

SENATE BILL REPORT

ESHB 1173

As Passed Senate - Amended, April 7, 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, 3/28/23 [DPA].

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

Brief Summary of Bill (As Amended by Senate)

- Requires new and existing utility-scale wind energy facilities to apply to the Federal Aviation Administration (FAA) for installation of a light-mitigating technology system that complies with FAA regulations by specified deadlines.
- Authorizes the Department of Ecology to enforce the light-mitigating technology system requirements.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass as amended.

Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; MacEwen, Ranking Member; Boehnke, Lovick, Short, Trudeau and Wellman.

Staff: Angela Kleis (786-7469)

Background: Energy Facility Siting. The Energy Facility Site Evaluation Council

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.

(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 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 light-mitigating technology.

Summary of Amended Bill: Except as provided, beginning:

- July 1, 2023, no new utility-scale wind energy facility (facility) shall commence operations unless the developer, owner, or operator of the facility applies to the FAA for installation of a light-mitigating technology system (system) that complies with FAA regulations; or
- January 1, 2028, or upon the completion of repowering, whichever is earlier, any facility developer, owner, or operator of a facility that has commenced operations without an aircraft detection lighting system must apply to the FAA for installation and operation of a system that complies with FAA regulations.

If approved by the FAA, the facility developer, owner, or operator must install the system on approved turbines within 24 months after receipt of approval. If not approved by the FAA, the facility developer, owner, or operator is not subject to the bill.

A legislative authority of any county may adopt a wind energy ordinance that includes specification for aviation obstruction light-mitigating technology systems. In adopting an ordinance, the county legislative authority must consider whether affected facilities have

caused, or will cause, light impacts requiring mitigation. A county is not authorized to deny a permit application for a facility where the use of a system is not allowed by the FAA, the United States Department of Defense, or if it is determined by the county to be impracticable.

The Department of Ecology (Ecology) may enforce system requirements and must prepare and distribute information regarding system requirements to owners and operators. A violation of these requirements is subject to a \$5,000 penalty, per day, per violation. Penalties are appealable to the Pollution Control Hearings Board. If Ecology obtains information that a facility is not in compliance with system requirements, it may issue a notification letter to the facility owner and offer information regarding compliance. If compliance is not achieved within 60 days of the notification letter, Ecology may assess penalties. Ecology may delay enforcement due to 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.

A facility owner or operator that has commenced operations prior to January 1, 2023, that applies for the approval of a system to the FAA prior to January 1, 2027, but that has not received a determination to approve the system by the FAA as of July 1, 2027, may not be assessed a penalty under this chapter until at least 24 months after the FAA issues its determination on the application.

Ecology may adopt by rule a light mitigation standard that references a more recent version of any federal requirements in order to maintain consistency with FAA requirements.

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

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.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The FAA regulations specify light mitigating technology requirements; however, these systems create unsightly problems during the day and at night. The flashing red lights are an eyesore, intrusion, and can have impacts on people's health and the economy. There are options available to mitigate the flashing lights and have been successful in other states. The bill provides exemptions for areas where light mitigating technology would not be approved. Dark skies can be safe skies.

CON: This bill needs to provide flexibility for existing facilities that are currently compliant with FAA requirements. It would be appropriate to require compliance at new facilities or when an existing facility is repowering.

OTHER: The bill needs to provide an exemption for projects near military areas as it is not clear if ADLS will be approved by the FAA in those areas.

Persons Testifying: PRO: Representative April Connors, Prime Sponsor; James Conca; Paul Krupin, Tri-Cities Cares.

CON: Spencer Gray, Northwest & Intermountain Power Producers Coalition; Jeff Gombosky, Renewable Northwest.

OTHER: Steve Taylor, Cowlitz Public Utility District No. 1.

Persons Signed In To Testify But Not Testifying: No one.