

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

1 State of Arkansas As Engrossed: S1/26/21 S2/1/21 S2/9/21

2 93rd General Assembly

# A Bill

3 Regular Session, 2021

SENATE BILL 23

4

5 By: Senator B. Johnson

6 By: Representative L. Fite

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## For An Act To Be Entitled

9

AN ACT TO ESTABLISH THE ELECTRIC COOPERATIVE

10

CORPORATION SELF-REGULATION ACT OF 2021; AND FOR

11

OTHER PURPOSES.

12

13

14

## Subtitle

15

TO ESTABLISH THE ELECTRIC COOPERATIVE

16

CORPORATION SELF-REGULATION ACT OF 2021.

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

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21 SECTION 1. Arkansas Code § 23-18-201 is amended to read as follows:

22 23-18-201. Jurisdiction of commission generally.

23 ~~Electric~~ Except as specifically provided by law or if an electric

24 cooperative corporation has selected self-regulation as provided in § 23-18-

25 308, an electric cooperative ~~corporations corporation~~ generating,

26 manufacturing, purchasing, acquiring, transmitting, distributing, selling,

27 furnishing, and disposing of electric power and energy in this state ~~pursuant~~

28 ~~to~~ under the Electric Cooperative Corporation Act, § 23-18-301 et seq., ~~shall~~

29 ~~be~~ is subject to the general jurisdiction of the Arkansas Public Service

30 Commission ~~in the same manner and to the same extent as provided by law for~~

31 ~~the regulation, supervision, or control of public utilities except as~~

32 ~~provided in this subchapter.~~

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

35 23-18-308. Legislative findings and intent - Jurisdiction of

36 commission.



1 (a) The General Assembly finds that a corporation organized under this  
2 subchapter:

3 (1) Is owned by the member-consumers that the corporation  
4 serves; and

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

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

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

16 (d) Excluding a generation and transmission cooperative as defined in  
17 § 23-4-1101, the right of self-regulation and exemption from the jurisdiction  
18 of the commission may be selected by the members of a corporation if:

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

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

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

26 (ii) Include:

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

29 (b) Dates, times, and locations for at least  
30 three (3) opportunities for member-consumer comment before the vote's being  
31 taken, including instructions for how to submit electronic comments to the  
32 corporation; and

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

35 (C) The corporation shall post notice of the vote in  
36 accessible locations, including without limitation the corporation

1 newsletter, website, or other regular methods of member-consumer  
2 communication;

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

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

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

10 (e) A corporation that becomes self-regulated under this subchapter  
11 shall:

12 (1) Set its own rates, terms, and conditions for service in a  
13 manner that reasonably approximates the costs of providing service to the  
14 respective classes of service of the corporation; and

15 (2) Ensure the rates, terms, and conditions for service of the  
16 corporation are available for access on the website of the corporation or  
17 other member-accessible location.

18 (f) Any corporate action undertaken in good faith while the  
19 corporation acts in a self-regulated capacity is valid and effective as if  
20 determined by the commission.

21 (g)(1) A corporation that becomes self-regulated under this subchapter  
22 may resubmit to the jurisdiction of the commission if:

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

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

30 (ii) The commission orders the corporation or the  
31 corporation decides to conduct a membership vote regarding returning to the  
32 jurisdiction of the commission using the same procedure described in  
33 subsection (d) of this section; or

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

1 (2)(A) After following the procedure in subdivision (g)(1)(A) or  
2 subdivision (g)(1)(B) of this section, if a majority of the votes cast are in  
3 favor of returning to the jurisdiction of the commission, then the process to  
4 return the corporation to the jurisdiction of the commission shall begin as  
5 soon as possible after the membership vote.

6 (B) Unless otherwise ordered by the commission, a  
7 corporation's return to the jurisdiction of the commission shall be completed  
8 within twelve (12) months of the majority vote to return to commission  
9 jurisdiction.

10 (h) The commission shall retain jurisdiction over a corporation that  
11 becomes self-regulated under this subchapter for:

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

13 (2) Siting of transmission facilities subject to a requirement  
14 for a certificate of public convenience and necessity under §§ 23-3-201 – 23-  
15 3-205 or under the Utility Facility Environmental and Economic Protection  
16 Act, § 23-18-501 et seq., if the property for the facility will be acquired  
17 by the corporation using the power of eminent domain;

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

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

21 (5) Ad valorem tax assessments as described in § 26-26-1601 et  
22 seq.

23 (i) A self-regulated corporation shall not use its status as a  
24 monopoly electric service provider to make the provision of electric service  
25 conditional upon the nonelectric service offerings of the corporation.

26 (j) If another provision of Arkansas law conflicts with this  
27 subchapter, this subchapter shall control, provided nothing in this  
28 subchapter conflicts with § 14-207-101 et seq. or otherwise affects the  
29 rights of municipal electric utilities under the Arkansas Municipal Electric  
30 Utility Interlocal Cooperation Act of 2003, § 25-20-401 et seq., relating to  
31 extensions of service or otherwise.

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33 SECTION 3. Arkansas Code § 23-18-331 is amended to read as follows:

34 23-18-331. Service in incorporated areas.

35 (a)(1) The inclusion by incorporation, annexation, or otherwise of any  
36 portion of a rural area assigned to ~~corporations~~ a corporation within the

1 limits of an incorporated or unincorporated city, town, or village,  
2 regardless of its population, shall not ~~in any respect~~ impair or affect the  
3 rights of ~~the corporations under their certificates of convenience and~~  
4 ~~necessity~~ a corporation under their commission approved service territory  
5 certificate to continue and extend electric service in the included areas.

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

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

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

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

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31 /s/B. Johnson  
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