

Stricken language would be deleted from and underlined language would be added to present law.

Act 945 of the Regular Session

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State of Arkansas

As Engrossed: S3/20/25 H4/15/25

95th General Assembly

## A Bill

Regular Session, 2025

SENATE BILL 437

By: Senator Hester

By: Representatives Hall, Eaton

### For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS WIND ENERGY DEVELOPMENT  
ACT; AND FOR OTHER PURPOSES.

### Subtitle

TO CREATE THE ARKANSAS WIND ENERGY  
DEVELOPMENT ACT.

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

SECTION 1. Arkansas Code Title 23, Chapter 18, is amended to add an additional subchapter to read as follows:

#### Subchapter 13 – Arkansas Wind Energy Development Act

##### 23-18-1301. Title.

This subchapter shall be known and may be cited as the "Arkansas Wind Energy Development Act".

##### 23-18-1302. Legislative findings and intent.

###### (a) The General Assembly finds that:

(1) Arkansas's wind energy resources are an important asset for the:

(A) Continued economic growth of Arkansas; and

(B) Provision of clean and renewable power to the people of Arkansas and the nation as a whole;

(2) Promotion of the development of wind energy resources is important to the economic growth of Arkansas;



(3) The conversion of wind energy into power for utility-scale systems frequently requires large wind energy systems consisting of wind turbines, electrical substations, electrical lines, and other supporting systems;

(4) The construction, location, and operation of wind energy facilities can have significant potential impacts on the health, safety, and welfare of the members of the communities in which the wind energy facilities are constructed;

(5) It is essential to the public interest to minimize any adverse effect upon the environment and the quality of life of the people of Arkansas that wind energy facilities might cause;

(6) The prudent development of wind energy resources requires addressing balancing the needs of wind energy facility developers with those of landowners that provide access to the wind energy resource, including assurances that:

(A) Wind energy facilities will be properly constructed and decommissioned; and

(B) The landowners will:

(i) Have access to adequate information to verify the accuracy of any payments made by wind energy facilities; and

(ii) Be adequately protected against hazards and accidents that may arise from the wind energy facilities;

(7) A wind energy facility, if abandoned or not properly constructed and maintained, could pose a hazard to the public health, safety, and welfare of the people of this state through mechanical failures, electrical hazards, or the release of hazardous substances;

(8) In order to protect the public against health and safety hazards, standards for the safe decommissioning of wind energy facilities should be established, and assurance of adequate financial resources should be given so that a wind energy facility can be properly decommissioned at the end of the wind energy facility's useful life; and

(9) A local legislative body should have an opportunity to adopt local legislation addressing the construction of wind energy facilities located in its jurisdiction if the local legislation is consistent with this subchapter and existing federal and state law and does not establish criteria for the issuance of a local permit that are less restrictive than stated

under this subchapter.

(b) It is the intent of the General Assembly that this subchapter shall:

(1) Establish the standards and criteria for permitting and regulating wind energy facilities; and

(2) Promote, preserve, and protect the public peace, health, safety, and welfare through effective permitting and regulation of wind energy facilities.

23-18-1303. Definitions.

As used in this subchapter:

(1) "Abandonment" means the failure to generate electricity in commercial quantities for a period of one hundred eighty (180) consecutive days unless the termination of electricity was:

(A) Mandated by state or federal law; or

(B) Authorized by the Arkansas Public Service Commission;

(2)(A) "Commercial quantities" means an amount of electrical energy sufficient to sell or use off-site from a wind energy facility.

(B) "Commercial quantities" does not include amounts of electrical energy only used for the maintenance or testing of the wind energy facility or components of the wind energy facility;

(3)(A) "Construct" means the activity of clearing land, excavation, relocation of utilities, a wind energy facility expansion, or other action that would adversely affect the natural environment of the proposed site.

(B) "Construct" does not include the activity of:

(i) An erection of a meteorological tower;

(ii) An environmental assessment;

(iii) A survey;

(iv) Any necessary borings to ascertain foundation

conditions;

(v) Any preliminary engineering; or

(vi) Any other activities associated with an assessment of development of wind resources on a given parcel of property;

(4) "Local government" means:

(A) A county;

(B) A city of the first class or city of the second class;

(C) An incorporated town; or

(D) Any other political subdivision of this state;

(5) "Local legislation" means:

(A) An ordinance enacted by a local legislative body;

(B) A resolution passed by a local legislative body;

(C) A motion made by a local legislative body;

(D) An amendment adopted by a local legislative body; or

(E) A rule or regulation promulgated by a local legislative

body;

(6) "Local legislative body" means the governing body of a local government;

(7) "Nonparticipating landowner" means a landowner that is not under a lease or other property agreement with the owner or operator of a wind energy facility;

(8)(A) "Operate" means an activity associated with the management, operation, and maintenance of a completed wind energy facility.

(B) "Operate" includes without limitation installing or improving a wind energy facility;

(9) "Operator" means a person that operates a wind energy facility;

(10) "Owner" means a person that has a majority equity interest in a wind energy facility;

(11) "Person" means a natural person, corporation, limited liability company, partnership, joint venture, or other private business entity;

(12)(A) "Proprietary information" means commercial or financial information that:

(i) Is used directly or indirectly in the business of an applicant submitting information to a local government under this subchapter; and

(ii) Gives an applicant submitting information to a local government under this subchapter an advantage or an opportunity to obtain an advantage over a competitor that does not know of, or otherwise use, the information.

(B) "Proprietary information" includes trade secrets;

(13) "Redevelop" means the process of replanning, reconstructing,

or redesigning a wind energy facility, including the acquisition, clearance, development, or disposal, or any combination of these activities, of a wind energy facility;

(14)(A) "Transmission facility" means a power cable, distribution line, or other equipment that delivers electricity from a wind turbine located in Arkansas to the point of interconnection with a power distribution grid, long-distance power transmission grid, or other facility by and through which the electricity is distributed or transmitted to one (1) or more customers.

(B) "Transmission facility" does not include distribution, transmission, or other facilities that are located beyond the point of interconnection with the power distribution grid or transmission grid;

(15) "Under development" means:

(1) Executed land leases;

(2) Commenced necessary state and federal studies related to construction of a wind energy facility; or

(3) Commenced construction of a wind energy facility;

(16) "Useful life" means the amount of time during which a wind energy facility is generating electricity in commercial quantities;

(17)(A) "Wind energy facility" means an electrical energy generation facility consisting of one (1) or more wind turbines under common ownership or operating control, that cumulatively, with any other wind energy facility:

(i) Has a rated capacity of five megawatts (5 MW) or more of electrical energy; and

(ii) Is more than two hundred feet (200') in height.

(B) "Wind energy facility" includes turbines, towers, buildings, transmission facilities, meteorological towers, transformers, control systems, and other associated facilities used to support the operation of the wind energy facility.

(C) "Wind energy facility" does not include equipment that when installed in connection with a dwelling transmits or uses wind energy to produce electrical energy in a useful form for residential purposes and is less than two hundred feet (200') in total height;

(18) "Wind energy facility expansion" means an activity that:

(A) Adds or substantially modifies a wind energy facility,

including without limitation increasing the height or the number of the wind turbines, transmission facilities, or other equipment; or

(B) Increases the environmental footprint of a wind energy facility; and

(19)(A) "Wind turbine" means a wind energy conversion system that converts wind energy into electricity using a wind turbine generator.

(B) "Wind turbine" includes a turbine, blade, tower, base, and pad transformer, if any.

23-18-1304. Permit required.

(a)(1) A person shall not construct, operate, or redevelop a wind energy facility or wind energy facility expansion in this state unless a permit is obtained under this subchapter.

(2) Before a person constructs, operates, or redevelops a wind energy facility or wind energy facility expansion in this state, the person shall obtain:

(A) A permit for the construction, operation, or redevelopment from the Arkansas Public Service Commission; and

(B) If a local government has adopted local legislation addressing the construction or expansion of a wind energy facility located in the jurisdiction of the local government, a permit from the local legislative body.

(b) The commission shall establish the application procedure for a permit to construct, operate, or redevelop a wind energy facility or a wind energy facility expansion.

(c) The issuance of a permit under this subchapter is contingent on compliance with this subchapter and other applicable state laws.

(d) Subject to the approval of the commission, a permit issued under this subchapter may be transferred to a person that agrees to comply with the terms of the permit.

(e) An initial filing fee of two thousand five hundred dollars (\$2,500) shall accompany each application for a permit.

(f) An application for a permit shall be accompanied by proof of service of the written notice under § 23-18-1305.

23-18-1305. Service – Notice requirements.

(a)(1) An applicant for a permit for the construction, operation, or redevelopment of a wind energy facility or a wind energy facility expansion shall provide a copy of the application as written notice to:

(A) A person listed in § 23-18-513;

(B) The Department of Parks, Heritage, and Tourism;

(C) The circuit clerk of each county in which the proposed wind energy facility will be located;

(D) Any landowner and residents located within four (4) miles of the proposed location of the wind energy facility or wind energy facility expansion; and

(E) All public libraries in each county in which the proposed wind energy facility or wind energy facility expansion is to be or may be located for review by the public.

(2) The Arkansas Public Service Commission shall prescribe by rule the form and submittal requirements of the written notice required under subdivision (a)(1) of this section.

(b) The written notice required under subdivision (a)(1) of this section shall include:

(1) A complete description of the wind energy facility, including the number and size of the wind turbines;

(2) A map showing the locations of all proposed wind energy facilities;

(3) The proposed timeline for construction and operation of the wind energy facility; and

(4) A list of locations where the application is available for review by the public.

(c) The written notice required under subdivision (a)(1) of this section shall be:

(1) Mailed by certified mail; and

(2) Directed to the address of the landowner of the real property as it appears on the records in the office of the county sheriff or county tax assessor for the mailing of statements for taxes as provided in § 26-35-705.

(d) An application for a permit shall be accompanied by proof that notice was provided to persons residing in the local government entitled to receive notice under § 23-18-513 by publication in a newspaper having

substantial circulation in the local government of:

- (1) A summary of the application for a permit;
- (2) A statement of the date on or about which the application is to be filed;
- (3) The locations at which a copy of the application is available for review by the public; and
- (4) The date, time, and location of the public hearings required in subsection (h) of this section.

(e)(1) An application for a permit shall be accompanied by proof that the applicant has served a copy of the written notice by certified mail to:

(A) An operator, as reflected in the records of the Oil and Gas Commission, that is conducting oil and gas operations upon any part of the surface estate on which the applicant intends to construct the wind energy facility or the wind energy facility expansion;

(B) An operator, as reflected in the records of the Oil and Gas Commission, of an unspaced unit, or a unit created by order of the Oil and Gas Commission, that is conducting oil and gas operations for the unspaced unit where any part of the unit area is within the geographical boundaries of the surface estate on which the applicant intends to construct the wind energy facility or wind energy facility expansion; and

(C) As to tracts of land not described in subdivisions (e)(1)(A) and (B) of this section on which the applicant intends to construct a wind energy facility or wind energy facility expansion, all lessees of oil and gas leases covering the mineral estate underlying any part of the tracts of land that are filed of record with the circuit clerk in the county where the tracts are located and whose primary term has not expired.

(2) The service of written notice required under subdivision (e)(1) of this section shall contain:

(A) A map or plat of the proposed location, with sufficient specificity of the elements of the wind energy facility to be located on the local government section that includes any part of the tracts of land described in subdivisions (e)(1)(A) and (B) of this section;

(B) The approximate date that the applicant proposes to commence construction of the wind energy facility or the wind energy facility expansion; and

(C)(i) The return address of the applicant and a statement

that the recipient of the notice, within thirty (30) days of receipt, is required to provide the applicant with site and operational and infrastructure information with sufficient specificity to facilitate the safe construction and operation of a wind energy facility or a wind energy facility expansion.

(ii) The information required under subdivision (e)(2)(C)(i) of this section shall include American Land Title Association surveys of existing subsurface and surface improvements on the real property, if any, as well as other technical specifications for existing improvements, including without limitation pipe size, material, capacity, and depth.

(f)(1) As a condition to the issuance of a permit, an applicant is required to submit to the Oil and Gas Commission:

(A) The information provided under subdivision (e)(2)(C)(i) of this section; and

(B) A copy of the written notice required under subdivision (a)(1) of this section.

(2) The applicant shall obtain approval or conditional approval from the Oil and Gas Commission.

(g) If the address of a party entitled to notice under this section cannot be ascertained or the notice cannot be delivered after a reasonable effort to obtain the information has been made, then an affidavit attesting to the efforts to locate the party shall be placed in the records of the circuit clerk where the surface estate is located.

(h)(1) Within sixty (60) days of the publication of the notice required under subsection (d) of this section, the applicant shall conduct a public hearing in each county in which the proposed wind energy facility is to be constructed or expanded.

(2) At the public hearing under subdivision (h)(1) of this section, the applicant shall:

(A) Provide copies of the notice required under subdivision (a)(1) of this section;

(B) Be prepared to discuss the contents of the application for a permit; and

(C) Provide substantive responses to questions asked by members of the public regarding the application for a permit.

23-18-1306. Minimum requirements.

(a) The Arkansas Public Service Commission shall require that to receive a permit for the construction, operation, or redevelopment of a wind energy facility or a wind energy facility expansion, the owner shall meet the following minimum requirements:

(1) The minimum setback for the base of any wind turbine of a wind energy facility from a nonparticipating landowner's property line shall be equal to the greater of:

(A) Three and five-tenths (3.5) times the total height of the wind turbine as measured from the ground at its base to the maximum height of the blade tip; and

(B)(i) Except as provided in subdivision (a)(1)(B)(ii) of this section, two thousand five hundred feet (2,500').

(ii) A nonparticipating landowner may elect to sign a waiver to allow a wind turbine or group of wind turbines of a wind energy facility to be placed up to one and one-tenth (1.1) times the total height of the wind turbine as measured from the ground at its base to the maximum height of the blade tip from the nonparticipating landowner's property line; and

(2) The minimum setback for the base of a wind turbine of a wind energy facility shall be one (1) mile from any of the following places existing at the time the application for the permit is filed:

(A) A public or private school;

(B) A hospital;

(C) A nursing home facility;

(D) A church;

(E) The limits of a city or town;

(F) A state or federal park; and

(G) A public airport.

(b)(1) Except as provided in subdivision (b)(2)(A) of this section, an application shall be accompanied by an environmental impact assessment conducted by a qualified, third-party expert and approved by the Arkansas Public Service Commission, paid for by the applicant, of the potential adverse impacts within four (4) miles of the perimeter of the wind energy facility or wind energy facility expansion.

(2)(A) An environmental impact assessment required under

subdivision (b)(1) of this section shall not be required if an environmental review of the wind energy facility or any portion of the wind energy facility is required under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., as it existed on January 1, 2025, that includes public input, a public hearing, an environmental impact statement, and a viewshed analysis.

(B) The environmental impact assessment under subdivision (b)(2)(A) of this section shall include without limitation a study of the:

(i) Economic impacts to individuals, real property values, tourism, and agriculture;

(ii) Assessment for compliance with state and national fire, building, and electrical codes;

(iii) A wildlife impact assessment, including without limitation a study of the potential adverse impacts to:

(a) Wildlife refuges;

(b) Preserves and management areas;

(c) Areas that provide habitat for threatened or endangered species;

(d) Primary nursery areas designated by the Arkansas Game and Fish Commission; and

(e) Critical fisheries habitats identified under applicable state or federal law;

(iv) Viewshed analysis for:

(a) State and federal parks and forests;

(b) Historic and cultural sites;

(c) Public parks and recreation areas; and

(d) Private conservation land;

(v) Hydrogeological assessment of areas of water within a minimum of four (4) miles of the perimeter of the wind energy facility or wind energy facility expansion, including:

(a) Bodies of water;

(b) Flowing water sources;

(c) Stormwater runoff;

(d) Wetlands;

(e) Groundwater;

(f) Aquifers; and

(g) Private wells;

(vi)(a) Risk assessment and mitigation recommendations for shadow flicker and incidents, including wind turbine fires, structural damage or failure, ice throw, blade shear, and hazardous material spills.

(b) Except as provided in subdivision (b)(2)(B)(vi)(c) of this section, shadow flicker shall not exceed thirty (30) hours annually as verified in an assessment prepared according to professional standards.

(c) A nonparticipating landowner may elect to sign a written waiver to allow ice throw, blade shear, or shadow flicker from any wind turbine or group of wind turbines on the nonparticipating landowner's property;

(vii) Risk assessment for civil air navigation, military or law enforcement routes or training exercises, emergency medical flights, radar operations, and mobile phone services; and

(viii) Risk assessment for lighting requirements beyond that which may be required by the Federal Aviation Administration, including the requirement that the wind energy facility be equipped with a Federal Aviation Administration-approved aircraft detection lighting system.

(c)(1) Except during an event of inclement weather that prevents the operator of a wind energy facility from controlling the noise level of one (1) or more wind turbines that are part of the wind energy facility, any wind turbine or group of wind turbines of a wind energy facility shall not exceed an emission limit at a nonparticipating landowner's dwelling of thirty-five A-weighted decibels (35 dBA) and forty-five A-weighted decibels (45 dBA) at a nonparticipating landowner's property line as determined by a qualified, third-party acoustics expert according to rules adopted by the Arkansas Public Service Commission based on the American National Standards Institute Standard 12.9 and other applicable American National Standards Institute standards.

(2) Before construction of a wind energy facility or wind energy facility expansion, a qualified, third-party acoustics expert, selected and paid for by the applicant, shall make a baseline determination of preconstruction noise levels, including modeling and enforcement.

(3) A nonparticipating landowner may elect to sign a written waiver to allow noise levels greater than those stated under subdivision

(c)(1) of this section from any wind turbine or group of wind turbines on the nonparticipating landowner's property.

23-18-1307. Application requirements.

(a) An application for a permit for the construction, operation, or redevelopment of a wind energy facility or a wind energy facility expansion shall include:

(1) A written determination of no hazard by the Federal Aviation Administration; and

(2) A development and management plan.

(b) The development and management plan under subdivision (a)(2) of this section shall address:

(1) Physical characteristics of the wind energy facility to protect the health and safety of the public;

(2) Electric standards that meet all national electric codes;

(3) Construction, operation, and maintenance standards that comply with all building codes and ensure that the wind energy facility is maintained in a manner that protects the public and complies with all requirements of this subchapter; and

(4)(A) Emergency procedures.

(B) The emergency procedures under this subdivision (b)(4) shall include:

(i) A plan to provide notice to the Arkansas Public Service Commission and local emergency agencies within twenty-four (24) hours of an emergency;

(ii) A plan to address an emergency situation, including written procedures that provide for shutting down the wind energy facility or a portion of the wind energy facility, as appropriate;

(iii) An emergency evacuation plan for an area within two (2) miles of a wind energy facility, including the location of alternate landing zones for emergency services aircraft;

(iv) An emergency plan shall be reviewed at least annually by the owner or operator of the wind energy facility in collaboration with the fire service, law enforcement, and other appropriate first responders to update and improve the emergency plan as needed;

(v) A plan for the owner to distribute current

copies of the emergency plan to the local legislative body and fire service, law enforcement, and other appropriate first responders as identified by the local government;

(vi) A plan, if a local government requires, for the owner, at the owner's expense, to provide annual training for fire service, law enforcement, and other appropriate first responders regarding responding to a wind energy facility emergency until the wind energy facility has been decommissioned;

(vii) A requirement that the owner shall furnish its operator, supervisors, and employees who are responsible for emergency action a copy of the current edition of the emergency procedures established under this section to ensure compliance with the procedures;

(viii) A requirement that the owner shall train the appropriate operating personnel to ensure the personnel has knowledge of the emergency procedures and verify that the training is effective; and

(ix) A plan that as soon as possible after the end of a wind energy facility emergency, the owner review employee activities to determine whether or not the emergency procedures were effectively followed.

23-18-1308. Decommissioning requirements.

(a) An owner is responsible, at the owner's expense, for the proper decommissioning of a wind energy facility.

(b)(1) Before the start of construction of a wind energy facility, the applicant for a permit for the construction or operation of the wind energy facility or wind energy facility expansion shall establish financial security in the amount of one hundred percent (100%) of the estimate of the total cost to decommission and remove the wind energy facility as determined by an independent consultant, selected and paid for by the applicant.

(2) To establish financial security under subdivision (b)(1) of this section, the applicant shall file with the Arkansas Public Service Commission a surety bond, collateral bond, irrevocable letter of credit, parent guaranty, cash, cashier's check, certificate of deposit, bank joint custody receipt, or other approved negotiated instrument, or any combination of the items listed in this subdivision (b)(2), in the amount required by subdivision (b)(1) of this section.

(c) A wind energy facility shall be decommissioned or removed if:

(1) A wind turbine of a wind energy facility ceases to generate electricity for one hundred eighty (180) continuous days, unless:

(A) The termination of electricity was mandated by state or federal law; or

(B)(i) As authorized by the commission.

(ii) Two (2) extensions may be allowed by the commission for one-hundred-eighty-day periods at a time if the wind energy facility continues to be maintained in proper working order; or

(2)(A) Any wind turbine or group of wind turbines of a wind energy facility violates the noise level restrictions under § 23-18-1306(c)(1), unless the wind turbine or group of wind turbines is brought into compliance within one hundred eighty (180) days of the violation.

(B) One (1) extension under subdivision (c)(2)(A) of this section is permitted.

(d) Within twelve (12) months following the decommissioning of a wind energy facility or wind energy facility expansion, the property shall be restored to its original condition before commencement of activities on the site.

(e) Not less than one (1) time every five (5) years following the issuance of the permit by the commission, the commission may require the owner to:

(1) Update the estimated costs of decommissioning and removal;

(2) File the new estimate with the commission; and

(3) Provide a surety bond, collateral bond, irrevocable letter of credit, parent guaranty, cash, cashier's check, certificate of deposit, bank joint custody receipt, or other approved negotiated instrument, or any combination of the items listed in this subdivision (e)(3), in the updated amount.

(f) Proper decommissioning of a wind energy facility shall include:

(1) Removal of wind turbines, towers, buildings, cabling, electrical components, foundations, and any other associated facilities, to a depth of forty-eight (48) inches below grade in the ground; and

(2)(A) Except as provided in subdivision (h)(2)(B) of this section, disturbed earth being graded and reseeded or otherwise restored to substantially the same physical condition as it existed before the construction of the wind energy facility by the owner.

(B) Replacement of trees that may have been removed during construction is not required.

(g)(1) Decommissioning of a wind energy facility or individual pieces of commercial wind energy equipment shall be completed by the owner within twelve (12) months after:

(A) Abandonment;

(B) The end of the useful life of the commercial wind energy equipment in the wind energy facility; or

(C) Receipt of a notice to decommission or remove under subsection (c) of this section.

(2) If the owner fails to complete the decommissioning within the period prescribed under subdivision (g)(1) of this section, the commission shall take such measures as are necessary to complete the decommissioning.

(h) A lease or other agreement between a landowner and an owner may contain provisions for decommissioning that are more restrictive than those provided under this section.

23-18-1309. Insurance requirements.

(a) Before commencing construction of a wind energy facility, the owner or operator shall obtain and keep in effect, either:

(1) A commercial general liability insurance policy with a limit consistent with prevailing industry standards as determined by the Arkansas Public Service Commission; or

(2) A combination of self-insurance and an excess liability insurance policy approved by the commission.

(b) The owner shall cause the landowner of the real property where the wind turbine or wind energy facility is located to be named as an additional insured in the insurance policy.

(c)(1) The owner or operator shall deliver to a landowner who has entered into a lease, easement, or other agreement with the owner a certificate of insurance evidencing the insurance policy.

(2) The landowner shall be given a notice of at least thirty (30) days before any material modification, cancellation, or termination of the insurance policy.

23-18-1310. Applicability.

(a) This subchapter does not amend the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

(b) This subchapter does not affect the:

(1) Jurisdiction of the Division of Environmental Quality or the Arkansas Pollution Control and Ecology Commission with respect to water and air pollution control or other matters within the jurisdiction of the division or the Arkansas Pollution Control and Ecology Commission;

(2) Jurisdiction of the Arkansas State Game and Fish Commission with respect to the impact on game and fish of the state; and

(3) Requirement that a person apply for and obtain a permit from a state agency or federal entity having jurisdiction over the wind energy facility or wind energy facility expansion.

(c) This subchapter does not apply to a wind energy facility in this state constructed or which commenced to be constructed on or before September 1, 2024.

23-18-1311. Review by a state agency.

(a) Upon receipt of an application for a permit for the construction, operation, or redevelopment of a wind energy facility or a wind energy facility expansion under this subchapter and other requirements the Arkansas Public Service Commission may adopt, the staff of the commission shall invite comments from a state agency entitled to service under § 23-18-513 as to the adequacy of the application.

(b) The invitation to comment under subsection (a) of this section shall include a notification to a state agency that comments are required to be received within one hundred twenty (120) days of the date of the mailing or delivery of the invitation to comment, unless a state agency requests, for cause, a longer period for consideration.

(c)(1) Upon review of the comments, if any, the staff shall determine whether or not the applicant failed to include or adequately develop any relevant environmental or economic aspect of the wind energy facility.

(2) The commission shall issue a deficiency letter specifying the deficiencies in the application.

(3) The deficiency letter shall be prepared and served upon the applicant as promptly as possible but no later than twenty (20) days before

the date set for a public hearing under § 23-18-1312.

(4) The applicant shall promptly respond to any deficiency letter, and the public hearing shall be deferred unless the applicant has responded before the public hearing to any deficiency letter.

23-18-1312. Public hearing.

(a)(1)(A) Upon receipt of an application for a permit for the construction, operation, or redevelopment of a wind energy facility or a wind energy facility expansion under this subchapter, the Arkansas Public Service Commission shall fix a date for the commencement for a public hearing on the application.

(B) The date of the public hearing under subdivision (a)(1)(A) of this section shall not be earlier than sixty (60) days after the date set for the receipt of comments from the state agencies under § 23-18-1311, including any extensions.

(2) The testimony presented at the public hearing may be presented in writing or orally, provided that the commission may make rules designed to exclude repetitive, redundant, or irrelevant testimony.

(3) The Rules of Practice and Procedure of the commission shall apply to the proceeding.

(b)(1) After the public hearing, the commission may deny, grant, or conditionally grant the permit.

(2) A permit shall not be granted if the applicant has not received a permit for the construction or operation of the wind energy facility or wind energy facility expansion from a state or federal agency having jurisdiction over the air, water, and other environmental impacts associated with a wind energy facility or wind energy facility expansion.

23-18-1313. Local legislation.

(a)(1) A local legislative body may adopt local legislation addressing the construction, expansion, operation, or redevelopment of a wind energy facility located within the jurisdiction of the local government if the local legislation is consistent with this subchapter and existing federal and state law.

(2) Local legislation shall not establish criteria for the issuance of a local permit that is less restrictive than those established in

this subchapter.

(b) A local government that regulates the construction, expansion, operation, or redevelopment of wind energy facilities and wind energy facility expansions by local legislation shall furnish a certified copy of the adopted local legislation to the Arkansas Public Service Commission.

23-18-1314. Report to landowners.

(a)(1) An owner or operator of a wind turbine or wind energy facility shall provide a report to a landowner that has entered into a lease, easement, or other agreement with the owner of a wind energy facility that is paid based on the amount of electrical energy produced from the conversion of wind energy.

(2) The report required under subdivision (a)(1) of this section shall:

(A) Be provided within ten (10) business days of the payment to the landowner; and

(B) At a minimum, contain:

(i) Information reasonably necessary to provide the landowner with an understanding of the basis for the payment the landowner received; and

(ii) A means of confirming the accuracy of the information provided under subdivision (a)(2)(B)(i) of this section.

(b)(1) A landowner described under subdivision (a)(1) of this section may inspect the records of the owner or operator to confirm the accuracy of a payment made to the landowner within the past twenty-four (24) months.

(2) One (1) inspection under subdivision (b)(1) of this section is permitted per calendar year.

(c)(1) The owner or operator shall make available within the state all records, documents, data, and other information, or copies thereof, as are necessary for a landowner to conduct the inspection specified in subsection (b) of this section.

(2) The records shall be made available in a location and manner that affords the landowner reasonable access to the records during normal business hours.

(3) The landowner shall be permitted a reasonable length of time to complete the inspection and shall not cause undue disruption to the

operations of the owner or operator during the inspection.

23-18-1315. Other applicable local, state, and federal permits, licenses, or approvals.

The issuance of a permit for the construction, operation, or redevelopment of a wind energy facility or a wind energy facility expansion under this subchapter does not preclude the need for a person to obtain other local, state, or federal permits, licenses, or approvals required for a wind energy facility.

23-18-1316. Information subject to disclosure.

(a) Except as provided in subsection (b) of this section, a permit application for the construction, operation, or redevelopment of a wind energy facility or a wind energy facility expansion and documents received by the Arkansas Public Service Commission or a local government under this subchapter or documents used by the local legislative body to evaluate the permit application are subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) Proprietary information contained in a permit application or in documents submitted in support of the permit application to the commission or local government under this subchapter or documents used by the commission or local government to evaluate and approve or deny a permit application shall remain confidential and is not subject to disclosure to the public under this section, the Freedom of Information Act of 1967, § 25-19-101 et seq., or any other law.

23-18-1317. Federal law.

If a provision of this subchapter conflicts with a current federal law, including promulgated federal regulations, the federal law shall take precedence over the conflicting provisions of this subchapter.

23-18-1318. Exemptions.

A wind energy facility project is exempt from this subchapter if the wind energy facility project is under development as of April 9, 2025.

23-18-1319. Rules.

(a) The Arkansas Public Service Commission shall promulgate rules to

implement and administer this subchapter.

(b) Rules that the commission shall promulgate under this subchapter include without limitation rules relating to:

(1) Requirements and terms for a permit for the construction, operation, or redevelopment of a wind energy facility or a wind energy facility expansion;

(2) Requirements for an application a permit for the construction, operation, or redevelopment of a wind energy facility or a wind energy facility expansion;

(3) Requirements for a renewal application a permit for the construction, operation, or redevelopment of a wind energy facility or a wind energy facility expansion; and

(4) The erection, construction, reconstruction, change, alteration, maintenance, use, operation, and decommissioning of wind energy facilities, including without limitation the:

(A) Interconnection of power lines and with regional transmission organizations, independent transmission system operators, or similar organizations; and

(B) Establishment of necessary cooperation for site visits and enforcement investigations.

SECTION 2. TEMPORARY LANGUAGE. DO NOT CODIFY. Rules.

(a) The Arkansas Public Service Commission shall promulgate rules necessary to implement this act.

(b) When adopting the initial rules required under this act, the commission shall file the final rules with the Secretary of State for adoption under § 25-15-204(f):

(1) On or before January 1, 2026; or

(2) If approval under § 10-3-309 has not occurred by January 1, 2026, as soon as practicable after approval under § 10-3-309.

(c) The commission shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2026, so that the Legislative Council may consider the rules for approval before January 1, 2026.

**APPROVED: 4/21/25**