

Stricken language would be deleted from and underlined language would be added to present law.
Act 271 of the Regular Session

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: S2/2/17
A Bill

SENATE BILL 256

By: Senator Irvin
By: Representative Davis

For An Act To Be Entitled

AN ACT TO TRANSFER THE ARKANSAS ENERGY OFFICE TO THE
ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY; AND FOR
OTHER PURPOSES.

Subtitle

TO TRANSFER THE ARKANSAS ENERGY OFFICE TO
THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL
QUALITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Transfer of the Arkansas Energy Office to the Arkansas Department of Environmental Quality.

(a)(1) The Arkansas Energy Office is transferred to the Arkansas Department of Environmental Quality by a type 2 transfer under § 25-2-105.

(2) For the purposes of this act, the Arkansas Department of Environmental Quality shall be considered a principal department established by Acts 1971, No. 38.

(b) All authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, and other funds, including the functions of budgeting or purchasing of the Arkansas Energy Office, are transferred to the Arkansas Department of Environmental Quality, except as specified by this act.

(c)(1) All powers, duties, and functions, including rulemaking, regulation, promulgation of rules, regulations, rates, and standards, and the rendering of findings, orders, and adjudications of the Arkansas Energy



Office are transferred to the Arkansas Pollution Control and Ecology Commission.

(2)(A) All rules and regulations promulgated by the Arkansas Energy Office in effect on January 1, 2017, are transferred as a matter of law to the Arkansas Pollution Control and Ecology Commission on the effective date of this act and shall be considered an officially promulgated regulation of the Arkansas Pollution Control and Ecology Commission from that date forward except as provided under subdivision (c)(3) of this section.

(B) Arkansas Pollution Control and Ecology Commission Regulation No. 8 concerning rulemaking shall not apply to any rules transferred under this subdivision (c)(2).

(3) A new regulation or regulatory amendment to an existing rule or regulation that is proposed after the effective date of this act and concerns the administration of the Arkansas Energy Office shall be promulgated by and through the Arkansas Pollution Control and Ecology Commission under the authority of § 8-1-203.

(d) The employees and designees of the Arkansas Energy Office and their successors shall continue to be selected in the manner and serve for the terms provided by the statutes applicable to the Arkansas Energy Office except as specified in this act.

SECTION 2. Arkansas Code § 8-1-202(b)(2), concerning the powers of the Director of the Arkansas Department of Environmental Quality, is amended to read as follows:

(2) As such, the director's duties shall include:

(A)(i) The administration of permitting, licensing, certification, and grants programs deemed necessary to protect the environmental integrity of the state.

(ii) The director, or his or her delegatee within his or her staff, shall serve as the issuing authority for the state;

(B)(i) Initiation and settlement of civil or administrative enforcement actions to compel compliance with laws, orders, and regulations charged to the responsibility of the department.

(ii) In this regard, the director may propose the assessment of civil penalties as provided by law and take all actions necessary to collect such penalties;

(C) Issuance of orders in such circumstances that reasonably require emergency measures to be taken to protect the environment or the public health and safety, except to the extent that the matter involved is reserved to the jurisdiction or orders of the Arkansas Pollution Control and Ecology Commission for rulemaking procedures in § 8-4-202;

(D) Day-to-day administration of all activities that the department is empowered by law to perform, including, but not limited to, the employment and supervision of such technical, legal, and administrative staff, within approved appropriations, as is necessary to carry out the responsibilities vested with the department;

(E) Providing technical and legal expertise and assistance in the field of environmental protection to other agencies and subdivisions of the state as appropriate;

(F) Day-to-day administration of environmental programs delegated to the State of Arkansas by the responsible agencies of the ~~federal government~~ United States Government; and

(G) The supervision of the Arkansas Energy Office of the Arkansas Department of Environmental Quality under the Arkansas Energy Reorganization and Policy Act of 1981 § 15-10-201 et seq.; and

~~(G)~~(H) Any other power or duty specifically vested with the director or department by the General Assembly.

SECTION 3. Arkansas Code § 14-164-803(4)(A)(ii), concerning definitions used throughout the Local Government Energy Efficiency Project Bond Act, is amended to read as follows:

(ii) Are measurable and verifiable under the International Performance Measurement and Verification Protocol, ~~as adopted by the Arkansas Energy Office promulgated by the Arkansas Pollution Control and Ecology Commission in the rules regulations~~ required under § 19-11-1207; and

SECTION 4. Arkansas Code § 14-164-821 is amended to read as follows:
14-164-821. ~~Rules~~ Regulations.

A municipality or county may provide by ordinance that the municipality or county shall comply with the ~~rules regulations~~ promulgated by the Arkansas Energy Office Arkansas Pollution Control and Ecology Commission under § 19-

11-1207.

SECTION 5. Arkansas Code § 15-10-202(5), concerning the declaration of policy under the Arkansas Energy Reorganization and Policy Act of 1981, is amended to read as follows:

(5) It is in the best interest of the citizens of this state to establish ~~a division within the Arkansas Economic Development Commission~~ the Arkansas Energy Office of the Arkansas Department of Environmental Quality to coordinate the planning and execution of comprehensive energy conservation programs; and

SECTION 6. Arkansas Code § 15-10-203 is amended to read as follows:

15-10-203. Arkansas Energy Office – Creation.

(a)(1) There is created ~~an Arkansas Energy Office, also referred to in this subchapter as the “office”, as a division within the Arkansas Economic Development Commission~~ the Arkansas Energy Office of the Arkansas Department of Environmental Quality.

(2)(A) The executive head of this ~~division~~ office shall be the Director of the Arkansas Energy Office.

(B) The Director of the Arkansas Energy Office shall be appointed by the ~~Executive Director of the Arkansas Economic Development Commission~~ Director of the Arkansas Department of Environmental Quality with the advice and consent of the Governor.

(b) The office shall consist of such ~~divisions~~ sections as may be established by the Director of the Arkansas Energy Office, with the approval of the ~~Executive Director of the Arkansas Economic Development Commission~~ Director of the Arkansas Department of Environmental Quality.

SECTION 7. Arkansas Code § 15-10-204(c), concerning the Director of the Arkansas Energy Office, is amended to read as follows:

(c) In addition to other duties and functions prescribed for the Director of the Arkansas Energy Office of the Arkansas Department of Environmental Quality elsewhere in this subchapter, the Director of the Arkansas Energy Office of the Arkansas Department of Environmental Quality shall supervise the daily operation of the office and advise the ~~Executive Director of the Arkansas Economic Development Commission~~ Director of the

Arkansas Department of Environmental Quality, the Governor, and the General Assembly on energy matters.

SECTION 8. Arkansas Code § 15-10-205, concerning the powers and duties of the Arkansas Energy Office, is amended to read as follows:

15-10-205. Arkansas Energy Office of the Arkansas Department of Environmental Quality – Powers and duties.

(a) The Arkansas Energy Office of the Arkansas Department of Environmental Quality shall coordinate authority and planning by the state in energy-related matters and shall have the following duties and responsibilities:

(1) Coordinating energy matters between and among all state agencies;

(2) Compiling an energy profile for the state which includes, but is not limited to, data on the demand for and supply of renewable and nonrenewable energy resources;

(3) Collecting data on, planning, and administering emergency plans, when needed, to allocate the distribution of motor fuels, aviation fuels, heating oil, and propane by wholesale jobbers and dealers within the state;

(4) Collecting data on, planning, and administering emergency plans, when needed, for the conservation or rationing of motor fuels;

(5) Proposing executive and legislative measures on energy-related matters;

(6) Providing comments before state and federal regulatory bodies on energy matters mandated by federal and state agencies;

(7) Monitoring and evaluating existing and proposed actions, laws, policies, regulations, and orders of the state and federal governments in energy matters relevant to Arkansas;

(8) Securing and administering federal energy grants for agencies of state government and monitoring and publicizing federal energy grants available to the private sector;

(9) Carrying out energy-related administrative and program functions established and required by federal law, regulations, or guidelines when applicable in Arkansas;

(10) Developing and administering conservation programs directed

toward reducing wasteful, inefficient uses of energy;

~~(11) Promulgating reasonable rules and regulations for the purpose of implementing and prescribing enforcement for thermal and lighting efficiency standards for new building construction in the state;~~

~~(12)~~(11) Developing and proposing thermal and lighting efficiency improvement programs for all buildings owned by the state and prescribing reasonable thermal and lighting efficiency criteria applicable to the leasing of buildings by all state agencies; and

~~(13)~~(12) Administering a public energy awareness program to inform and demonstrate to the public the importance and methods of utilizing energy conservation and renewable energy resources.

(b) The office ~~shall have the authority to~~ may:

(1) Provide comments before state and federal bodies in energy matters relevant to Arkansas;

(2) Receive and expend funds obtained from the federal government or other sources by means of contracts, grants, awards, payment for services, and other devices in support of energy-related programs, studies, or other operations beneficial to the State of Arkansas; and

~~(3) Promulgate reasonable rules for the purpose of:~~

~~(A) Implementing and prescribing enforcement for thermal and lighting efficiency standards for new building construction;~~

~~(B) Requiring a city or county that issues building permits for new building construction to adopt the Arkansas Energy Code for New Building Construction; and~~

~~(C) Complying with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;~~

~~(4)~~(3) Propose programs for the implementation of thermal and lighting efficiency improvements for all buildings owned by the state and prescribe reasonable thermal and lighting efficiency criteria applicable to the leasing of buildings by all state agencies; and.

~~(5) Promulgate rules and regulations for the purpose of administering emergency plans as referred to in subdivision (a)(4) of this section.~~

~~(e) Prior to the final adoption of the rules and regulations prescribing thermal and lighting efficiency standards for new building construction referred to in subdivision (b)(3) of this section, the Joint~~

~~Committee on Energy shall review and comment on the rules and regulations of the office.~~

(c) The Arkansas Pollution Control and Ecology Commission may promulgate regulations necessary to administer this section for the purposes of:

(1) Implementing and prescribing enforcement for thermal and lighting efficiency standards for new building construction;

(2) Requiring a city or county that issues building permits for new building construction to adopt the Arkansas Energy Code for New Building Construction; and

(3) Administering emergency plans as referred to in subdivision (a)(4) of this section.

SECTION 9. Arkansas Code § 15-10-904(a), concerning rebates for qualified clean-burning motor fuel property, is amended to read as follows:

(a) The Arkansas Energy Office of the Arkansas Department of Environmental Quality shall offer a rebate for qualified clean-burning motor vehicle fuel property.

SECTION 10. Arkansas Code § 15-72-802(1), concerning definitions used throughout the Emergency Petroleum Set-Aside Act, is amended to read as follows:

(1) "Assignment" means an action taken by the Arkansas Energy Office of the Arkansas Department of Environmental Quality, designating that a prime supplier of petroleum products supply them to an authorized consumer, wholesale purchaser-consumer, or wholesale purchaser-reseller to facilitate relief of emergency or hardship needs, pursuant to § 15-72-804;

SECTION 11. Arkansas Code § 15-72-802(9), concerning definitions used throughout the Emergency Petroleum Set-Aside Act, is amended to read as follows:

(9) "Set-aside" means, with respect to a particular prime supplier, the amount of a petroleum product which is made available from the total supply of a prime supplier, pursuant to the provisions of § 15-72-804, for utilization by the Arkansas Energy Office of the Arkansas Department of Environmental Quality to resolve emergencies and hardships due to shortages

or other dislocations in petroleum products distribution systems; and

SECTION 12. Arkansas Code § 15-72-804(a)(1), concerning the establishment of state emergency petroleum set-aside, is amended to read as follows:

(a)(1) ~~The Director of the Arkansas Energy Office~~ Arkansas Pollution Control and Ecology Commission shall promulgate ~~rules in accordance with the Arkansas Administrative Procedure Act, as amended, § 25-15-201 et seq.,~~ regulations establishing a set-aside system for petroleum products and reporting requirements for prime suppliers and brokers.

SECTION 13. Arkansas Code § 19-5-1249(c), concerning the Clean-burning Motor Fuel Development Fund, is amended to read as follows:

(c) The fund shall be used by the ~~Arkansas Energy Office of the Arkansas Economic Development Commission~~ Arkansas Department of Environmental Quality to provide rebates and incentives under the Arkansas Clean-burning Motor Fuel Development Act, § 15-10-901 et seq.

SECTION 14. Arkansas Code § 19-11-1202(1)(A)(i)(b), concerning definitions used throughout the Guaranteed Energy Cost Savings Act, is amended to read as follows:

(b) Are measurable and verifiable under the International Performance Measurement and Verification Protocol, as adopted by the ~~Arkansas Energy Office~~ Arkansas Pollution Control and Ecology Commission, in the rules required under § 19-11-1207; and

SECTION 15. Arkansas Code § 19-11-1207 is amended to read as follows:

19-11-1207. Administration of subchapter – Fees.

~~The Arkansas Energy Office:~~

~~(1) Shall:~~

~~(A) Administer this subchapter; and~~

~~(B) Promulgate rules for the administration of this subchapter within nine (9) months of the effective date of this subchapter, including without limitation the following:~~

~~(i) Standards for measuring and verifying the performance of energy cost savings measures;~~

~~(ii) A standard contract form for use by a state agency in entering into a guaranteed energy cost savings contract; and~~
~~(iii) The adoption of the International Performance Measurement and Verification Protocol as it existed on a specific date; and~~
~~(2) May establish and collect a reasonable fee to cover the costs of administering this subchapter.~~

(a) The Arkansas Energy Office of the Arkansas Department of Environmental Quality shall administer this subchapter.

(b) The Arkansas Pollution Control and Ecology Commission may promulgate regulations for the administration of this subchapter to include without limitation the following:

(1) Standards for measuring and verifying the performance of energy cost savings measures;

(2) A standard contract form for use by a state agency in entering into a guaranteed energy cost savings contract; and

(3) The adoption of the International Performance Measurement and Verification Protocol as it existed on a specific date; and

(4) To establish and collect a reasonable fee to cover the costs of administering this subchapter.

SECTION 16. Arkansas Code § 22-3-2003(b)(1), concerning the Sustainable Energy-Efficient Buildings Program, is amended to read as follows:

(1) For public agencies, the Arkansas Energy Office of the Arkansas Department of Environmental Quality shall develop and:

(A) Issue policies and technical guidelines to establish procedures and methods for compliance with the criteria and the performance standards for a major facility or a major renovation under § 22-3-2004; and

(B) Administer an energy management program designed to achieve compliance with the requirements of § 22-3-2006 through the implementation of energy conservation measures; and

SECTION 17. Arkansas Code § 22-3-2006(a), concerning the program to manage energy usage of public agencies, is amended to read as follows:

(a) The Arkansas Energy Office of the Arkansas Department of Environmental Quality shall:

(1) Develop an energy program to manage energy, water, and other utility uses for public agencies that will reduce total energy consumption per gross square foot for all existing state buildings by twenty percent (20%) by 2014 and thirty percent (30%) by 2017 based on energy consumption for the 2007-2008 fiscal year if the savings can be justified by a life-cycle cost analysis; and

(2) Update this program annually.

SECTION 18. The introductory language of Arkansas Code § 22-3-2006(b), concerning the program to manage energy usage of public agencies, is amended to read as follows:

(b) To implement its plan, the Arkansas Energy Office of the Arkansas Department of Environmental Quality shall to the extent funds are available:

SECTION 19. Arkansas Code § 22-3-2006(c), concerning the program to manage energy usage of public agencies, is amended to read as follows:

(c) The Arkansas Energy Office of the Arkansas Department of Environmental Quality may adopt architectural and engineering standards to implement this section.

SECTION 20. Arkansas Code § 22-3-2007(4), concerning application to historic and unique buildings, is amended to read as follows:

(4) A building that the Arkansas Energy Office of the Arkansas Department of Environmental Quality has exempted from this subchapter because of its unique architectural characteristics or usage.

SECTION 21. Arkansas Code § 22-3-2008 is amended to read as follows:

22-3-2008. Advisory committee for the Arkansas Energy Office of the ~~Arkansas Economic Development Commission~~ Arkansas Department of Environmental Quality.

(a)(1) The Director of the Arkansas Energy Office of the Arkansas Department of Environmental Quality shall create and recommend members for a sustainable, energy-efficient building advisory committee composed of:

(A) Representatives from the design and construction industry who are involved in public works contracting;

(B) Persons from public agencies who are responsible for

overseeing public works projects or for developing energy efficiency programs and policies; and

(C) Other persons that the ~~director~~ Director of the Arkansas Energy Office of the Arkansas Department of Environmental Quality considers to have useful information.

~~(2)(A) Committee members shall serve at the pleasure of the~~ The Director of the Arkansas Department of Environmental Quality shall approve the creation and membership recommendations under this section.

(B) The committee members shall serve at the pleasure of the director of the Arkansas Department of Environmental Quality.

(b) The committee shall provide advice on the implementation of this subchapter, including without limitation recommendations regarding:

(1) An education and training process for persons who are involved in the implementation of this subchapter;

(2) An ongoing evaluation or feedback process to help the Arkansas Energy Office to implement this section; and

(3) Water-deficiency requirements and energy-efficiency requirements.

SECTION 22. Arkansas Code § 22-3-2009 is amended to read as follows:
22-3-2009. Rules Regulations and administration.

~~(a) The Arkansas Energy Office shall:~~

~~(1) Adopt rules for the implementation of operation and maintenance energy conservation measures in a public building; and~~

~~(2) Develop or revise the Arkansas Energy Office's architectural and engineering standards to provide assistance in determining:~~

~~(A) Which energy conservation measures are best suited to the unique characteristics of each building; and~~

~~(B) The specifications for the energy conservation measures under this subchapter; and~~

~~(3) Adopt rules for the development of education and training requirements for the various personnel that may be involved in a major facility or a major renovation under this subchapter.~~

~~(b) The Arkansas Energy Office may adopt:~~

~~(1) Rules to implement this subchapter; and~~

~~(2) Architectural or engineering standards as needed to~~

~~implement this section.~~

(a) The Arkansas Pollution Control and Ecology Commission shall promulgate regulations for the implementation of operation and maintenance energy conservation measures in public buildings.

(b) The Arkansas Energy Office of the Arkansas Department of Environmental Quality shall:

(1) Develop or revise the architectural and engineering standards to provide assistance in determining:

(A) The energy conservation measures that are best suited to the unique characteristics of each building; and

(B) The specifications for the energy conservation measures under this subchapter; and

(2) Develop and adopt guidelines for the development of education and training requirements for the various personnel that may be involved in a major facility or a major renovation under this subchapter.

(c) The Arkansas Pollution Control and Ecology Commission may promulgate regulations to implement this subchapter.

SECTION 23. The introductory language of Arkansas Code § 22-3-2010(a), concerning performance review, is amended to read as follows:

(a) The Arkansas Energy Office of the Arkansas Department of Environmental Quality, to the extent funds are available, shall conduct a performance review of the Sustainable Energy-Efficient Buildings Program that includes at least the following:

SECTION 24. Arkansas Code § 22-3-2011(c), concerning applicability under the Sustainable Energy-Efficient Buildings Program, is amended to read as follows:

(c) This subchapter does not:

(1) Preclude an institution of higher education from adopting the policies and technical guidelines for a major facility or a major renovation that are established by the Arkansas Energy Office of the Arkansas Department of Environmental Quality under § 22-3-2003(b)(1); or

(2) Affect the processes or exemptions under § 22-6-601.

SECTION 25. Arkansas Code § 25-11-103 is amended to read as follows:

25-11-103. Funds Transfer of transfer to the Weatherization Assistance Program.

~~(a)(1) The Weatherization Assistance Program, a federally funded program under 42 U.S.C. § 6861 et seq., operated by the Division of County Operations of the Department of Human Services is abolished and all the powers, duties and functions, records, property, personnel, unexpended balances of appropriations, allocations, or other funds are transferred by a type 3 transfer to the Arkansas Energy Office of the Arkansas Economic Development Commission.~~

~~(2) This transfer does not conflict with any duties, responsibilities, or powers of the office.~~

~~(b) Unspent funds associated with the Weatherization Assistance Program shall be transferred from the Department of Human Services to the Arkansas Economic Development Commission within thirty (30) days of the effective date of this act.~~

~~(c) The department annually Department of Human Services shall transfer annually to the ~~commission~~ Arkansas Department of Environmental Quality a minimum of fifteen percent (15%) and up to a maximum of twenty-five percent (25%), as allowed by federal law or regulation, of the annual allocation for the Low Income Home Energy Assistance Program ~~to the commission~~ to be used by the Weatherization Assistance Program of the Arkansas Energy Office of the Arkansas Department of Environmental Quality.~~

/s/Irvin

APPROVED: 02/22/2017