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4

As Engrossed: S3/30/23

A Bill

SENATE BILL 544

5 By: Senators M. McKee, J. Boyd, J. Bryant, Caldwell, Crowell, B. Davis, Dees, J. Dismang, J. Dotson, J.
6 English, Flippo, Gilmore, K. Hammer, Hester, Hill, Irvin, B. Johnson, M. Johnson, C. Penzo, J. Petty,
7 Rice, Stone, G. Stubblefield, D. Sullivan, D. Wallace
8 By: Representatives Beaty Jr., Ladyman, McAlindon
9

For An Act To Be Entitled

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

Subtitle

20 TO AMEND THE LAW REGARDING ENERGY; TO
21 AMEND THE LAW CONCERNING COAL-POWERED
22 ELECTRICAL GENERATION FACILITIES; TO
23 REQUIRE CERTAIN ACTIONS BEFORE
24 DECOMMISSIONING OR DISPOSAL OF ASSETS;
25 AND TO REQUIRE A STUDY.
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

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

32 15-10-102. State energy policy.

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

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



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

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

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

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

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

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

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

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

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

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

24 (A) Programs addressing:

25 (i) Energy conservation;

26 (ii) Energy efficiency;

27 (iii) Supply and demand; and

28 (iv) Energy-related workforce development; and

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

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

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

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

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

6
7 SECTION 2. Arkansas Code Title 23, Chapter 18, is amended to add an
8 additional subchapter to read as follows:

9 Subchapter 12 – Coal-powered Electrical Generation Facilities

10
11 23-18-1201. Legislative findings.

12 The General Assembly finds that:

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

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

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

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

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

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

35
36 23-18-1202. Definitions.

1 As used in this subchapter:

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

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

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

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

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

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

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

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

20 (i) Fuel facilities;

21 (ii) Fuel production facilities;

22 (iii) Fuel transportation facilities;

23 (iv) Energy storage facilities; or

24 (v) Water facilities.

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

27 (i) Facilities providing additional project
28 capacity;

29 (ii) Facilities providing replacement project
30 capacity; and

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

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

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

36 (i) Land;

1 (ii) Buildings; or
2 (iii) Essential equipment, including without
3 limitation turbines, generators, transformers, and transmission lines.

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

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

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

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

16
17 23-18-1203. Notice of decommissioning or disposal of project entity
18 assets.

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

22 (1) Disposal of any project entity assets; or

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

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

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

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

31 (3) The reasons for the decommissioning or disposal.

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

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

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

3
4 23-18-1204. Forced retirement.

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

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

14
15 SECTION 3. TEMPORARY LANGUAGE. DO NOT CODIFY. Project entity
16 continued operation study.

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

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

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

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

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

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

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

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

34 (A) Under ownership of the state; or

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

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

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

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

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

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

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

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

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

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

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

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23 */s/M. McKee*
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