

# SENATE BILL REPORT

## ESHB 1173

---

---

As of March 17, 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

**Staff:** Angela Kleis (786-7469)

**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

---

*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.*

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.

**Staff Summary of Public Testimony:** 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 eye-sore, 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.