

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1173

68th Legislature
2023 Regular Session

Passed by the House April 14, 2023
Yeas 95 Nays 1

**Speaker of the House of
Representatives**

Passed by the Senate April 7, 2023
Yeas 48 Nays 1

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1173** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1173

AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By House Environment & Energy (originally sponsored by
Representatives Connors, Klicker, and Rude)

READ FIRST TIME 02/03/23.

1 AN ACT Relating to reducing light pollution associated with
2 certain energy infrastructure; amending RCW 43.21B.110; adding a new
3 section to chapter 36.01 RCW; adding a new section to chapter 43.21C
4 RCW; adding a new chapter to Title 70A RCW; prescribing penalties;
5 and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires
9 otherwise.

10 (1) "Aircraft detection lighting system" means a sensor-based
11 system that:

12 (a) Is designed to detect approaching aircraft;

13 (b) Automatically activates appropriate obstruction lights until
14 the lights are no longer needed by the aircraft; and

15 (c) The federal aviation administration has approved as meeting
16 the requirements set forth in chapter 10 of the federal aviation
17 administration's 2020 advisory circular AC 70/7460-1M, "Obstruction
18 marking and lighting."

19 (2) "Department" means the department of ecology.

20 (3) "Hub height" means the distance from the ground to the middle
21 of a wind turbine's rotor.

1 (4) "Light-mitigating technology system" means aircraft detection
2 lighting or another federal aviation administration-approved system
3 capable of reducing the impact of aviation obstruction lighting while
4 maintaining conspicuity sufficient to assist aircraft in identifying
5 and avoiding collision with a utility-scale wind energy facility.

6 (5) "Repowering" means a rebuild or refurbishment of a turbine or
7 facility that is required due to the turbine or facility reaching the
8 end of its useful life or useful reasonable economic life. The
9 rebuild or refurbishment does not constitute repowering if it is part
10 of routine major maintenance or the maintenance of or replacement of
11 equipment that does not materially affect the expected physical or
12 economical life of the turbine or facility.

13 (6) "Utility-scale wind energy facility" means a facility used in
14 the generation of electricity by means of turbines or other devices
15 that capture and employ the kinetic energy of the wind and:

16 (a) Is required under federal aviation administration
17 regulations, guidelines, circulars, or standards, as they existed as
18 of January 1, 2023, to have obstruction lights; or

19 (b) Has at least one obstruction light and at least one wind
20 turbine with a hub height of at least 75 feet above ground level.

21 NEW SECTION. **Sec. 2.** (1) Except as provided in section 3 of
22 this act, beginning July 1, 2023, no new utility-scale wind energy
23 facility with five or more turbines shall commence operations unless
24 the developer, owner, or operator of the facility applies to the
25 federal aviation administration for installation of a light-
26 mitigating technology system that complies with federal aviation
27 administration regulations, as they existed as of the effective date
28 of this section. If approved by the federal aviation administration,
29 the developer, owner, or operator of such utility-scale wind energy
30 facility shall install the light-mitigating technology system on
31 approved turbines within 24 months after receipt of such approval. If
32 not approved by the federal aviation administration, the developer,
33 owner, or operator of such utility-scale wind energy facility is not
34 subject to this chapter.

35 (2) Except as provided in section 3 of this act, beginning
36 January 1, 2028, or upon the completion of repowering, whichever is
37 earlier, any developer, owner, or operator of a utility-scale wind
38 energy facility with five or more turbines that has commenced
39 operations without an aircraft detection lighting system shall apply

1 to the federal aviation administration for installation and operation
2 of a light-mitigating technology system that achieves comparable
3 light mitigation outcomes to an aircraft detection lighting system
4 and that complies with federal aviation administration regulations,
5 as they existed as of the effective date of this section. If approved
6 by the federal aviation administration, the developer, owner, or
7 operator of such utility-scale wind energy facility shall install the
8 light-mitigating technology system on approved turbines within 24
9 months following such approval. If not approved by the federal
10 aviation administration, the developer, owner, or operator of such
11 utility-scale wind energy facility is not subject to this chapter.

12 (3) A developer, owner, or operator of a utility-scale wind
13 energy facility shall comply with any wind energy ordinance adopted
14 by a legislative authority of a county pursuant to section 3 of this
15 act.

16 (4) Nothing in this section requires mitigation of light
17 pollution to be carried out in a manner that conflicts with federal
18 requirements, including requirements of the federal aviation
19 administration or the United States department of defense.

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.01
21 RCW to read as follows:

22 (1) A legislative authority of any county may adopt a wind energy
23 ordinance that includes specifications for aviation obstruction
24 light-mitigating technology systems. In adopting an ordinance under
25 this section, the county legislative authority shall consider whether
26 affected wind energy facilities have caused, or will cause, light
27 impacts requiring mitigation. Additional criteria related to the
28 selection of light-mitigating technology systems may include the
29 costs associated with the installation of such a system, the economic
30 impact to a developer, owner, or operator of the installation of such
31 a system, conditions under which light mitigation is required, and
32 the type of system that best serves the public interest of the
33 county. Nothing in this section authorizes a county to deny a permit
34 application for a wind energy facility where the use of a light-
35 mitigating technology system is not allowed by the federal aviation
36 administration, United States department of defense, or if it is
37 determined by the county to be impracticable.

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

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

5 (2)(a) The department may enforce the requirements of this
6 chapter.

7 (b) Enforcement of this chapter by the department must rely on
8 notification and information exchange between the department and
9 utility-scale wind energy facility owners or operators. The
10 department must prepare and distribute information regarding this
11 chapter to utility-scale wind energy facility owners and operators to
12 help facility owners and operators in their advance planning to meet
13 the deadlines.

14 (c)(i) If the department obtains information that a facility is
15 not in compliance with the requirements of this chapter, the
16 department may issue a notification letter by certified mail to the
17 facility owner or operator and offer information or other appropriate
18 assistance regarding compliance with this chapter. If compliance is
19 not achieved within 60 days of the issuance of a notification letter
20 under this subsection, the department may assess penalties under this
21 section.

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

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

28 (B) Lack of contractor availability;

29 (C) Lighting system permitting delays; or

30 (D) Technological feasibility considerations.

31 (3) A utility-scale wind energy facility owner or operator of a
32 facility that has commenced operations prior to January 1, 2023, that
33 applies for the approval of a light-mitigating technology system to
34 the federal aviation administration prior to January 1, 2027, but
35 that has not received a determination to approve the system by the
36 federal aviation administration as of July 1, 2027, may not be
37 assessed a penalty under this chapter until at least 24 months after
38 the federal aviation administration issues its determination on the
39 application of the utility-scale wind energy facility's proposed
40 light-mitigating technology system.

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

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

8 (1) The hearings board shall only have jurisdiction to hear and
9 decide appeals from the following decisions of the department, the
10 director, local conservation districts, the air pollution control
11 boards or authorities as established pursuant to chapter 70A.15 RCW,
12 local health departments, the department of natural resources, the
13 department of fish and wildlife, the parks and recreation commission,
14 and authorized public entities described in chapter 79.100 RCW:

15 (a) Civil penalties imposed pursuant to RCW 18.104.155,
16 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
17 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,
18 70A.65.200, 70A.455.090, section 4 of this act, 76.09.170, 77.55.440,
19 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
20 90.56.330, and 90.64.102.

21 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
22 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
23 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250,
24 90.48.120, and 90.56.330.

25 (c) Except as provided in RCW 90.03.210(2), the issuance,
26 modification, or termination of any permit, certificate, or license
27 by the department or any air authority in the exercise of its
28 jurisdiction, including the issuance or termination of a waste
29 disposal permit, the denial of an application for a waste disposal
30 permit, the modification of the conditions or the terms of a waste
31 disposal permit, or a decision to approve or deny an application for
32 a solid waste permit exemption under RCW 70A.205.260.

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

35 (e) Decisions of local health departments regarding the issuance
36 and enforcement of permits to use or dispose of biosolids under RCW
37 70A.226.090.

38 (f) Decisions of the department regarding waste-derived
39 fertilizer or micronutrient fertilizer under RCW 15.54.820, and

1 decisions of the department regarding waste-derived soil amendments
2 under RCW 70A.205.145.

3 (g) Decisions of local conservation districts related to the
4 denial of approval or denial of certification of a dairy nutrient
5 management plan; conditions contained in a plan; application of any
6 dairy nutrient management practices, standards, methods, and
7 technologies to a particular dairy farm; and failure to adhere to the
8 plan review and approval timelines in RCW 90.64.026.

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

12 (i) Decisions of the department of natural resources, the
13 department of fish and wildlife, and the department that are
14 reviewable under chapter 76.09 RCW, and the department of natural
15 resources' appeals of county, city, or town objections under RCW
16 76.09.050(7).

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

19 (k) Decisions of the department of fish and wildlife to issue,
20 deny, condition, or modify a hydraulic project approval permit under
21 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
22 comply, to issue a civil penalty, or to issue a notice of intent to
23 disapprove applications.

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

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

30 (n) Decisions of the department of ecology that are appealable
31 under RCW 70A.245.020 to set recycled minimum postconsumer content
32 for covered products or to temporarily exclude types of covered
33 products in plastic containers from minimum postconsumer recycled
34 content requirements.

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

36 (2) The following hearings shall not be conducted by the hearings
37 board:

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

1 (b) Hearings conducted by the department pursuant to RCW
2 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
3 70A.15.3110, and 90.44.180.

4 (c) Appeals of decisions by the department under RCW 90.03.110
5 and 90.44.220.

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

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

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

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

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

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

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

24 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of
26 the state government and its existing public institutions, and takes
27 effect immediately.

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