

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

Act 945 of the Regular Session

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1 State of Arkansas As Engrossed: S3/20/25 H4/15/25

2 95th General Assembly

A Bill

3 Regular Session, 2025

SENATE BILL 437

4

5 By: Senator Hester

6 By: Representatives Hall, Eaton

7

8

For An Act To Be Entitled

9 AN ACT TO CREATE THE ARKANSAS WIND ENERGY DEVELOPMENT
10 ACT; AND FOR OTHER PURPOSES.

11

12

13

Subtitle

14

TO CREATE THE ARKANSAS WIND ENERGY

15

DEVELOPMENT ACT.

16

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

18

19 SECTION 1. Arkansas Code Title 23, Chapter 18, is amended to add an
20 additional subchapter to read as follows:

21

22 Subchapter 13 – Arkansas Wind Energy Development Act

23

24 23-18-1301. Title.

25 This subchapter shall be known and may be cited as the "Arkansas Wind
26 Energy Development Act".

27

28 23-18-1302. Legislative findings and intent.

29 (a) The General Assembly finds that:

30 (1) Arkansas's wind energy resources are an important asset for
31 the:

32 (A) Continued economic growth of Arkansas; and

33 (B) Provision of clean and renewable power to the people
34 of Arkansas and the nation as a whole;

35 (2) Promotion of the development of wind energy resources is
36 important to the economic growth of Arkansas;



1 (3) The conversion of wind energy into power for utility-scale
2 systems frequently requires large wind energy systems consisting of wind
3 turbines, electrical substations, electrical lines, and other supporting
4 systems;

5 (4) The construction, location, and operation of wind energy
6 facilities can have significant potential impacts on the health, safety, and
7 welfare of the members of the communities in which the wind energy facilities
8 are constructed;

9 (5) It is essential to the public interest to minimize any
10 adverse effect upon the environment and the quality of life of the people of
11 Arkansas that wind energy facilities might cause;

12 (6) The prudent development of wind energy resources requires
13 addressing balancing the needs of wind energy facility developers with those
14 of landowners that provide access to the wind energy resource, including
15 assurances that:

16 (A) Wind energy facilities will be properly constructed
17 and decommissioned; and

18 (B) The landowners will:

19 (i) Have access to adequate information to verify
20 the accuracy of any payments made by wind energy facilities; and

21 (ii) Be adequately protected against hazards and
22 accidents that may arise from the wind energy facilities;

23 (7) A wind energy facility, if abandoned or not properly
24 constructed and maintained, could pose a hazard to the public health, safety,
25 and welfare of the people of this state through mechanical failures,
26 electrical hazards, or the release of hazardous substances;

27 (8) In order to protect the public against health and safety
28 hazards, standards for the safe decommissioning of wind energy facilities
29 should be established, and assurance of adequate financial resources should
30 be given so that a wind energy facility can be properly decommissioned at the
31 end of the wind energy facility's useful life; and

32 (9) A local legislative body should have an opportunity to adopt
33 local legislation addressing the construction of wind energy facilities
34 located in its jurisdiction if the local legislation is consistent with this
35 subchapter and existing federal and state law and does not establish criteria
36 for the issuance of a local permit that are less restrictive than stated

1 under this subchapter.

2 (b) It is the intent of the General Assembly that this subchapter
3 shall:

4 (1) Establish the standards and criteria for permitting and
5 regulating wind energy facilities; and

6 (2) Promote, preserve, and protect the public peace, health,
7 safety, and welfare through effective permitting and regulation of wind
8 energy facilities.

9

10 23-18-1303. Definitions.

11 As used in this subchapter:

12 (1) "Abandonment" means the failure to generate electricity in
13 commercial quantities for a period of one hundred eighty (180) consecutive
14 days unless the termination of electricity was:

15 (A) Mandated by state or federal law; or

16 (B) Authorized by the Arkansas Public Service Commission;

17 (2)(A) "Commercial quantities" means an amount of electrical
18 energy sufficient to sell or use off-site from a wind energy facility.

19 (B) "Commercial quantities" does not include amounts of
20 electrical energy only used for the maintenance or testing of the wind energy
21 facility or components of the wind energy facility;

22 (3)(A) "Construct" means the activity of clearing land,
23 excavation, relocation of utilities, a wind energy facility expansion, or
24 other action that would adversely affect the natural environment of the
25 proposed site.

26 (B) "Construct" does not include the activity of:

27 (i) An erection of a meteorological tower;

28 (ii) An environmental assessment;

29 (iii) A survey;

30 (iv) Any necessary borings to ascertain foundation
31 conditions;

32 (v) Any preliminary engineering; or

33 (vi) Any other activities associated with an
34 assessment of development of wind resources on a given parcel of property;

35 (4) "Local government" means:

36 (A) A county;

- 1 (B) A city of the first class or city of the second class;
2 (C) An incorporated town; or
3 (D) Any other political subdivision of this state;
4 (5) "Local legislation" means:
5 (A) An ordinance enacted by a local legislative body;
6 (B) A resolution passed by a local legislative body;
7 (C) A motion made by a local legislative body;
8 (D) An amendment adopted by a local legislative body; or
9 (E) A rule or regulation promulgated by a local legislative
10 body;
11 (6) "Local legislative body" means the governing body of a local
12 government;
13 (7) "Nonparticipating landowner" means a landowner that is not
14 under a lease or other property agreement with the owner or operator of a wind
15 energy facility;
16 (8)(A) "Operate" means an activity associated with the management,
17 operation, and maintenance of a completed wind energy facility.
18 (B) "Operate" includes without limitation installing or
19 improving a wind energy facility;
20 (9) "Operator" means a person that operates a wind energy facility;
21 (10) "Owner" means a person that has a majority equity interest
22 in a wind energy facility;
23 (11) "Person" means a natural person, corporation, limited
24 liability company, partnership, joint venture, or other private business
25 entity;
26 (12)(A) "Proprietary information" means commercial or financial
27 information that:
28 (i) Is used directly or indirectly in the business of
29 an applicant submitting information to a local government under this subchapter;
30 and
31 (ii) Gives an applicant submitting information to a
32 local government under this subchapter an advantage or an opportunity to obtain
33 an advantage over a competitor that does not know of, or otherwise use, the
34 information.
35 (B) "Proprietary information" includes trade secrets;
36 (13) "Redevelop" means the process of replanning, reconstructing,

1 or redesigning a wind energy facility, including the acquisition, clearance,
2 development, or disposal, or any combination of these activities, of a wind
3 energy facility;

4 (14)(A) "Transmission facility" means a power cable,
5 distribution line, or other equipment that delivers electricity from a wind
6 turbine located in Arkansas to the point of interconnection with a power
7 distribution grid, long-distance power transmission grid, or other facility
8 by and through which the electricity is distributed or transmitted to one (1)
9 or more customers.

10 (B) "Transmission facility" does not include distribution,
11 transmission, or other facilities that are located beyond the point of
12 interconnection with the power distribution grid or transmission grid;

13 (15) "Under development" means:

14 (1) Executed land leases;

15 (2) Commenced necessary state and federal studies related
16 to construction of a wind energy facility; or

17 (3) Commenced construction of a wind energy facility;

18 (16) "Useful life" means the amount of time during which a wind
19 energy facility is generating electricity in commercial quantities;

20 (17)(A) "Wind energy facility" means an electrical energy
21 generation facility consisting of one (1) or more wind turbines under common
22 ownership or operating control, that cumulatively, with any other wind energy
23 facility:

24 (i) Has a rated capacity of five megawatts (5 MW) or
25 more of electrical energy; and

26 (ii) Is more than two hundred feet (200') in height.

27 (B) "Wind energy facility" includes turbines, towers,
28 buildings, transmission facilities, meteorological towers, transformers,
29 control systems, and other associated facilities used to support the
30 operation of the wind energy facility.

31 (C) "Wind energy facility" does not include equipment that
32 when installed in connection with a dwelling transmits or uses wind energy to
33 produce electrical energy in a useful form for residential purposes and is less
34 than two hundred feet (200') in total height;

35 (18) "Wind energy facility expansion" means an activity that:

36 (A) Adds or substantially modifies a wind energy facility,

1 including without limitation increasing the height or the number of the wind
2 turbines, transmission facilities, or other equipment; or

3 (B) Increases the environmental footprint of a wind energy
4 facility; and

5 (19)(A) "Wind turbine" means a wind energy conversion system that
6 converts wind energy into electricity using a wind turbine generator.

7 (B) "Wind turbine" includes a turbine, blade, tower, base,
8 and pad transformer, if any.

9
10 23-18-1304. Permit required.

11 (a)(1) A person shall not construct, operate, or redevelop a wind
12 energy facility or wind energy facility expansion in this state unless a
13 permit is obtained under this subchapter.

14 (2) Before a person constructs, operates, or redevelops a wind
15 energy facility or wind energy facility expansion in this state, the person
16 shall obtain:

17 (A) A permit for the construction, operation, or
18 redevelopment from the Arkansas Public Service Commission; and

19 (B) If a local government has adopted local legislation
20 addressing the construction or expansion of a wind energy facility located in
21 the jurisdiction of the local government, a permit from the local legislative
22 body.

23 (b) The commission shall establish the application procedure for a
24 permit to construct, operate, or redevelop a wind energy facility or a wind
25 energy facility expansion.

26 (c) The issuance of a permit under this subchapter is contingent on
27 compliance with this subchapter and other applicable state laws.

28 (d) Subject to the approval of the commission, a permit issued under
29 this subchapter may be transferred to a person that agrees to comply with the
30 terms of the permit.

31 (e) An initial filing fee of two thousand five hundred dollars (\$2,500)
32 shall accompany each application for a permit.

33 (f) An application for a permit shall be accompanied by proof of service
34 of the written notice under § 23-18-1305.

35
36 23-18-1305. Service – Notice requirements.

1 (a)(1) An applicant for a permit for the construction, operation, or
2 redevelopment of a wind energy facility or a wind energy facility expansion
3 shall provide a copy of the application as written notice to:

4 (A) A person listed in § 23-18-513;

5 (B) The Department of Parks, Heritage, and Tourism;

6 (C) The circuit clerk of each county in which the proposed
7 wind energy facility will be located;

8 (D) Any landowner and residents located within four (4)
9 miles of the proposed location of the wind energy facility or wind energy
10 facility expansion; and

11 (E) All public libraries in each county in which the
12 proposed wind energy facility or wind energy facility expansion is to be or
13 may be located for review by the public.

14 (2) The Arkansas Public Service Commission shall prescribe by
15 rule the form and submittal requirements of the written notice required under
16 subdivision (a)(1) of this section.

17 (b) The written notice required under subdivision (a)(1) of this
18 section shall include:

19 (1) A complete description of the wind energy facility,
20 including the number and size of the wind turbines;

21 (2) A map showing the locations of all proposed wind energy
22 facilities;

23 (3) The proposed timeline for construction and operation of the
24 wind energy facility; and

25 (4) A list of locations where the application is available for
26 review by the public.

27 (c) The written notice required under subdivision (a)(1) of this
28 section shall be:

29 (1) Mailed by certified mail; and

30 (2) Directed to the address of the landowner of the real
31 property as it appears on the records in the office of the county sheriff or
32 county tax assessor for the mailing of statements for taxes as provided in §
33 26-35-705.

34 (d) An application for a permit shall be accompanied by proof that
35 notice was provided to persons residing in the local government entitled to
36 receive notice under § 23-18-513 by publication in a newspaper having

1 substantial circulation in the local government of:

2 (1) A summary of the application for a permit;

3 (2) A statement of the date on or about which the application is
4 to be filed;

5 (3) The locations at which a copy of the application is
6 available for review by the public; and

7 (4) The date, time, and location of the public hearings required
8 in subsection (h) of this section.

9 (e)(1) An application for a permit shall be accompanied by proof that
10 the applicant has served a copy of the written notice by certified mail to:

11 (A) An operator, as reflected in the records of the Oil
12 and Gas Commission, that is conducting oil and gas operations upon any part
13 of the surface estate on which the applicant intends to construct the wind
14 energy facility or the wind energy facility expansion;

15 (B) An operator, as reflected in the records of the Oil
16 and Gas Commission, of an unspaced unit, or a unit created by order of the
17 Oil and Gas Commission, that is conducting oil and gas operations for the
18 unspaced unit where any part of the unit area is within the geographical
19 boundaries of the surface estate on which the applicant intends to construct
20 the wind energy facility or wind energy facility expansion; and

21 (C) As to tracts of land not described in subdivisions
22 (e)(1)(A) and (B) of this section on which the applicant intends to construct
23 a wind energy facility or wind energy facility expansion, all lessees of oil
24 and gas leases covering the mineral estate underlying any part of the tracts
25 of land that are filed of record with the circuit clerk in the county where
26 the tracts are located and whose primary term has not expired.

27 (2) The service of written notice required under subdivision
28 (e)(1) of this section shall contain:

29 (A) A map or plat of the proposed location, with
30 sufficient specificity of the elements of the wind energy facility to be
31 located on the local government section that includes any part of the tracts
32 of land described in subdivisions (e)(1)(A) and (B) of this section;

33 (B) The approximate date that the applicant proposes to
34 commence construction of the wind energy facility or the wind energy facility
35 expansion; and

36 (C)(i) The return address of the applicant and a statement

1 that the recipient of the notice, within thirty (30) days of receipt, is
2 required to provide the applicant with site and operational and
3 infrastructure information with sufficient specificity to facilitate the safe
4 construction and operation of a wind energy facility or a wind energy
5 facility expansion.

6 (ii) The information required under subdivision
7 (e)(2)(C)(i) of this section shall include American Land Title Association
8 surveys of existing subsurface and surface improvements on the real property,
9 if any, as well as other technical specifications for existing improvements,
10 including without limitation pipe size, material, capacity, and depth.

11 (f)(1) As a condition to the issuance of a permit, an applicant is
12 required to submit to the Oil and Gas Commission:

13 (A) The information provided under subdivision
14 (e)(2)(C)(i) of this section; and

15 (B) A copy of the written notice required under
16 subdivision (a)(1) of this section.

17 (2) The applicant shall obtain approval or conditional approval
18 from the Oil and Gas Commission.

19 (g) If the address of a party entitled to notice under this section
20 cannot be ascertained or the notice cannot be delivered after a reasonable
21 effort to obtain the information has been made, then an affidavit attesting
22 to the efforts to locate the party shall be placed in the records of the
23 circuit clerk where the surface estate is located.

24 (h)(1) Within sixty (60) days of the publication of the notice
25 required under subsection (d) of this section, the applicant shall conduct a
26 public hearing in each county in which the proposed wind energy facility is
27 to be constructed or expanded.

28 (2) At the public hearing under subdivision (h)(1) of this
29 section, the applicant shall:

30 (A) Provide copies of the notice required under
31 subdivision (a)(1) of this section;

32 (B) Be prepared to discuss the contents of the application
33 for a permit; and

34 (C) Provide substantive responses to questions asked by
35 members of the public regarding the application for a permit.

36

1 23-18-1306. Minimum requirements.

2 (a) The Arkansas Public Service Commission shall require that to
3 receive a permit for the construction, operation, or redevelopment of a wind
4 energy facility or a wind energy facility expansion, the owner shall meet the
5 following minimum requirements:

6 (1) The minimum setback for the base of any wind turbine of a
7 wind energy facility from a nonparticipating landowner's property line shall
8 be equal to the greater of:

9 (A) Three and five-tenths (3.5) times the total height of
10 the wind turbine as measured from the ground at its base to the maximum
11 height of the blade tip; and

12 (B)(i) Except as provided in subdivision (a)(1)(B)(ii) of
13 this section, two thousand five hundred feet (2,500').

14 (ii) A nonparticipating landowner may elect to sign
15 a waiver to allow a wind turbine or group of wind turbines of a wind energy
16 facility to be placed up to one and one-tenth (1.1) times the total height of
17 the wind turbine as measured from the ground at its base to the maximum
18 height of the blade tip from the nonparticipating landowner's property line;
19 and

20 (2) The minimum setback for the base of a wind turbine of a wind
21 energy facility shall be one (1) mile from any of the following places
22 existing at the time the application for the permit is filed:

23 (A) A public or private school;

24 (B) A hospital;

25 (C) A nursing home facility;

26 (D) A church;

27 (E) The limits of a city or town;

28 (F) A state or federal park; and

29 (G) A public airport.

30 (b)(1) Except as provided in subdivision (b)(2)(A) of this section, an
31 application shall be accompanied by an environmental impact assessment
32 conducted by a qualified, third-party expert and approved by the Arkansas
33 Public Service Commission, paid for by the applicant, of the potential
34 adverse impacts within four (4) miles of the perimeter of the wind energy
35 facility or wind energy facility expansion.

36 (2)(A) An environmental impact assessment required under

1 subdivision (b)(1) of this section shall not be required if an environmental
2 review of the wind energy facility or any portion of the wind energy facility
3 is required under the National Environmental Policy Act of 1969, 42 U.S.C. §
4 4321 et seq., as it existed on January 1, 2025, that includes public input, a
5 public hearing, an environmental impact statement, and a viewshed analysis.

6 (B) The environmental impact assessment under subdivision
7 (b)(2)(A) of this section shall include without limitation a study of the:

8 (i) Economic impacts to individuals, real property
9 values, tourism, and agriculture;

10 (ii) Assessment for compliance with state and
11 national fire, building, and electrical codes;

12 (iii) A wildlife impact assessment, including
13 without limitation a study of the potential adverse impacts to:

14 (a) Wildlife refuges;

15 (b) Preserves and management areas;

16 (c) Areas that provide habitat for threatened
17 or endangered species;

18 (d) Primary nursery areas designated by the
19 Arkansas Game and Fish Commission; and

20 (e) Critical fisheries habitats identified
21 under applicable state or federal law;

22 (iv) Viewshed analysis for:

23 (a) State and federal parks and forests;

24 (b) Historic and cultural sites;

25 (c) Public parks and recreation areas; and

26 (d) Private conservation land;

27 (v) Hydrogeological assessment of areas of water
28 within a minimum of four (4) miles of the perimeter of the wind energy
29 facility or wind energy facility expansion, including:

30 (a) Bodies of water;

31 (b) Flowing water sources;

32 (c) Stormwater runoff;

33 (d) Wetlands;

34 (e) Groundwater;

35 (f) Aquifers; and

36 (g) Private wells;

1 (vi)(a) Risk assessment and mitigation
2 recommendations for shadow flicker and incidents, including wind turbine
3 fires, structural damage or failure, ice throw, blade shear, and hazardous
4 material spills.

5 (b) Except as provided in subdivision
6 (b)(2)(B)(vi)(c) of this section, shadow flicker shall not exceed thirty (30)
7 hours annually as verified in an assessment prepared according to
8 professional standards.

9 (c) A nonparticipating landowner may elect to
10 sign a written waiver to allow ice throw, blade shear, or shadow flicker from
11 any wind turbine or group of wind turbines on the nonparticipating
12 landowner's property;

13 (vii) Risk assessment for civil air navigation,
14 military or law enforcement routes or training exercises, emergency medical
15 flights, radar operations, and mobile phone services; and

16 (viii) Risk assessment for lighting requirements
17 beyond that which may be required by the Federal Aviation Administration,
18 including the requirement that the wind energy facility be equipped with a
19 Federal Aviation Administration-approved aircraft detection lighting system.

20 (c)(1) Except during an event of inclement weather that prevents the
21 operator of a wind energy facility from controlling the noise level of one
22 (1) or more wind turbines that are part of the wind energy facility, any wind
23 turbine or group of wind turbines of a wind energy facility shall not exceed
24 an emission limit at a nonparticipating landowner's dwelling of thirty-five
25 A-weighted decibels (35 dBA) and forty-five A-weighted decibels (45 dBA) at a
26 nonparticipating landowner's property line as determined by a qualified,
27 third-party acoustics expert according to rules adopted by the Arkansas
28 Public Service Commission based on the American National Standards Institute
29 Standard 12.9 and other applicable American National Standards Institute
30 standards.

31 (2) Before construction of a wind energy facility or wind energy
32 facility expansion, a qualified, third-party acoustics expert, selected and
33 paid for by the applicant, shall make a baseline determination of
34 preconstruction noise levels, including modeling and enforcement.

35 (3) A nonparticipating landowner may elect to sign a written
36 waiver to allow noise levels greater than those stated under subdivision

1 (c)(1) of this section from any wind turbine or group of wind turbines on the
2 nonparticipating landowner's property.

3
4 23-18-1307. Application requirements.

5 (a) An application for a permit for the construction, operation, or
6 redevelopment of a wind energy facility or a wind energy facility expansion
7 shall include:

8 (1) A written determination of no hazard by the Federal Aviation
9 Administration; and

10 (2) A development and management plan.

11 (b) The development and management plan under subdivision (a)(2) of
12 this section shall address:

13 (1) Physical characteristics of the wind energy facility to
14 protect the health and safety of the public;

15 (2) Electric standards that meet all national electric codes;

16 (3) Construction, operation, and maintenance standards that
17 comply with all building codes and ensure that the wind energy facility is
18 maintained in a manner that protects the public and complies with all
19 requirements of this subchapter; and

20 (4)(A) Emergency procedures.

21 (B) The emergency procedures under this subdivision (b)(4)
22 shall include:

23 (i) A plan to provide notice to the Arkansas Public
24 Service Commission and local emergency agencies within twenty-four (24) hours
25 of an emergency;

26 (ii) A plan to address an emergency situation,
27 including written procedures that provide for shutting down the wind energy
28 facility or a portion of the wind energy facility, as appropriate;

29 (iii) An emergency evacuation plan for an area
30 within two (2) miles of a wind energy facility, including the location of
31 alternate landing zones for emergency services aircraft;

32 (iv) An emergency plan shall be reviewed at least
33 annually by the owner or operator of the wind energy facility in
34 collaboration with the fire service, law enforcement, and other appropriate
35 first responders to update and improve the emergency plan as needed;

36 (v) A plan for the owner to distribute current

1 copies of the emergency plan to the local legislative body and fire service,
2 law enforcement, and other appropriate first responders as identified by the
3 local government;

4 (vi) A plan, if a local government requires, for the
5 owner, at the owner's expense, to provide annual training for fire service,
6 law enforcement, and other appropriate first responders regarding responding
7 to a wind energy facility emergency until the wind energy facility has been
8 decommissioned;

9 (vii) A requirement that the owner shall furnish its
10 operator, supervisors, and employees who are responsible for emergency action
11 a copy of the current edition of the emergency procedures established under
12 this section to ensure compliance with the procedures;

13 (viii) A requirement that the owner shall train the
14 appropriate operating personnel to ensure the personnel has knowledge of the
15 emergency procedures and verify that the training is effective; and

16 (ix) A plan that as soon as possible after the end
17 of a wind energy facility emergency, the owner review employee activities to
18 determine whether or not the emergency procedures were effectively followed.

19
20 23-18-1308. Decommissioning requirements.

21 (a) An owner is responsible, at the owner's expense, for the proper
22 decommissioning of a wind energy facility.

23 (b)(1) Before the start of construction of a wind energy facility, the
24 applicant for a permit for the construction or operation of the wind energy
25 facility or wind energy facility expansion shall establish financial security
26 in the amount of one hundred percent (100%) of the estimate of the total cost
27 to decommission and remove the wind energy facility as determined by an
28 independent consultant, selected and paid for by the applicant.

29 (2) To establish financial security under subdivision (b)(1) of
30 this section, the applicant shall file with the Arkansas Public Service
31 Commission a surety bond, collateral bond, irrevocable letter of credit,
32 parent guaranty, cash, cashier's check, certificate of deposit, bank joint
33 custody receipt, or other approved negotiated instrument, or any combination
34 of the items listed in this subdivision (b)(2), in the amount required by
35 subdivision (b)(1) of this section.

36 (c) A wind energy facility shall be decommissioned or removed if:

1 (1) A wind turbine of a wind energy facility ceases to generate
2 electricity for one hundred eighty (180) continuous days, unless:

3 (A) The termination of electricity was mandated by state
4 or federal law; or

5 (B)(i) As authorized by the commission.

6 (ii) Two (2) extensions may be allowed by the
7 commission for one-hundred-eighty-day periods at a time if the wind energy
8 facility continues to be maintained in proper working order; or

9 (2)(A) Any wind turbine or group of wind turbines of a wind
10 energy facility violates the noise level restrictions under § 23-18-
11 1306(c)(1), unless the wind turbine or group of wind turbines is brought into
12 compliance within one hundred eighty (180) days of the violation.

13 (B) One (1) extension under subdivision (c)(2)(A) of this
14 section is permitted.

15 (d) Within twelve (12) months following the decommissioning of a wind
16 energy facility or wind energy facility expansion, the property shall be
17 restored to its original condition before commencement of activities on the
18 site.

19 (e) Not less than one (1) time every five (5) years following the
20 issuance of the permit by the commission, the commission may require the
21 owner to:

22 (1) Update the estimated costs of decommissioning and removal;

23 (2) File the new estimate with the commission; and

24 (3) Provide a surety bond, collateral bond, irrevocable letter
25 of credit, parent guaranty, cash, cashier's check, certificate of deposit,
26 bank joint custody receipt, or other approved negotiated instrument, or any
27 combination of the items listed in this subdivision (e)(3), in the updated
28 amount.

29 (f) Proper decommissioning of a wind energy facility shall include:

30 (1) Removal of wind turbines, towers, buildings, cabling,
31 electrical components, foundations, and any other associated facilities, to a
32 depth of forty-eight (48) inches below grade in the ground; and

33 (2)(A) Except as provided in subdivision (h)(2)(B) of this
34 section, disturbed earth being graded and reseeded or otherwise restored to
35 substantially the same physical condition as it existed before the
36 construction of the wind energy facility by the owner.

1 (B) Replacement of trees that may have been removed during
2 construction is not required.

3 (g)(1) Decommissioning of a wind energy facility or individual pieces
4 of commercial wind energy equipment shall be completed by the owner within
5 twelve (12) months after:

6 (A) Abandonment;

7 (B) The end of the useful life of the commercial wind
8 energy equipment in the wind energy facility; or

9 (C) Receipt of a notice to decommission or remove under
10 subsection (c) of this section.

11 (2) If the owner fails to complete the decommissioning within
12 the period prescribed under subdivision (g)(1) of this section, the
13 commission shall take such measures as are necessary to complete the
14 decommissioning.

15 (h) A lease or other agreement between a landowner and an owner may
16 contain provisions for decommissioning that are more restrictive than those
17 provided under this section.

18
19 23-18-1309. Insurance requirements.

20 (a) Before commencing construction of a wind energy facility, the
21 owner or operator shall obtain and keep in effect, either:

22 (1) A commercial general liability insurance policy with a limit
23 consistent with prevailing industry standards as determined by the Arkansas
24 Public Service Commission; or

25 (2) A combination of self-insurance and an excess liability
26 insurance policy approved by the commission.

27 (b) The owner shall cause the landowner of the real property where the
28 wind turbine or wind energy facility is located to be named as an additional
29 insured in the insurance policy.

30 (c)(1) The owner or operator shall deliver to a landowner who has
31 entered into a lease, easement, or other agreement with the owner a
32 certificate of insurance evidencing the insurance policy.

33 (2) The landowner shall be given a notice of at least thirty
34 (30) days before any material modification, cancellation, or termination of
35 the insurance policy.

36

1 23-18-1310. Applicability.

2 (a) This subchapter does not amend the Arkansas Water and Air
3 Pollution Control Act, § 8-4-101 et seq.

4 (b) This subchapter does not affect the:

5 (1) Jurisdiction of the Division of Environmental Quality or the
6 Arkansas Pollution Control and Ecology Commission with respect to water and
7 air pollution control or other matters within the jurisdiction of the
8 division or the Arkansas Pollution Control and Ecology Commission;

9 (2) Jurisdiction of the Arkansas State Game and Fish Commission
10 with respect to the impact on game and fish of the state; and

11 (3) Requirement that a person apply for and obtain a permit from
12 a state agency or federal entity having jurisdiction over the wind energy
13 facility or wind energy facility expansion.

14 (c) This subchapter does not apply to a wind energy facility in this
15 state constructed or which commenced to be constructed on or before September
16 1, 2024.

17
18 23-18-1311. Review by a state agency.

19 (a) Upon receipt of an application for a permit for the construction,
20 operation, or redevelopment of a wind energy facility or a wind energy
21 facility expansion under this subchapter and other requirements the Arkansas
22 Public Service Commission may adopt, the staff of the commission shall invite
23 comments from a state agency entitled to service under § 23-18-513 as to the
24 adequacy of the application.

25 (b) The invitation to comment under subsection (a) of this section
26 shall include a notification to a state agency that comments are required to
27 be received within one hundred twenty (120) days of the date of the mailing
28 or delivery of the invitation to comment, unless a state agency requests, for
29 cause, a longer period for consideration.

30 (c)(1) Upon review of the comments, if any, the staff shall determine
31 whether or not the applicant failed to include or adequately develop any
32 relevant environmental or economic aspect of the wind energy facility.

33 (2) The commission shall issue a deficiency letter specifying
34 the deficiencies in the application.

35 (3) The deficiency letter shall be prepared and served upon the
36 applicant as promptly as possible but no later than twenty (20) days before

1 the date set for a public hearing under § 23-18-1312.

2 (4) The applicant shall promptly respond to any deficiency
3 letter, and the public hearing shall be deferred unless the applicant has
4 responded before the public hearing to any deficiency letter.

5
6 23-18-1312. Public hearing.

7 (a)(1)(A) Upon receipt of an application for a permit for the
8 construction, operation, or redevelopment of a wind energy facility or a wind
9 energy facility expansion under this subchapter, the Arkansas Public Service
10 Commission shall fix a date for the commencement for a public hearing on the
11 application.

12 (B) The date of the public hearing under subdivision
13 (a)(1)(A) of this section shall not be earlier than sixty (60) days after the
14 date set for the receipt of comments from the state agencies under § 23-18-
15 1311, including any extensions.

16 (2) The testimony presented at the public hearing may be
17 presented in writing or orally, provided that the commission may make rules
18 designed to exclude repetitive, redundant, or irrelevant testimony.

19 (3) The Rules of Practice and Procedure of the commission shall
20 apply to the proceeding.

21 (b)(1) After the public hearing, the commission may deny, grant, or
22 conditionally grant the permit.

23 (2) A permit shall not be granted if the applicant has not
24 received a permit for the construction or operation of the wind energy
25 facility or wind energy facility expansion from a state or federal agency
26 having jurisdiction over the air, water, and other environmental impacts
27 associated with a wind energy facility or wind energy facility expansion.

28
29 23-18-1313. Local legislation.

30 (a)(1) A local legislative body may adopt local legislation addressing
31 the construction, expansion, operation, or redevelopment of a wind energy
32 facility located within the jurisdiction of the local government if the local
33 legislation is consistent with this subchapter and existing federal and state
34 law.

35 (2) Local legislation shall not establish criteria for the
36 issuance of a local permit that is less restrictive than those established in

1 this subchapter.

2 (b) A local government that regulates the construction, expansion,
3 operation, or redevelopment of wind energy facilities and wind energy
4 facility expansions by local legislation shall furnish a certified copy of
5 the adopted local legislation to the Arkansas Public Service Commission.

6
7 23-18-1314. Report to landowners.

8 (a)(1) An owner or operator of a wind turbine or wind energy facility
9 shall provide a report to a landowner that has entered into a lease,
10 easement, or other agreement with the owner of a wind energy facility that is
11 paid based on the amount of electrical energy produced from the conversion of
12 wind energy.

13 (2) The report required under subdivision (a)(1) of this section
14 shall:

15 (A) Be provided within ten (10) business days of the
16 payment to the landowner; and

17 (B) At a minimum, contain:

18 (i) Information reasonably necessary to provide the
19 landowner with an understanding of the basis for the payment the landowner
20 received; and

21 (ii) A means of confirming the accuracy of the
22 information provided under subdivision (a)(2)(B)(i) of this section.

23 (b)(1) A landowner described under subdivision (a)(1) of this section
24 may inspect the records of the owner or operator to confirm the accuracy of a
25 payment made to the landowner within the past twenty-four (24) months.

26 (2) One (1) inspection under subdivision (b)(1) of this section
27 is permitted per calendar year.

28 (c)(1) The owner or operator shall make available within the state all
29 records, documents, data, and other information, or copies thereof, as are
30 necessary for a landowner to conduct the inspection specified in subsection
31 (b) of this section.

32 (2) The records shall be made available in a location and manner
33 that affords the landowner reasonable access to the records during normal
34 business hours.

35 (3) The landowner shall be permitted a reasonable length of time
36 to complete the inspection and shall not cause undue disruption to the

1 operations of the owner or operator during the inspection.

2
3 23-18-1315. Other applicable local, state, and federal permits, licenses,
4 or approvals.

5 The issuance of a permit for the construction, operation, or redevelopment
6 of a wind energy facility or a wind energy facility expansion under this
7 subchapter does not preclude the need for a person to obtain other local, state,
8 or federal permits, licenses, or approvals required for a wind energy facility.

9
10 23-18-1316. Information subject to disclosure.

11 (a) Except as provided in subsection (b) of this section, a permit
12 application for the construction, operation, or redevelopment of a wind
13 energy facility or a wind energy facility expansion and documents received by
14 the Arkansas Public Service Commission or a local government under this
15 subchapter or documents used by the local legislative body to evaluate the
16 permit application are subject to disclosure under the Freedom of Information
17 Act of 1967, § 25-19-101 et seq.

18 (b) Proprietary information contained in a permit application or in
19 documents submitted in support of the permit application to the commission or
20 local government under this subchapter or documents used by the commission or
21 local government to evaluate and approve or deny a permit application shall
22 remain confidential and is not subject to disclosure to the public under this
23 section, the Freedom of Information Act of 1967, § 25-19-101 et seq., or any
24 other law.

25
26 23-18-1317. Federal law.

27 If a provision of this subchapter conflicts with a current federal law,
28 including promulgated federal regulations, the federal law shall take
29 precedence over the conflicting provisions of this subchapter.

30
31 23-18-1318. Exemptions.

32 A wind energy facility project is exempt from this subchapter if the
33 wind energy facility project is under development as of April 9, 2025.

34
35 23-18-1319. Rules.

36 (a) The Arkansas Public Service Commission shall promulgate rules to

1 implement and administer this subchapter.

2 (b) Rules that the commission shall promulgate under this subchapter
3 include without limitation rules relating to:

4 (1) Requirements and terms for a permit for the construction,
5 operation, or redevelopment of a wind energy facility or a wind energy facility
6 expansion;

7 (2) Requirements for an application a permit for the construction,
8 operation, or redevelopment of a wind energy facility or a wind energy facility
9 expansion;

10 (3) Requirements for a renewal application a permit for the
11 construction, operation, or redevelopment of a wind energy facility or a wind
12 energy facility expansion; and

13 (4) The erection, construction, reconstruction, change,
14 alteration, maintenance, use, operation, and decommissioning of wind energy
15 facilities, including without limitation the:

16 (A) Interconnection of power lines and with regional
17 transmission organizations, independent transmission system operators, or
18 similar organizations; and

19 (B) Establishment of necessary cooperation for site visits
20 and enforcement investigations.

21
22 SECTION 2. TEMPORARY LANGUAGE. DO NOT CODIFY. Rules.

23 (a) The Arkansas Public Service Commission shall promulgate rules
24 necessary to implement this act.

25 (b) When adopting the initial rules required under this act, the
26 commission shall file the final rules with the Secretary of State for
27 adoption under § 25-15-204(f):

28 (1) On or before January 1, 2026; or

29 (2) If approval under § 10-3-309 has not occurred by January 1,
30 2026, as soon as practicable after approval under § 10-3-309.

31 (c) The commission shall file the proposed rules with the Legislative
32 Council under § 10-3-309(c) sufficiently in advance of January 1, 2026, so
33 that the Legislative Council may consider the rules for approval before
34 January 1, 2026.

35
36 APPROVED: 4/21/25