

1 State of Arkansas
2 95th General Assembly
3 Regular Session, 2025
4

A Bill

SENATE BILL 437

5 By: Senator Hester
6 By: Representatives Hall, Eaton
7

For An Act To Be Entitled

8
9 AN ACT TO CREATE THE ARKANSAS WIND ENERGY DEVELOPMENT
10 ACT; AND FOR OTHER PURPOSES.
11

Subtitle

12
13
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) "Useful life" means the amount of time during which a wind
14 energy facility is generating electricity in commercial quantities;

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

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

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

22 (B) "Wind energy facility" includes turbines, towers,
23 buildings, transmission facilities, meteorological towers, transformers,
24 control systems, and other associated facilities used to support the
25 operation of the wind energy facility.

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

30 (17) "Wind energy facility expansion" means an activity that:

31 (A) Adds or substantially modifies a wind energy facility,
32 including without limitation increasing the height or the number of the wind
33 turbines, transmission facilities, or other equipment; or

34 (B) Increases the environmental footprint of a wind energy
35 facility; and

36 (18)(A) "Wind turbine" means a wind energy conversion system that

1 converts wind energy into electricity using a wind turbine generator.

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

4
5 23-18-1304. Permit required.

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

9 (2) Before a person constructs, operates, or redevelops a wind
10 energy facility or wind energy facility expansion in this state, the person
11 shall obtain:

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

14 (B) If a local government has adopted local legislation
15 addressing the construction or expansion of a wind energy facility located in
16 the jurisdiction of the local government, a permit from the local legislative
17 body.

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

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

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

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

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

30
31 23-18-1305. Service – Notice requirements.

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

35 (A) A person listed in § 23-18-513;

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

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

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

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

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

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

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

16 (2) A map showing the locations of all proposed wind energy
17 facilities;

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

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

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

24 (1) Mailed by certified mail; and

25 (2) Directed to the address of the landowner of the real
26 property as it appears on the records in the office of the county sheriff or
27 county tax assessor for the mailing of statements for taxes as provided in §
28 26-35-705.

29 (d) An application for a permit shall be accompanied by proof that
30 notice was provided to persons residing in the local government entitled to
31 receive notice under § 23-18-513 by publication in a newspaper having
32 substantial circulation in the local government of:

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

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

36 (3) The locations at which a copy of the application is

1 available for review by the public; and

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

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

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

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

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

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

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

28 (B) The approximate date that the applicant proposes to
29 commence construction of the wind energy facility or the wind energy facility
30 expansion; and

31 (C)(i) The return address of the applicant and a statement
32 that the recipient of the notice, within thirty (30) days of receipt, is
33 required to provide the applicant with site and operational and
34 infrastructure information with sufficient specificity to facilitate the safe
35 construction and operation of a wind energy facility or a wind energy
36 facility expansion.

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

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

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

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

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

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

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

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

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

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

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

31
32 23-18-1306. Minimum requirements.

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

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

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

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

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

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

18 (A) A public or private school;

19 (B) A hospital;

20 (C) A nursing home facility;

21 (D) A church;

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

23 (F) A state or federal park; and

24 (G) A public airport.

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

31 (2)(A) An environmental impact assessment required under
32 subdivision (b)(1) of this section shall not be required if an environmental
33 review of the wind energy facility or any portion of the wind energy facility
34 is required under the National Environmental Policy Act of 1969, 42 U.S.C. §
35 4321 et seq., as it existed on January 1, 2025, that includes public input, a
36 public hearing, an environmental impact statement, and a viewshed analysis.

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

3 (i) Economic impacts to individuals, real property
4 values, tourism, and agriculture;

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

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

9 (a) Wildlife refuges;

10 (b) Preserves and management areas;

11 (c) Areas that provide habitat for threatened
12 or endangered species;

13 (d) Primary nursery areas designated by the
14 Arkansas Game and Fish Commission; and

15 (e) Critical fisheries habitats identified
16 under applicable state or federal law;

17 (iv) Viewshed analysis for:

18 (a) State and federal parks and forests;

19 (b) Historic and cultural sites;

20 (c) Public parks and recreation areas; and

21 (d) Private conservation land;

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

25 (a) Bodies of water;

26 (b) Flowing water sources;

27 (c) Stormwater runoff;

28 (d) Wetlands;

29 (e) Groundwater;

30 (f) Aquifers; and

31 (g) Private wells;

32 (vi)(a) Risk assessment and mitigation
33 recommendations for shadow flicker and incidents, including wind turbine
34 fires, structural damage or failure, ice throw, blade shear, and hazardous
35 material spills.

36 (b) Except as provided in subdivision

1 (b)(2)(B)(vi)(c) of this section, shadow flicker shall not exceed thirty (30)
2 hours annually as verified in an assessment prepared according to
3 professional standards.

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

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

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

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

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

30 (3) A nonparticipating landowner may elect to sign a written
31 waiver to allow noise levels greater than those stated under subdivision
32 (c)(1) of this section from any wind turbine or group of wind turbines on the
33 nonparticipating landowner's property.

34
35 23-18-1307. Application requirements.

36 (a) An application for a permit for the construction, operation, or

1 redevelopment of a wind energy facility or a wind energy facility expansion
2 shall include:

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

5 (2) A development and management plan.

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

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

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

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

15 (4)(A) Emergency procedures.

16 (B) The emergency procedures under this subdivision (b)(4)
17 shall include:

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

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

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

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

31 (v) A plan for the owner to distribute current
32 copies of the emergency plan to the local legislative body and fire service,
33 law enforcement, and other appropriate first responders as identified by the
34 local government;

35 (vi) A plan, if a local government requires, for the
36 owner, at the owner's expense, to provide annual training for fire service,

1 law enforcement, and other appropriate first responders regarding responding
2 to a wind energy facility emergency until the wind energy facility has been
3 decommissioned;

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

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

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

14
15 23-18-1308. Decommissioning requirements.

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

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

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

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

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

34 (A) The termination of electricity was mandated by state
35 or federal law; or

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

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

4 (2)(A) Any wind turbine or group of wind turbines of a wind
5 energy facility violates the noise level restrictions under § 23-18-
6 1306(c)(1), unless the wind turbine or group of wind turbines is brought into
7 compliance within one hundred eighty (180) days of the violation.

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

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

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

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

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

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

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

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

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

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

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

1 (A) Abandonment;

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

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

6 (2) If the owner fails to complete the decommissioning within
7 the period prescribed under subdivision (g)(1) of this section, the
8 commission shall take such measures as are necessary to complete the
9 decommissioning.

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

13
14 23-18-1309. Insurance requirements.

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

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

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

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

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

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

31
32 23-18-1310. Applicability.

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

35 (b) This subchapter does not affect the:

36 (1) Jurisdiction of the Division of Environmental Quality or the

1 Arkansas Pollution Control and Ecology Commission with respect to water and
2 air pollution control or other matters within the jurisdiction of the
3 division or the Arkansas Pollution Control and Ecology Commission;

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

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

9 (c) This subchapter does not apply to a wind energy facility in this
10 state constructed or which commenced to be constructed on or before September
11 1, 2024.

12
13 23-18-1311. Review by a state agency.

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

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

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

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

30 (3) The deficiency letter shall be prepared and served upon the
31 applicant as promptly as possible but no later than twenty (20) days before
32 the date set for a public hearing under § 23-18-1312.

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

36

1 23-18-1312. Public hearing.

2 (a)(1)(A) Upon receipt of an application for a permit for the
3 construction, operation, or redevelopment of a wind energy facility or a wind
4 energy facility expansion under this subchapter, the Arkansas Public Service
5 Commission shall fix a date for the commencement for a public hearing on the
6 application.

7 (B) The date of the public hearing under subdivision
8 (a)(1)(A) of this section shall not be earlier than sixty (60) days after the
9 date set for the receipt of comments from the state agencies under § 23-18-
10 1311, including any extensions.

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

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

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

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

23
24 23-18-1313. Local legislation.

25 (a)(1) A local legislative body may adopt local legislation addressing
26 the construction, expansion, operation, or redevelopment of a wind energy
27 facility located within the jurisdiction of the local government if the local
28 legislation is consistent with this subchapter and existing federal and state
29 law.

30 (2) Local legislation shall not establish criteria for the
31 issuance of a local permit that is less restrictive than those established in
32 this subchapter.

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

1
2 23-18-1314. Report to landowners.

3 (a)(1) An owner or operator of a wind turbine or wind energy facility
4 shall provide a report to a landowner that has entered into a lease,
5 easement, or other agreement with the owner of a wind energy facility that is
6 paid based on the amount of electrical energy produced from the conversion of
7 wind energy.

8 (2) The report required under subdivision (a)(1) of this section
9 shall:

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

12 (B) At a minimum, contain:

13 (i) Information reasonably necessary to provide the
14 landowner with an understanding of the basis for the payment the landowner
15 received; and

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

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

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

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

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

30 (3) The landowner shall be permitted a reasonable length of time
31 to complete the inspection and shall not cause undue disruption to the
32 operations of the owner or operator during the inspection.

33
34 23-18-1315. Other applicable local, state, and federal permits, licenses,
35 or approvals.

36 The issuance of a permit for the construction, operation, or redevelopment

1 of a wind energy facility or a wind energy facility expansion under this
2 subchapter does not preclude the need for a person to obtain other local, state,
3 or federal permits, licenses, or approvals required for a wind energy facility.
4

5 23-18-1316. Information subject to disclosure.

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

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

20
21 23-18-1317. Federal law.

22 If a provision of this subchapter conflicts with a current federal law,
23 including promulgated federal regulations, the federal law shall take
24 precedence over the conflicting provisions of this subchapter.

25
26 23-18-1318. Rules.

27 (a) The Arkansas Public Service Commission shall promulgate rules to
28 implement and administer this subchapter.

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

31 (1) Requirements and terms for a permit for the construction,
32 operation, or redevelopment of a wind energy facility or a wind energy facility
33 expansion;

34 (2) Requirements for an application a permit for the construction,
35 operation, or redevelopment of a wind energy facility or a wind energy facility
36 expansion;

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

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

7 (A) Interconnection of power lines and with regional
8 transmission organizations, independent transmission system operators, or
9 similar organizations; and

10 (B) Establishment of necessary cooperation for site visits
11 and enforcement investigations.

12
13 SECTION 2. TEMPORARY LANGUAGE. DO NOT CODIFY. Rules.

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

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

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

20 (2) If approval under § 10-3-309 has not occurred by January 1,
21 2026, as soon as practicable after approval under § 10-3-309.

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

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