

HOUSE BILL REPORT

ESHB 1173

As Passed Legislature

Title: An act relating to reducing light pollution associated with certain energy infrastructure.

Brief Description: Reducing light pollution associated with certain energy infrastructure.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Connors, Klicker and Rude).

Brief History:

Committee Activity:

Environment & Energy: 1/16/23, 2/2/23 [DPS].

Floor Activity:

Passed House: 2/27/23, 94-1.

Senate Amended.

Passed Senate: 4/7/23, 48-1.

House Concurred.

Passed House: 4/14/23, 95-1.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Requires owners, operators, or developers of new and existing wind energy facilities to apply to the Federal Aviation Administration to be allowed to install a light pollution mitigation system.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Doglio, Chair; Mena, Vice Chair; Dye, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; Abbarno, Barnard, Berry, Couture, Duerr, Fey, Goehner, Lekanoff, Ramel, Slatter and Street.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Jacob Lipson (786-7196).

Background:

Energy Facility Siting.

The Energy Facility Site Evaluation Council (EFSEC) was established in 1970 to provide a single siting process for major energy facilities located in the state. The EFSEC coordinates all evaluation and licensing steps for siting certain energy facilities, as well as specifies the conditions of construction and operation. After evaluating an application, the EFSEC submits a recommendation either approving or rejecting an application to the Governor, who makes the final decision on site certification. This recommendation must be reported to the Governor within 12 months of application receipt, or at a later time if agreed to by the applicant and the EFSEC. The recommendation must include a draft certification agreement, which must include various conditions including conditions to protect state, local, and community interests affected by the construction or operation of the energy facility. If approved by the Governor, a site certification agreement is issued in lieu of any other individual state or local agency permits.

The laws that require or allow a facility to seek certification through the EFSEC process apply to the construction, reconstruction, and enlargement of energy facilities, biorefineries, and electrical transmission facilities, with many specifications. Energy facilities of any size that exclusively use alternative energy resources such as wind or solar energy may opt into the EFSEC review and certification process. Energy facilities that exclusively use alternative energy resources that choose not to opt in to the EFSEC review and certification process must instead receive applicable state and local agency development and environmental permits for their projects directly from each agency.

Light Pollution and Mitigation.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. Projects and government decisions undergoing environmental review under SEPA must evaluate associated potential impacts to light and glare, aesthetics, and scenic resources, among other elements of the environment covered by SEPA review.

Some cities and counties have adopted ordinances that regulate aspects of outdoor lighting. Ordinances adopted by local governments in Washington to limit outdoor lighting include measures that:

- limit the illuminating power of outdoor lights;
- specifically restrict certain uses of lighting, such as illuminated athletic fields or industrial sources of light; or
- require that outdoor lights be positioned or shaded so as to limit illumination of neighboring properties or other features.

Federal Aviation Administration Requirements.

The Federal Aviation Administration (FAA) has adopted rules and advisory standards that apply to obstructions that have been deemed a hazard to air navigation, including structures that reach at least 500 feet above the ground. Specific FAA standards apply to the lighting of wind turbines, and also establish performance specifications for aircraft detection lighting systems, which are sensor-based systems designed to detect aircraft as they approach an obstruction or group of obstructions.

Summary of Engrossed Substitute Bill:

Beginning July 1, 2023, new utility-scale wind energy facilities with five or more turbines may not commence operations unless the developer, owner, or operator of the facilities applies to the United States Federal Aviation Administration (FAA) for installation of a light-mitigating technology system (LMTS) that complies with FAA regulations. If the FAA approves of a LMTS, it must be installed within two years of approval, but no action by the owner, operator, or developer is required if the FAA disapproves of the application.

Beginning the earlier of January 1, 2028, or upon the repowering of a utility-scale wind energy facility, the developer, owner, or operator of a facility with at least five turbines that has commenced operations without an aircraft detection lighting system (ADLS) must apply to the FAA for approval of an ADLS or comparable LMTS. If the FAA approves of a LMTS, it must be installed within two years of approval, but no action by the owner, operator, or developer is required if the FAA disapproves of the application. ADLSs are defined as sensor-based systems that detect approaching aircraft, automatically activate obstruction lights until no longer needed by aircraft, and that the FAA has approved as meeting 2020 FAA standards for ADLSs. By rule, the Department of Ecology (Ecology) may update light mitigation standards to reference a more recent version of an FAA standard.

A county legislative authority may adopt a wind energy ordinance that includes specification for LMTS for aviation obstruction lighting. Developers, owners, and operators of utility-scale wind energy facilities must comply with the specifications of a county ordinance. In adopting an ordinance, counties must consider whether affected facilities have caused or will cause light impacts, and may consider additional criteria. Counties may not deny permit applications to wind energy facilities where the use of LMTS is not allowed by the FAA, the Department of Defense, or determined by the county to be impracticable.

Ecology must prepare and distribute information regarding light mitigation requirements to wind energy facility owners and operators. Ecology is authorized to enforce light mitigation requirements, and violations of light mitigation requirements are subject to a \$5,000 penalty per violation per day. Penalties may not be issued until at least 60 days after the issuance of a written notification letter of a violation to a facility owner or operator.

Ecology may delay issuing pre-penalty warning notices or penalties for good cause shown due to supply chain constraints, lack of contractor availability, lighting system permitting delays, or technological feasibility considerations. Penalties are appealable to the Pollution Control Hearings Board. Ecology may not penalize a wind energy facility operator that submits an application to the FAA by January 1, 2027, but that has not received an FAA determination as of July 1, 2027, until two years after the FAA issues a determination on the application.

Actions to mitigate light pollution at a utility-scale wind energy facility are exempt from review under the State Environmental Policy Act.

A severability clause is included.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on April 25, 2023.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) The blinking lights on windmills can be a distraction and detract from the beauty of the communities that they are situated in. Other states have enacted laws to require motion sensors to be attached to windmill lights in order to reduce the number of hours that they remain on. Warning lights need to be on windmills for aircraft safety, but do not need to be activated more than two or three percent of the time in some cases. These aircraft detection lighting systems turn the lights on when planes are nearby, and then shut them off as soon as the airplane is a safe distance away. Many new windmill facilities are anticipated to be sited in Eastern Washington, and a particularly large windfarm is slated to be sited within a few miles of the Tri-Cities that will have significant impacts on a large number of people. Blinking windmill lights and other impacts from the project have the potential to affect the mental health of nearby residents and hurt the tourism industry. It is not cost-prohibitive to install aircraft detection lighting systems, and represents a small fraction of the overall cost of a wind energy development project. The people of the Tri-Cities will appreciate the Legislature for making this step to reduce the public health impacts on them.

(Opposed) None.

(Other) Businesses would be concerned if the requirements to retrofit existing wind energy facilities resulted in higher electric power rates. The requirements on wind energy facilities to mitigate light pollution should not be so stringent that it results in facilities being sited outside of Washington instead of in Washington.

Persons Testifying: (In support) Representative April Connors, prime sponsor; Paul Krupin; and James Conca, UFA Ventures.

(Other) Peter Godlewski, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.