

1 State of Arkansas
2 94th General Assembly
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4

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; AND FOR OTHER PURPOSES.
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Subtitle

19 TO AMEND THE LAW REGARDING ENERGY; TO
20 AMEND THE LAW CONCERNING COAL-POWERED
21 ELECTRICAL GENERATION FACILITIES; TO
22 REQUIRE CERTAIN ACTIONS BEFORE
23 DECOMMISSIONING OR DISPOSAL OF ASSETS;
24 AND TO REQUIRE A STUDY.
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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29 SECTION 1. Arkansas Code Title 23, Chapter 18, is amended to add an
30 additional subchapter to read as follows:

31 Subchapter 12 – Coal-powered Electrical Generation Facilities
32

33 23-18-1201. Legislative findings.

34 The General Assembly finds that:

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



1 citizens;

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

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

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

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

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

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22 23-18-1202. Definitions.

23 As used in this subchapter:

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

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

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

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

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

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

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

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

6 (i) Fuel facilities;

7 (ii) Fuel production facilities;

8 (iii) Fuel transportation facilities;

9 (iv) Energy storage facilities; or

10 (v) Water facilities.

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

13 (i) Facilities providing additional project
14 capacity;

15 (ii) Facilities providing replacement project
16 capacity; and

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

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

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

22 (i) Land;

23 (ii) Buildings; or

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

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

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

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

36 (10) "Secure" means protected against disruption, tampering, and

1 external interference.

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3 23-18-1203. Notice of decommissioning or disposal of project entity
4 assets.

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

8 (1) Disposal of any project entity assets; or
9 (2) Decommissioning of the project entity's coal-powered
10 electrical generation facility.

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

13 (1) The date of the intended decommissioning or disposal;
14 (2) A description of the project entity's coal-powered
15 electrical generation facility intended for decommissioning or a project
16 entity asset intended for disposal; and

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

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

20 (d) Notwithstanding the requirements in this section, a project entity
21 may take any action necessary to transition to a new electrical generation
22 facility powered by natural gas, hydrogen, or a combination of natural gas
23 and hydrogen, including without limitation any action that has been approved
24 by a permitting authority.

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26 23-18-1204. Forced retirement.

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

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

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1 SECTION 2. TEMPORARY LANGUAGE. DO NOT CODIFY. Project entity
2 continued operation study.

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

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

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

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

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

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

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

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

20 (A) Under ownership of the state; or

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

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

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

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

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

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

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

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

1 generation facility;

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

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

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