

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

State of Arkansas  
94th General Assembly  
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As Engrossed: S3/30/23  
**A Bill**

SENATE BILL 544

By: Senators M. McKee, J. Boyd, J. Bryant, Caldwell, Crowell, B. Davis, Dees, J. Dismang, J. Dotson, J. English, Flippo, Gilmore, K. Hammer, Hester, Hill, Irvin, B. Johnson, M. Johnson, C. Penzo, J. Petty, Rice, Stone, G. Stubblefield, D. Sullivan, D. Wallace  
By: Representatives Beaty Jr., Ladyman, McAlindon

### **For An Act To Be Entitled**

AN ACT TO AMEND THE LAW REGARDING ENERGY; TO AMEND THE LAW CONCERNING COAL-POWERED ELECTRICAL GENERATION FACILITIES; TO REQUIRE CERTAIN ACTIONS BEFORE DECOMMISSIONING OR DISPOSAL OF ASSETS; TO REQUIRE A *STUDY*; TO *ESTABLISH A STATE ENERGY POLICY*; AND FOR OTHER PURPOSES.

### **Subtitle**

TO AMEND THE LAW REGARDING ENERGY; TO AMEND THE LAW CONCERNING COAL-POWERED ELECTRICAL GENERATION FACILITIES; TO REQUIRE CERTAIN ACTIONS BEFORE DECOMMISSIONING OR DISPOSAL OF ASSETS; AND TO REQUIRE A STUDY.

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

*SECTION 1. Arkansas Code Title 15, Chapter 1, is amended to add an additional section to read as follows:*

*15-10-102. State energy policy.*

*(a) It is the policy of this state that Arkansas shall have adequate, reliable, affordable, sustainable, and clean energy resources.*

*(b) To further the policy in subsection (a) of this section, Arkansas shall promote the development of:*



- (1) Nonrenewable energy resources, including without limitation:
  - (A) Natural gas;
  - (B) Coal;
  - (C) Oil;
  - (D) Oil shale; and
  - (E) Oil sands;
- (2) Renewable energy resources, including without limitation:
  - (A) Geothermal;
  - (B) Solar;
  - (C) Wind;
  - (D) Biomass;
  - (E) Biofuel; and
  - (F) Hydroelectric;
- (3) Nuclear power generation technologies certified for use by the United States Nuclear Regulatory Commission, including without limitation molten salt reactors producing medical isotopes;
- (4) Alternative transportation fuels and technologies;
- (5) Infrastructure to facilitate energy development, diversified modes of transportation, greater access to domestic and international markets for Arkansas's resources, and advanced transmission systems;
- (6) Energy storage, pumped storage, and other advanced energy systems, including without limitation hydrogen from all sources;
- (7) Electricity systems that can be controlled at the request of grid operators to meet system load demands to ensure an adequate supply of dispatchable energy generation resources;
- (8) Increased refinery capacity;
- (9) Resources and infrastructure sufficient to meet the state's growing demand for energy, while contributing to the regional and national energy supply, thus reducing dependence on international energy sources; and
- (10) Resources, tools, and infrastructure to enhance the state's ability to:
  - (A) Respond effectively to significant disruptions to the state's energy generation, energy delivery systems, or fuel supplies;
  - (B) Maintain adequate supply of energy resources, including without limitation reserves of proven and cost-effective dispatchable electricity reserves to meet grid demand; and

(C) Ensure the state's energy independence by promoting the use of energy resources generated within the state.

(c) In addition to promoting the development of energy resources and related assets and policies under subsection (b) of this section, Arkansas shall:

(1) Allow market forces to drive prudent uses of energy resources, although incentives and other methods may be used to ensure the state's optimal development and use of energy resources in the short- and long-term;

(2) Pursue energy conservation, energy efficiency, and environmental quality;

(3) Promote the development of a secure supply chain from resource extraction to energy production and consumption;

(4) Maintain an environment that provides for stable consumer prices that are as low as possible while providing producers and suppliers a fair return on investment, recognizing that:

(A) Economic prosperity is linked to the availability, reliability, and affordability of consumer energy supplies; and

(B) Investment shall occur only when adequate financial returns can be realized;

(5) Promote training and education programs focused on developing a comprehensive understanding of energy, including without limitation:

(A) Programs addressing:

(i) Energy conservation;

(ii) Energy efficiency;

(iii) Supply and demand; and

(iv) Energy-related workforce development; and

(B) Energy education programs in kindergarten through grade twelve (K-12); and

(6) Promote the use of clean energy sources by considering the emissions of an energy resource throughout the entire life cycle of the energy resource.

(d)(1) State regulatory processes should be streamlined to balance economic costs with the level of review necessary to ensure protection of the state's various interests.

(2) When federal action is required, Arkansas shall encourage expedited federal action and collaborate with federal agencies to expedite review.

(e) State agencies are encouraged to conduct state agency activities consistent with this section.

SECTION 2. Arkansas Code Title 23, Chapter 18, is amended to add an additional subchapter to read as follows:

Subchapter 12 – Coal-powered Electrical Generation Facilities

23-18-1201. Legislative findings.

The General Assembly finds that:

(1) Affordable, reliable, dispatchable, and secure energy resources are important to the health, safety, and welfare of the state's citizens;

(2) The state has invested substantial resources in the development of affordable, reliable, dispatchable, and secure energy resources within the state;

(3) The early retirement of an electrical generation facility that provides affordable, reliable, dispatchable, and secure energy is a threat to the health, safety, and welfare of the state's citizens;

(4) The state's police powers, reserved to the state by the United States Constitution, provide the state with sovereign authority to make and enforce laws for the protection of the health, safety, and welfare of the state's citizens;

(5) The state has a duty to defend the production and supply of affordable, reliable, dispatchable, and secure energy from external regulatory interference; and

(6) The state's sovereign authority with respect to the retirement of an electrical generation facility for the protection of the health, safety, and welfare of the state's citizens is primary and takes precedence over any attempt from an external regulatory body to mandate, restrict, or influence the early retirement of an electrical generation facility in the state.

23-18-1202. Definitions.

As used in this subchapter:

(1) "Dispatchable" means available for use on demand and generally available to be delivered at a time and quantity of the operator's choosing;

(2) "Disposal" means the sale, transfer, or other disposition of a project entity's assets;

(3) "Electrical generation facility" means a facility that generates electricity to provide to customers;

(4) "Forced retirement" means the closure of an electrical generation facility as a result of a federal regulation that:

(A) Directly mandates the closure of an electrical generation facility; or

(B) Imposes costs of compliance that are so high as to effectively force the closure of an electrical generation facility;

(5)(A) "Project" means an electric generation and transmission facility owned by an interlocal entity or an electric interlocal entity.

(B) "Project" includes without limitation the following facilities that are owned by an interlocal entity or an electric interlocal entity and required for the electric generation and transmission facility:

(i) Fuel facilities;

(ii) Fuel production facilities;

(iii) Fuel transportation facilities;

(iv) Energy storage facilities; or

(v) Water facilities.

(C) "Project" includes a project entity's ownership interest in:

(i) Facilities providing additional project capacity;

(ii) Facilities providing replacement project capacity; and

(iii) Additional generating, transmission, fuel, fuel transportation, water, or other facilities added to a project;

(6) "Project entity" means an interlocal entity or an electric interlocal entity that owns a project;

(7)(A) "Project entity asset" means a project entity's:

(i) Land;

(ii) Buildings; or

(iii) Essential equipment, including without limitation turbines, generators, transformers, and transmission lines.

(B) "Project entity asset" does not include an asset that is not essential for the generation of electricity in the project entity's coal-powered electrical generation facility;

(8) "Qualified utility" means an electric corporation that serves more than two hundred thousand (200,000) retail customers in the state;

(9) "Reliable" means supporting a system generally able to provide a continuous supply of electricity at the proper voltage and frequency and the resiliency to withstand sudden or unexpected disturbances; and

(10) "Secure" means protected against disruption, tampering, and external interference.

23-18-1203. Notice of decommissioning or disposal of project entity assets.

(a) A project entity shall provide a notice of decommissioning or disposal to the Legislative Council at least one hundred eighty (180) days before the:

(1) Disposal of any project entity assets; or

(2) Decommissioning of the project entity's coal-powered electrical generation facility.

(b) The notice of decommissioning or disposal described in subsection (a) of this section shall include:

(1) The date of the intended decommissioning or disposal;

(2) A description of the project entity's coal-powered electrical generation facility intended for decommissioning or a project entity asset intended for disposal; and

(3) The reasons for the decommissioning or disposal.

(c) A project entity shall not intentionally prevent the functionality of the project entity's existing coal-powered electrical generation facility.

(d) Notwithstanding the requirements in this section, a project entity may take any action necessary to transition to a new electrical generation facility powered by nuclear power, natural gas, hydrogen, or a combination of

natural gas and hydrogen, including without limitation any action that has been approved by a permitting authority.

23-18-1204. Forced retirement.

(a) A qualified utility that receives notice of any federal regulation that may result in the forced retirement of the qualified utility's electrical generation facility shall inform the Attorney General's Office of the regulation within thirty (30) days after the receipt of notice.

(b) After being informed under subsection (a) of this section, the Attorney General's Office may take any action necessary to defend the interest of the state with respect to electricity generation by the qualified utility, including without limitation filing an action in court or participating in administrative proceedings.

SECTION 3. TEMPORARY LANGUAGE. DO NOT CODIFY. Project entity continued operation study.

(a) The Department of Energy and Environment shall conduct a study to:

(1) Evaluate all environmental regulations and permits to be filed to continue operation of a project entity's existing coal-powered electrical generation facility;

(2) Identify the best available technology to implement additional environmental controls for the continued operation of a project entity's existing coal-powered electrical generation facility;

(3) Identify the transmission capacity of the project entity;

(4) Coordinate with state and local economic development agencies to evaluate economic opportunities for continued use of a project entity's existing coal-powered electrical generation facility;

(5) Analyze the financial assets and liabilities of a project entity;

(6) Identify the best interests of the local economies, local tax base, and the state in relation to a project entity;

(7) Evaluate the viability of the continued operation of a project entity's existing coal-powered electrical generation facility:

(A) Under ownership of the state; or

(B) In a public-private partnership; and

(8) Identify the steps necessary for the state to obtain right

of first refusal for ownership of a project entity's existing coal-powered electrical generation facility.

(b) A project entity shall cooperate and provide timely assistance and information to the department in the preparation of the study under subsection (a) of this section.

(c) The department shall report to the Joint Committee on Energy and the Legislative Council on or before September 2024.

(d) The report under subsection (c) of this section shall include:

(1) The results of the study under subsection (a) of this section;

(2) Recommendations for continued operation of a project entity's existing coal-powered electrical generation facility;

(3) Environmental controls that need to be implemented for the continued operation of a project entity's existing coal-powered electrical generation facility;

(4) Recommendations to increase local and state tax revenue through the continued operation of a project entity's existing coal-powered electrical generation facility; and

(5) Recommendations for legislation to enable the continued operation of a project entity's existing coal-powered electrical generation facility.

*/s/M. McKee*