

INTERIM STUDY PROPOSAL 2023-073

State of Arkansas

As Engrossed: S3/30/23

94th General Assembly

A Bill

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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

Filed with: Senate Committee on Insurance and Commerce

pursuant to A.C.A. §10-3-217.

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.

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

3 (1) Nonrenewable energy resources, including without limitation:

- 4 (A) Natural gas;
- 5 (B) Coal;
- 6 (C) Oil;
- 7 (D) Oil shale; and
- 8 (E) Oil sands;

9 (2) Renewable energy resources, including without limitation:

- 10 (A) Geothermal;
- 11 (B) Solar;
- 12 (C) Wind;
- 13 (D) Biomass;
- 14 (E) Biofuel; and
- 15 (F) Hydroelectric;

16 (3) Nuclear power generation technologies certified for use by
17 the United States Nuclear Regulatory Commission, including without limitation
18 molten salt reactors producing medical isotopes;

19 (4) Alternative transportation fuels and technologies;

20 (5) Infrastructure to facilitate energy development, diversified
21 modes of transportation, greater access to domestic and international markets
22 for Arkansas's resources, and advanced transmission systems;

23 (6) Energy storage, pumped storage, and other advanced energy
24 systems, including without limitation hydrogen from all sources;

25 (7) Electricity systems that can be controlled at the request of
26 grid operators to meet system load demands to ensure an adequate supply of
27 dispatchable energy generation resources;

28 (8) Increased refinery capacity;

29 (9) Resources and infrastructure sufficient to meet the state's
30 growing demand for energy, while contributing to the regional and national
31 energy supply, thus reducing dependence on international energy sources; and

32 (10) Resources, tools, and infrastructure to enhance the state's
33 ability to:

34 (A) Respond effectively to significant disruptions to the
35 state's energy generation, energy delivery systems, or fuel supplies;

1 (B) Maintain adequate supply of energy resources,
2 including without limitation reserves of proven and cost-effective
3 dispatchable electricity reserves to meet grid demand; and

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

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

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

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

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

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

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

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

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

27 (A) Programs addressing:

28 (i) Energy conservation;

29 (ii) Energy efficiency;

30 (iii) Supply and demand; and

31 (iv) Energy-related workforce development; and

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

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

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

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

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

9
10 SECTION 2. Arkansas Code Title 23, Chapter 18, is amended to add an
11 additional subchapter to read as follows:

12 Subchapter 12 – Coal-powered Electrical Generation Facilities

13
14 23-18-1201. Legislative findings.

15 The General Assembly finds that:

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

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

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

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

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

32 (6) The state's sovereign authority with respect to the
33 retirement of an electrical generation facility for the protection of the
34 health, safety, and welfare of the state's citizens is primary and takes
35 precedence over any attempt from an external regulatory body to mandate,

1 restrict, or influence the early retirement of an electrical generation
2 facility in the state.

3
4 23-18-1202. Definitions.

5 As used in this subchapter:

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

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

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

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

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

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

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

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

24 (i) Fuel facilities;

25 (ii) Fuel production facilities;

26 (iii) Fuel transportation facilities;

27 (iv) Energy storage facilities; or

28 (v) Water facilities.

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

31 (i) Facilities providing additional project
32 capacity;

33 (ii) Facilities providing replacement project
34 capacity; and

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

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

3 (7)(A) "Project entity asset" means a project entity's:
4 (i) Land;
5 (ii) Buildings; or
6 (iii) Essential equipment, including without
7 limitation turbines, generators, transformers, and transmission lines.

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

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

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

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

20
21 23-18-1203. Notice of decommissioning or disposal of project entity
22 assets.

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

26 (1) Disposal of any project entity assets; or
27 (2) Decommissioning of the project entity's coal-powered
28 electrical generation facility.

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

31 (1) The date of the intended decommissioning or disposal;
32 (2) A description of the project entity's coal-powered
33 electrical generation facility intended for decommissioning or a project
34 entity asset intended for disposal; and
35 (3) The reasons for the decommissioning or disposal.

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

3 (d) Notwithstanding the requirements in this section, a project entity
4 may take any action necessary to transition to a new electrical generation
5 facility powered by nuclear power, natural gas, hydrogen, or a combination of
6 natural gas and hydrogen, including without limitation any action that has
7 been approved by a permitting authority.

8
9 23-18-1204. Forced retirement.

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

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

19
20 SECTION 3. TEMPORARY LANGUAGE. DO NOT CODIFY. Project entity
21 continued operation study.

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

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

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

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

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

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

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

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

3 (A) Under ownership of the state; or

4 (B) In a public-private partnership; and

5 (8) Identify the steps necessary for the state to obtain right
6 of first refusal for ownership of a project entity's existing coal-powered
7 electrical generation facility.

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

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

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

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

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

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

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

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

27
28 */s/M. McKee*

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30
31 Referred requested by the Arkansas Senate

32 Prepared by: CRH/SJA