

INTERIM STUDY PROPOSAL 2021-061

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93rd General Assembly

**A Bill**

Regular Session, 2021

SENATE BILL 23

By: Senator B. Johnson

By: Representative L. Fite

Filed with: Arkansas Legislative Council  
pursuant to A.C.A. §10-3-217.

**For An Act To Be Entitled**

AN ACT TO ESTABLISH THE ELECTRIC COOPERATIVE  
CORPORATION SELF-REGULATION ACT OF 2021; AND FOR  
OTHER PURPOSES.

**Subtitle**

TO ESTABLISH THE ELECTRIC COOPERATIVE  
CORPORATION SELF-REGULATION ACT OF 2021.

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

SECTION 1. Arkansas Code § 23-18-201 is amended to read as follows:  
23-18-201. Jurisdiction of commission generally.

~~Electric~~ Except as specifically provided by law or if an electric  
cooperative corporation has selected self-regulation as provided in § 23-18-  
308, an electric cooperative corporations corporation generating,  
manufacturing, purchasing, acquiring, transmitting, distributing, selling,  
furnishing, and disposing of electric power and energy in this state ~~pursuant~~  
~~to~~ under the Electric Cooperative Corporation Act, § 23-18-301 et seq., ~~shall~~  
~~be~~ is subject to the general jurisdiction of the Arkansas Public Service  
Commission ~~in the same manner and to the same extent as provided by law for~~  
~~the regulation, supervision, or control of public utilities except as~~  
~~provided in this subchapter.~~

SECTION 2. Arkansas Code § 23-18-308 is amended to read as follows:

1           23-18-308. Legislative findings and intent – Jurisdiction of  
2 commission.

3           (a) The General Assembly finds that a corporation organized under this  
4 subchapter:

5                   (1) Is owned by the member-consumers that the corporation  
6 serves; and

7                   (2) Is regulated by the member-consumers through an elected and  
8 governing board of directors.

9           (b) It is the intent of the General Assembly that it is in the public  
10 interest to allow self-regulation for a corporation organized under this  
11 subchapter.

12           (c) All corporations organized under this subchapter A corporation  
13 shall be in all respects is subject to the jurisdiction, supervision,  
14 regulation, and control of the Arkansas Public Service Commission to the same  
15 extent and in the same manner as a public utility, except as otherwise  
16 specifically provided by law or if a corporation has selected self-regulation  
17 as described in subsection (d) of this section.

18           (d) Excluding a generation and transmission cooperative as defined in  
19 § 23-4-1101, the right of self-regulation and exemption from the jurisdiction  
20 of the commission may be selected by the members of a corporation if:

21                   (1)(A) At least ninety (90) days before a vote on self-  
22 regulation, the corporation notifies the corporation's membership of the plan  
23 to conduct a vote of member-consumers regarding self-regulation.

24                   (B) The notice described in subdivision (d)(1)(A) of this  
25 section shall:

26                           (i) Be sent via postal mail to each member-  
27 consumer's account using the address on file; and

28                           (ii) Include:

29                                   (a) A summary of the vote proposed and the  
30 reasons for the vote to be taken;

31                                   (b) Dates, times, and locations for at least  
32 three (3) opportunities for member-consumer comments, which shall occur  
33 before the vote is taken, including instructions for how to submit electronic  
34 comments to the corporation; and

35                                   (c) The procedure necessary for the member-  
36 consumer to cast a vote.

1                   (C) The corporation shall post notice of the vote in  
2 accessible locations, including without limitation the corporation  
3 newsletter, website, or other regular methods of member-consumer  
4 communication;

5                   (2) A vote on self-regulation and exemption occurred according  
6 to the corporation's relevant governance documents;

7                   (3) A majority of votes cast were in favor of self-regulation  
8 and exemption; and

9                   (4) The corporation notifies the commission, in writing, of the  
10 results of the membership vote of the corporation within sixty (60) days of  
11 the declaration of the results.

12                   (e) After following the procedure in subsection (d) of this section,  
13 once a majority of the votes cast are in favor of becoming self-regulated  
14 under this subchapter, then the process to become self-regulated shall begin  
15 as soon as possible and shall be completed within twelve (12) months of the  
16 majority vote to become self-regulated.

17                   (f) A corporation that becomes self-regulated under this subchapter  
18 shall:

19                   (1)(A) Set its own rates, terms, and conditions for service in a  
20 manner that reasonably approximates the costs of providing service to the  
21 respective classes of service of the corporation.

22                   (B) For any changes in rates, a member-consumer shall be  
23 provided advance notice of at least ninety (90) days through the same  
24 communication channel the member-consumer selects for receiving billing; and

25                   (2) Ensure the rates, terms, and conditions for service of the  
26 corporation are available for access on the website of the corporation or  
27 other member-accessible locations as well as those locations on file with the  
28 commission for informational purposes as listed in the commission-designated  
29 docket.

30                   (g) Any corporate action undertaken in good faith while the  
31 corporation acts in a self-regulated capacity is valid and effective as if  
32 determined by the commission.

33                   (h)(1) A corporation that becomes self-regulated under this subchapter  
34 may resubmit to the jurisdiction of the commission if:

35                   (A) The membership of a corporation requests a return to  
36 the jurisdiction of the commission as follows:

1                   (i) The commission or the corporation receives a  
2 petition from at least ten percent (10%) of the corporation's member-  
3 consumers, as defined in § 23-4-901, requesting that the corporation return  
4 to the jurisdiction of the commission, following the same form and procedures  
5 as described in § 23-4-904; and

6                   (ii) The commission orders the corporation or the  
7 corporation decides to conduct a membership vote regarding returning to the  
8 jurisdiction of the commission using the same procedure described in  
9 subsection (d) of this section; or

10                   (B) The corporation's board of directors holds a  
11 membership vote on the return to the jurisdiction of the commission using the  
12 same procedure described in subsection (d) of this section.

13                   (2) After following the procedure in subdivision (h)(1)(A) or  
14 subdivision (h)(1)(B) of this section, if a majority of the votes cast are in  
15 favor of returning to the jurisdiction of the commission, then:

16                   (A) The process to return the corporation to the  
17 jurisdiction of the commission shall begin as soon as possible after the  
18 membership vote; and

19                   (B) Unless otherwise ordered by the commission, a  
20 corporation's return to the jurisdiction of the commission shall be completed  
21 within twelve (12) months of the majority vote to return to commission  
22 jurisdiction.

23                   (i) The commission shall retain jurisdiction over a corporation that  
24 becomes self-regulated under this subchapter for:

25                   (1) Areas of service established in § 23-18-101;

26                   (2) Siting of transmission facilities subject to a requirement  
27 for a certificate of public convenience and necessity under §§ 23-3-201 – 23-  
28 3-205 or under the Utility Facility Environmental and Economic Protection  
29 Act, § 23-18-501 et seq., if the property for the facility will be acquired  
30 by the corporation using the power of eminent domain;

31                   (3) Proceedings brought by a member or consumer of the  
32 corporation regarding quality of service;

33                   (4) Pole attachments as described in § 23-4-1001 et seq.;

34                   (5) Ad valorem tax assessments as described in § 26-26-1601 et  
35 seq.;

1           (6) Net metering as defined in the Arkansas Renewable Energy  
2 Development Act of 2001, § 23-18-601 et seq.; and

3           (7) Demand response as defined in the Regulation of Electric  
4 Demand Response Act, § 23-18-1001 et seq.

5           (j) A self-regulated corporation shall not use its status as a  
6 monopoly electric service provider to:

7           (1) Make the provision of electric service conditional upon the  
8 nonelectric service offerings of the corporation; or

9           (2) Offer consideration to induce a member-consumer to switch  
10 from another public utility’s service to the service of the corporation.

11          (k)(1) This subchapter does not conflict with:

12           (A) Section 14-207-101 et seq. or otherwise affect the  
13 rights of a municipal electric utility, as defined in the Arkansas Municipal  
14 Electric Utility Interlocal Cooperation Act of 2003, § 25-20-401 et seq.,  
15 relating to extensions of service or otherwise;

16           (B) The Broadband Over Power Lines Enabling Act, § 23-18-  
17 801 et seq.;

18           (C) Commission funding provisions described in §§ 23-3-309  
19 and 23-3-310;

20           (D) Section 23-3-114(a) concerning the prohibition of  
21 unreasonable preferences or disadvantages for rates and service between  
22 classes of service; and

23           (E) Other laws pertaining to public utilities that do not  
24 address the jurisdiction or authority of the commission over a self-regulated  
25 corporation.

26           (2) If another provision of Arkansas law conflicts with this  
27 subchapter concerning the jurisdiction or authority of the commission over a  
28 self-regulated corporation, then this subchapter controls.

29  
30          SECTION 3. Arkansas Code § 23-18-331 is amended to read as follows:  
31          23-18-331. Service in incorporated areas.

32          (a)(1) The inclusion by incorporation, annexation, or otherwise of any  
33 portion of a rural area assigned to ~~corporations~~ a corporation within the  
34 limits of an incorporated or unincorporated city, town, or village,  
35 regardless of its population, shall not ~~in any respect~~ impair or affect the  
36 rights of ~~the corporations under their certificates of convenience and~~

1 ~~necessity a corporation under their commission approved service territory~~  
2 ~~certificate~~ to continue and extend electric service in the included areas.

3 (2) Notwithstanding any other provisions of law, ~~the~~  
4 ~~corporations shall be~~ a corporation is entitled to continue and extend  
5 service ~~therein~~ under the same terms and conditions as those contained in the  
6 franchise or indeterminate permit of any other supplier of electric service  
7 in the city, town, or village the same as though it were a party to the  
8 franchise or indeterminate permit.

9 (b)(1) ~~A corporation which serves an area within the limits of any~~  
10 ~~municipality under the terms of this subchapter shall as to that area be~~  
11 ~~subject in all respects to the jurisdiction of the Arkansas Public Service~~  
12 ~~Commission to the same extent and in the same manner as it is subject to such~~  
13 ~~jurisdiction in areas outside the limits of municipalities.~~

14 (2) ~~Any such~~ A city, town, or village shall have the same  
15 authority to impose taxes, charges, or fees in respect to the business of a  
16 corporation conducted within the corporate limits of ~~such~~ the city, town, or  
17 village as it has in respect to business conducted by other suppliers of  
18 electric service.

19 (c) ~~Nothing in this section shall in any manner~~ This section does not  
20 restrict or impair the right of ~~any~~ a municipality to acquire, construct,  
21 expand, maintain, or operate any electric generation, transmission, or  
22 distribution facilities within the corporate limits of the city, town, or  
23 village in Arkansas as ~~such~~ the limits may of the city, town, or village now  
24 exist or as ~~such~~ the limits of the city, town, or village may exist upon the  
25 extension or expansion of the city limits of the city, town, or village.

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27  
28 /s/B. Johnson  
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31 Referred requested by the Arkansas Senate

32 Prepared by: MBM/KFW  
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