

Department of Finance and Administration

Legislative Impact Statement

Bill: JAP051 (Amendment to HB1064)

**Bill Subtitle: AN ACT FOR THE DEPARTMENT OF FINANCE AND ADMINISTRATION
APPROPRIATION FOR THE 2024-2025 FISCAL YEAR.**

Basic Change:

Sponsor: Rep. Pilkington

JAP051 would create a sales and use tax exemption for the following items and services related to microgrids:

- Microgrid equipment;
- Eligible microgrid costs;
- Services purchased for the purpose of and in conjunction with developing, acquiring, constructing, expanding, renovating, refurbishing, and operating a qualified microgrid; and
- Electricity sold by a qualified microgrid.

“Eligible microgrid costs” include expenditures for the development, acquisition, construction, expansion, renovation, refurbishment, and operation of a qualified microgrid, including without limitation costs of land, buildings, site improvements, substations, lease payments, site characterization and assessment, engineering, and design used directly and exclusively in a qualified microgrid.

“Microgrid equipment” is defined as equipment or software purchased or leased for the generation and delivery of power to a co-located energy purchaser or a municipal utility purchaser. JAP051 provides a list of items that qualify as microgrid equipment.

“Qualified microgrid” means a facility that is:

- Developed, acquired, constructed, expanded, rehabilitated, renovated, repaired, or operated using at least two energy generation sources and one energy storage system to deliver power to a co-located energy user or a municipal utility purchaser; and
- Owned or operated by a qualified firm that:
 - Creates a qualified investment of at least \$10,000,000 within two years of the issuance of a building permit or an interconnection agreement, whichever comes last.
 - If an interconnection agreement is not required, then the qualified investment required under subdivision JAP051 is required within two years of the issuance of a building permit; and
 - Pays prevailing wages for construction and trade workers.

To qualify for the exemption, a qualified firm must apply for a financial incentive certificate from the Arkansas Economic Development Commission. A qualified firm must demonstrate that the minimum qualified investment of \$10,000,000 and wages have been met within two years from the issuance of the building permit or an interconnection agreement, where required. Once approved, the qualified firm must certify annually to the Commission the minimum qualified investment and wages paid to construction and trade workers for the preceding calendar year for the term of the financial incentive certificate.

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Revenue Impact:

Undetermined loss to state and local sales and use tax.

[The anticipated loss to state and local sales and use tax would be a minimum of \$1.57M and \$794,000, respectively, for the construction of one microgrid facility, but does not include the continuing revenue impact for future costs, replacement, repair, upgrades, other improvements, maintenance costs, or electricity sold.]

Taxpayer Impact:

The seller of certain microgrid costs and services as defined in the bill would not collect and remit sales tax from the purchaser. A qualified microgrid would sell electricity exempt from sales and use tax.

Resources Required:

Computer programs, tax forms, and instructions will need to be updated. Updates to the Sales and Use Tax Rules will need to be promulgated.

Time Required:

Adequate time is provided for implementation.

Procedural Changes:

Department employees will need to be educated as well as the tax community.

Other Comments:

None.

Legal Analysis:

Fiscal sessions of the Arkansas General Assembly may only entertain appropriation bills. Ark. Const. Art. 5, § 5(b) (as amended by Amendment 86). A bill other than an appropriation bill may be considered in a fiscal session if two-thirds of the members of each house of the General Assembly approve consideration of the bill. *Id.* at (c)(2). Article 5, § 29 of the Arkansas Constitution requires that appropriations be made by law with a distinctly stated purpose. These appropriations may only encompass one purpose pursuant to Article 5, § 30 of the Arkansas Constitution. An appropriation bill may not include substantive provisions distinct from the appropriation itself. *See Reid v. Jones*, 261 Ark. 550, 551 S.W.2d 191 (1977). JAP051 may be subject to challenge under the Arkansas Constitution.