such utility-scale wind energy facility shall install the
32 light-mitigating technology system on approved turbines within 24
33 months following such approval. If not approved by the federal
34 aviation administration, the developer, owner, or operator of such
35 utility-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. In adopting an ordinance under
10 this section, the county legislative authority shall consider whether
11 affected wind energy facilities have caused, or will cause, light
12 impacts requiring mitigation. Additional criteria related to the
13 selection of light-mitigating technology systems may include the
14 costs associated with the installation of such a system, the economic
15 impact to a developer, owner, or operator of the installation of such
16 a system, conditions under which light mitigation is required, and
17 the type of system that best serves the public interest of the
18 county. Nothing in this section authorizes a county to deny a permit
19 application for a wind energy facility where the use of a light-
20 mitigating technology system is not allowed by the federal aviation
21 administration, United States department of defense, or if it is
22 determined by the county to be impracticable.

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

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

29 (2)(a) The department may enforce the requirements of this
30 chapter.

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

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

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

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

15 (B) Lack of contractor availability;

16 (C) Lighting system permitting delays; or

17 (D) Technological feasibility considerations.

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

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

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

35 (1) The hearings board shall only have jurisdiction to hear and
36 decide appeals from the following decisions of the department, the
37 director, local conservation districts, the air pollution control
38 boards or authorities as established pursuant to chapter 70A.15 RCW,
39 local health departments, the department of natural resources, the

1 department of fish and wildlife, the parks and recreation commission,
2 and authorized public entities described in chapter 79.100 RCW:

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

9 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
10 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
11 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250,
12 90.48.120, and 90.56.330.

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

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

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

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

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

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

39 (i) Decisions of the department of natural resources, the
40 department of fish and wildlife, and the department that are

1 reviewable under chapter 76.09 RCW, and the department of natural
2 resources' appeals of county, city, or town objections under RCW
3 76.09.050(7).

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

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

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

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

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

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

23 (2) The following hearings shall not be conducted by the hearings
24 board:

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

27 (b) Hearings conducted by the department pursuant to RCW
28 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
29 70A.15.3110, and 90.44.180.

30 (c) Appeals of decisions by the department under RCW 90.03.110
31 and 90.44.220.

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

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

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

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

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

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

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

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

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

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