

SENATE BILL REPORT

ESHB 1173

As of March 15, 2023

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

Committee Activity: Environment, Energy & Technology: 3/17/23.

Brief Summary of Bill

- Requires new and existing utility-scale wind energy facilities to mitigate light pollution through the use of aircraft detection lighting systems, or through alternative forms of light mitigation if federal requirements preclude the installation of an aircraft detection lighting system at a facility.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

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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. EFSEC coordinates all evaluation and licensing steps for siting certain energy facilities, as well as specifies the conditions of construction and operation. 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

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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 and aesthetics among other elements of the environment covered by SEPA review.

Federal Aviation Administration Requirements. Under federal law, the Federal Aviation Administration (FAA) has exclusive authority to regulate U.S. airspace. The FAA adopted rules and advisory standards that apply to obstructions 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 an aircraft detection lighting system (ADLS), which is a sensor-based system designed to detect aircraft as they approach an obstruction or group of obstructions.

For projects considering ADLS, a request must be made to the FAA. Approvals of an ADLS are on a case-by-case basis, and may be modified, adjusted, or denied based on proximity to certain areas of frequent flight activity, including airports or military training areas.

Summary of Bill: An owner or operator of a utility-scale wind energy facility (facility) must operate with an ADLS to mitigate light pollution from the facility. If an owner or operator of a facility is precluded from using an ADLS as a consequence of federal law, it must mitigate light pollution from the facility through alternative means demonstrated to the Department of Ecology (Ecology).

Beginning January 1, 2027, the ADLS requirements apply to existing facilities that have received site certification through EFSEC or all applicable permits from state agencies and local governments. For all other facilities, the requirements apply upon completion of construction of the facility. The mitigation of light pollution is not required to be carried out in a manner that conflicts with federal requirements.

Ecology may enforce ADLS requirements and must prepare and distribute information regarding ADLS requirements to owners and operators. A violation of these requirements is subject to a \$5,000 penalty per violation per day. Penalties are appealable to the Pollution Control Hearings Board. 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 a notification letters after the 60-day period for specified purposes, such as for good cause shown due to supply chain constraints, lack of contractor availability, lighting

system permitting delays, or technological feasibility considerations.

Actions to mitigate light pollution at an existing facility are exempt from review under SEPA.

A severability clause is included.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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