

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: S2/2/17

A Bill

SENATE BILL 256

5 By: Senator Irvin
6 By: Representative Davis
7

For An Act To Be Entitled

9 AN ACT TO TRANSFER THE ARKANSAS ENERGY OFFICE TO THE
10 ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY; AND FOR
11 OTHER PURPOSES.
12
13

Subtitle

15 TO TRANSFER THE ARKANSAS ENERGY OFFICE TO
16 THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL
17 QUALITY.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 *SECTION 1. DO NOT CODIFY. Transfer of the Arkansas Energy Office to*
23 *the Arkansas Department of Environmental Quality.*

24 *(a)(1) The Arkansas Energy Office is transferred to the Arkansas*
25 *Department of Environmental Quality by a type 2 transfer under § 25-2-105.*

26 *(2) For the purposes of this act, the Arkansas Department of*
27 *Environmental Quality shall be considered a principal department established*
28 *by Acts 1971, No. 38.*

29 *(b) All authority, powers, duties, functions, records, personnel,*
30 *property, unexpended balances of appropriations, allocations, and other*
31 *funds, including the functions of budgeting or purchasing of the Arkansas*
32 *Energy Office, are transferred to the Arkansas Department of Environmental*
33 *Quality, except as specified by this act.*

34 *(c)(1) All powers, duties, and functions, including rulemaking,*
35 *regulation, promulgation of rules, regulations, rates, and standards, and the*
36 *rendering of findings, orders, and adjudications of the Arkansas Energy*



1 Office are transferred to the Arkansas Pollution Control and Ecology
2 Commission.

3 (2)(A) All rules and regulations promulgated by the Arkansas
4 Energy Office in effect on January 1, 2017, are transferred as a matter of
5 law to the Arkansas Pollution Control and Ecology Commission on the effective
6 date of this act and shall be considered an officially promulgated regulation
7 of the Arkansas Pollution Control and Ecology Commission from that date
8 forward except as provided under subdivision (c)(3) of this section.

9 (B) Arkansas Pollution Control and Ecology Commission
10 Regulation No. 8 concerning rulemaking shall not apply to any rules
11 transferred under this subdivision (c)(2).

12 (3) A new regulation or regulatory amendment to an existing rule
13 or regulation that is proposed after the effective date of this act and
14 concerns the administration of the Arkansas Energy Office shall be
15 promulgated by and through the Arkansas Pollution Control and Ecology
16 Commission under the authority of § 8-1-203.

17 (d) The employees and designees of the Arkansas Energy Office and
18 their successors shall continue to be selected in the manner and serve for
19 the terms provided by the statutes applicable to the Arkansas Energy Office
20 except as specified in this act.

21
22 SECTION 2. Arkansas Code § 8-1-202(b)(2), concerning the powers of the
23 Director of the Arkansas Department of Environmental Quality, is amended to
24 read as follows:

25 (2) As such, the director's duties shall include:

26 (A)(i) The administration of permitting, licensing,
27 certification, and grants programs deemed necessary to protect the
28 environmental integrity of the state.

29 (ii) The director, or his or her delegatee within
30 his or her staff, shall serve as the issuing authority for the state;

31 (B)(i) Initiation and settlement of civil or
32 administrative enforcement actions to compel compliance with laws, orders,
33 and regulations charged to the responsibility of the department.

34 (ii) In this regard, the director may propose the
35 assessment of civil penalties as provided by law and take all actions
36 necessary to collect such penalties;

1 (C) Issuance of orders in such circumstances that
 2 reasonably require emergency measures to be taken to protect the environment
 3 or the public health and safety, except to the extent that the matter
 4 involved is reserved to the jurisdiction or orders of the Arkansas Pollution
 5 Control and Ecology Commission for rulemaking procedures in § 8-4-202;

6 (D) Day-to-day administration of all activities that the
 7 department is empowered by law to perform, including, but not limited to, the
 8 employment and supervision of such technical, legal, and administrative
 9 staff, within approved appropriations, as is necessary to carry out the
 10 responsibilities vested with the department;

11 (E) Providing technical and legal expertise and assistance
 12 in the field of environmental protection to other agencies and subdivisions
 13 of the state as appropriate;

14 (F) Day-to-day administration of environmental programs
 15 delegated to the State of Arkansas by the responsible agencies of the ~~federal~~
 16 ~~government~~ United States Government; and

17 (G) The supervision of the Arkansas Energy Office of the
 18 Arkansas Department of Environmental Quality under the Arkansas Energy
 19 Reorganization and Policy Act of 1981 § 15-10-201 et seq.; and

20 ~~(G)~~(H) Any other power or duty specifically vested with
 21 the director or department by the General Assembly.

22
 23 SECTION 3. Arkansas Code § 14-164-803(4)(A)(ii), concerning
 24 definitions used throughout the Local Government Energy Efficiency Project
 25 Bond Act, is amended to read as follows:

26 (ii) Are measurable and verifiable under the
 27 International Performance Measurement and Verification Protocol, ~~as adopted~~
 28 ~~by the Arkansas Energy Office promulgated by the Arkansas Pollution Control~~
 29 ~~and Ecology Commission in the rules regulations~~ required under § 19-11-1207;
 30 and

31
 32 SECTION 4. Arkansas Code § 14-164-821 is amended to read as follows:
 33 14-164-821. ~~Rules~~ Regulations.

34 A municipality or county may provide by ordinance that the municipality
 35 or county shall comply with the ~~rules~~ regulations promulgated by the ~~Arkansas~~
 36 ~~Energy Office~~ Arkansas Pollution Control and Ecology Commission under § 19-

1 11-1207.

2
3 SECTION 5. Arkansas Code § 15-10-202(5), concerning the declaration of
4 policy under the Arkansas Energy Reorganization and Policy Act of 1981, is
5 amended to read as follows:

6 (5) It is in the best interest of the citizens of this state to
7 establish ~~a division within the Arkansas Economic Development Commission~~ the
8 Arkansas Energy Office of the Arkansas Department of Environmental Quality to
9 coordinate the planning and execution of comprehensive energy conservation
10 programs; and

11
12 SECTION 6. Arkansas Code § 15-10-203 is amended to read as follows:
13 15-10-203. Arkansas Energy Office – Creation.

14 (a)(1) There is created ~~an Arkansas Energy Office, also referred to in~~
15 ~~this subchapter as the “office”, as a division within the Arkansas Economic~~
16 ~~Development Commission~~ the Arkansas Energy Office of the Arkansas Department
17 of Environmental Quality.

18 (2)(A) The executive head of this ~~division~~ office shall be the
19 Director of the Arkansas Energy Office.

20 (B) The Director of the Arkansas Energy Office shall be
21 appointed by the ~~Executive Director of the Arkansas Economic Development~~
22 ~~Commission~~ Director of the Arkansas Department of Environmental Quality with
23 the advice and consent of the Governor.

24 (b) The office shall consist of such ~~divisions~~ sections as may be
25 established by the Director of the Arkansas Energy Office, with the approval
26 of the ~~Executive Director of the Arkansas Economic Development Commission~~
27 Director of the Arkansas Department of Environmental Quality.

28
29 SECTION 7. Arkansas Code § 15-10-204(c), concerning the Director of
30 the Arkansas Energy Office, is amended to read as follows:

31 (c) In addition to other duties and functions prescribed for the
32 Director of the Arkansas Energy Office of the Arkansas Department of
33 Environmental Quality elsewhere in this subchapter, the Director of the
34 Arkansas Energy Office of the Arkansas Department of Environmental Quality
35 shall supervise the daily operation of the office and advise the ~~Executive~~
36 ~~Director of the Arkansas Economic Development Commission~~ Director of the

1 Arkansas Department of Environmental Quality, the Governor, and the General
2 Assembly on energy matters.

3

4 SECTION 8. Arkansas Code § 15-10-205, concerning the powers and duties
5 of the Arkansas Energy Office, is amended to read as follows:

6 15-10-205. Arkansas Energy Office of the Arkansas Department of
7 Environmental Quality – Powers and duties.

8 (a) The Arkansas Energy Office of the Arkansas Department of
9 Environmental Quality shall coordinate authority and planning by the state in
10 energy-related matters and shall have the following duties and
11 responsibilities:

12 (1) Coordinating energy matters between and among all state
13 agencies;

14 (2) Compiling an energy profile for the state which includes,
15 but is not limited to, data on the demand for and supply of renewable and
16 nonrenewable energy resources;

17 (3) Collecting data on, planning, and administering emergency
18 plans, when needed, to allocate the distribution of motor fuels, aviation
19 fuels, heating oil, and propane by wholesale jobbers and dealers within the
20 state;

21 (4) Collecting data on, planning, and administering emergency
22 plans, when needed, for the conservation or rationing of motor fuels;

23 (5) Proposing executive and legislative measures on energy-
24 related matters;

25 (6) Providing comments before state and federal regulatory
26 bodies on energy matters mandated by federal and state agencies;

27 (7) Monitoring and evaluating existing and proposed actions,
28 laws, policies, regulations, and orders of the state and federal governments
29 in energy matters relevant to Arkansas;

30 (8) Securing and administering federal energy grants for
31 agencies of state government and monitoring and publicizing federal energy
32 grants available to the private sector;

33 (9) Carrying out energy-related administrative and program
34 functions established and required by federal law, regulations, or guidelines
35 when applicable in Arkansas;

36 (10) Developing and administering conservation programs directed

1 toward reducing wasteful, inefficient uses of energy;

2 ~~(11) Promulgating reasonable rules and regulations for the~~
3 ~~purpose of implementing and prescribing enforcement for thermal and lighting~~
4 ~~efficiency standards for new building construction in the state;~~

5 ~~(12)~~(11) Developing and proposing thermal and lighting
6 efficiency improvement programs for all buildings owned by the state and
7 prescribing reasonable thermal and lighting efficiency criteria applicable to
8 the leasing of buildings by all state agencies; and

9 ~~(13)~~(12) Administering a public energy awareness program to
10 inform and demonstrate to the public the importance and methods of utilizing
11 energy conservation and renewable energy resources.

12 (b) The office ~~shall have the authority to~~ may:

13 (1) Provide comments before state and federal bodies in energy
14 matters relevant to Arkansas;

15 (2) Receive and expend funds obtained from the federal
16 government or other sources by means of contracts, grants, awards, payment
17 for services, and other devices in support of energy-related programs,
18 studies, or other operations beneficial to the State of Arkansas; and

19 ~~(3) Promulgate reasonable rules for the purpose of:~~

20 ~~(A) Implementing and prescribing enforcement for thermal~~
21 ~~and lighting efficiency standards for new building construction;~~

22 ~~(B) Requiring a city or county that issues building~~
23 ~~permits for new building construction to adopt the Arkansas Energy Code for~~
24 ~~New Building Construction; and~~

25 ~~(C) Complying with the Arkansas Administrative Procedure~~
26 ~~Act, § 25-15-201 et seq.;~~

27 ~~(4)~~(3) Propose programs for the implementation of thermal and
28 lighting efficiency improvements for all buildings owned by the state and
29 prescribe reasonable thermal and lighting efficiency criteria applicable to
30 the leasing of buildings by all state agencies; and.

31 ~~(5) Promulgate rules and regulations for the purpose of~~
32 ~~administering emergency plans as referred to in subdivision (a)(4) of this~~
33 ~~section.~~

34 ~~(e) Prior to the final adoption of the rules and regulations~~
35 ~~prescribing thermal and lighting efficiency standards for new building~~
36 ~~construction referred to in subdivision (b)(3) of this section, the Joint~~

1 ~~Committee on Energy shall review and comment on the rules and regulations of~~
2 ~~the office.~~

3 (c) The Arkansas Pollution Control and Ecology Commission may
4 promulgate regulations necessary to administer this section for the purposes
5 of:

6 (1) Implementing and prescribing enforcement for thermal and
7 lighting efficiency standards for new building construction;

8 (2) Requiring a city or county that issues building permits for
9 new building construction to adopt the Arkansas Energy Code for New Building
10 Construction; and

11 (3) Administering emergency plans as referred to in subdivision
12 (a)(4) of this section.

13
14 SECTION 9. Arkansas Code § 15-10-904(a), concerning rebates for
15 qualified clean-burning motor fuel property, is amended to read as follows:

16 (a) The Arkansas Energy Office of the Arkansas Department of
17 Environmental Quality shall offer a rebate for qualified clean-burning motor
18 vehicle fuel property.

19
20 SECTION 10. Arkansas Code § 15-72-802(1), concerning definitions used
21 throughout the Emergency Petroleum Set-Aside Act, is amended to read as
22 follows:

23 (1) "Assignment" means an action taken by the Arkansas Energy
24 Office of the Arkansas Department of Environmental Quality, designating that
25 a prime supplier of petroleum products supply them to an authorized consumer,
26 wholesale purchaser-consumer, or wholesale purchaser-reseller to facilitate
27 relief of emergency or hardship needs, pursuant to § 15-72-804;

28
29 SECTION 11. Arkansas Code § 15-72-802(9), concerning definitions used
30 throughout the Emergency Petroleum Set-Aside Act, is amended to read as
31 follows:

32 (9) "Set-aside" means, with respect to a particular prime
33 supplier, the amount of a petroleum product which is made available from the
34 total supply of a prime supplier, pursuant to the provisions of § 15-72-804,
35 for utilization by the Arkansas Energy Office of the Arkansas Department of
36 Environmental Quality to resolve emergencies and hardships due to shortages

1 or other dislocations in petroleum products distribution systems; and

2
3 SECTION 12. Arkansas Code § 15-72-804(a)(1), concerning the
4 establishment of state emergency petroleum set-aside, is amended to read as
5 follows:

6 (a)(1) ~~The Director of the Arkansas Energy Office~~ Arkansas Pollution
7 Control and Ecology Commission shall promulgate ~~rules in accordance with the~~
8 ~~Arkansas Administrative Procedure Act, as amended, § 25-15-201 et seq.,~~
9 regulations establishing a set-aside system for petroleum products and
10 reporting requirements for prime suppliers and brokers.

11
12 SECTION 13. Arkansas Code § 19-5-1249(c), concerning the Clean-burning
13 Motor Fuel Development Fund, is amended to read as follows:

14 (c) The fund shall be used by the ~~Arkansas Energy Office of the~~
15 ~~Arkansas Economic Development Commission~~ Arkansas Department of Environmental
16 Quality to provide rebates and incentives under the Arkansas Clean-burning
17 Motor Fuel Development Act, § 15-10-901 et seq.

18
19 SECTION 14. Arkansas Code § 19-11-1202(1)(A)(i)(b), concerning
20 definitions used throughout the Guaranteed Energy Cost Savings Act, is
21 amended to read as follows:

22 (b) Are measurable and verifiable under the International Performance
23 Measurement and Verification Protocol, as adopted by the ~~Arkansas Energy~~
24 ~~Office~~ Arkansas Pollution Control and Ecology Commission, in the rules
25 required under § 19-11-1207; and

26
27 SECTION 15. Arkansas Code § 19-11-1207 is amended to read as follows:
28 19-11-1207. Administration of subchapter – Fees.

29 ~~The Arkansas Energy Office:~~

30 ~~(1) Shall:~~

31 ~~(A) Administer this subchapter; and~~

32 ~~(B) Promulgate rules for the administration of this~~
33 ~~subchapter within nine (9) months of the effective date of this subchapter,~~
34 ~~including without limitation the following:~~

35 ~~(i) Standards for measuring and verifying the~~
36 ~~performance of energy cost savings measures;~~

1 ~~(ii) A standard contract form for use by a state~~
2 ~~agency in entering into a guaranteed energy cost savings contract; and~~
3 ~~(iii) The adoption of the International Performance~~
4 ~~Measurement and Verification Protocol as it existed on a specific date; and~~
5 ~~(2) May establish and collect a reasonable fee to cover the costs~~
6 ~~of administering this subchapter.~~

7 (a) The Arkansas Energy Office of the Arkansas Department of
8 Environmental Quality shall administer this subchapter.

9 (b) The Arkansas Pollution Control and Ecology Commission may
10 promulgate regulations for the administration of this subchapter to include
11 without limitation the following:

12 (1) Standards for measuring and verifying the performance of
13 energy cost savings measures;

14 (2) A standard contract form for use by a state agency in
15 entering into a guaranteed energy cost savings contract; and

16 (3) The adoption of the International Performance Measurement
17 and Verification Protocol as it existed on a specific date; and

18 (4) To establish and collect a reasonable fee to cover the costs
19 of administering this subchapter.

20
21 SECTION 16. Arkansas Code § 22-3-2003(b)(1), concerning the
22 Sustainable Energy-Efficient Buildings Program, is amended to read as
23 follows:

24 (1) For public agencies, the Arkansas Energy Office of the
25 Arkansas Department of Environmental Quality shall develop and:

26 (A) Issue policies and technical guidelines to establish
27 procedures and methods for compliance with the criteria and the performance
28 standards for a major facility or a major renovation under § 22-3-2004; and

29 (B) Administer an energy management program designed to achieve
30 compliance with the requirements of § 22-3-2006 through the implementation of
31 energy conservation measures; and

32
33 SECTION 17. Arkansas Code § 22-3-2006(a), concerning the program to
34 manage energy usage of public agencies, is amended to read as follows:

35 (a) The Arkansas Energy Office of the Arkansas Department of
36 Environmental Quality shall:

1 (1) *Develop an energy program to manage energy, water, and other*
2 *utility uses for public agencies that will reduce total energy consumption*
3 *per gross square foot for all existing state buildings by twenty percent*
4 *(20%) by 2014 and thirty percent (30%) by 2017 based on energy consumption*
5 *for the 2007-2008 fiscal year if the savings can be justified by a life-cycle*
6 *cost analysis; and*

7 (2) *Update this program annually.*

8
9 SECTION 18. *The introductory language of Arkansas Code § 22-3-2006(b),*
10 *concerning the program to manage energy usage of public agencies, is amended*
11 *to read as follows:*

12 (b) *To implement its plan, the Arkansas Energy Office of the Arkansas*
13 *Department of Environmental Quality shall to the extent funds are available:*

14
15 SECTION 19. *Arkansas Code § 22-3-2006(c), concerning the program to*
16 *manage energy usage of public agencies, is amended to read as follows:*

17 (c) *The Arkansas Energy Office of the Arkansas Department of*
18 *Environmental Quality may adopt architectural and engineering standards to*
19 *implement this section.*

20
21 SECTION 20. *Arkansas Code § 22-3-2007(4), concerning application to*
22 *historic and unique buildings, is amended to read as follows:*

23 (4) *A building that the Arkansas Energy Office of the Arkansas*
24 *Department of Environmental Quality has exempted from this subchapter because*
25 *of its unique architectural characteristics or usage.*

26
27 SECTION 21. *Arkansas Code § 22-3-2008 is amended to read as follows:*

28 22-3-2008. *Advisory committee for the Arkansas Energy Office of the*
29 *~~Arkansas Economic Development Commission~~ Arkansas Department of Environmental*
30 *Quality.*

31 (a)(1) *The Director of the Arkansas Energy Office of the Arkansas*
32 *Department of Environmental Quality shall create and recommend members for a*
33 *sustainable, energy-efficient building advisory committee composed of:*

34 (A) *Representatives from the design and construction*
35 *industry who are involved in public works contracting;*

36 (B) *Persons from public agencies who are responsible for*

1 overseeing public works projects or for developing energy efficiency programs
2 and policies; and

3 (C) Other persons that the ~~director~~ Director of the
4 Arkansas Energy Office of the Arkansas Department of Environmental Quality
5 considers to have useful information.

6 (2)(A) ~~Committee members shall serve at the pleasure of the~~ The
7 ~~director~~ Director of the Arkansas Department of Environmental Quality shall
8 approve the creation and membership recommendations under this section.

9 (B) The committee members shall serve at the pleasure of
10 the director of the Arkansas Department of Environmental Quality.

11 (b) The committee shall provide advice on the implementation of this
12 subchapter, including without limitation recommendations regarding:

13 (1) An education and training process for persons who are
14 involved in the implementation of this subchapter;

15 (2) An ongoing evaluation or feedback process to help the
16 Arkansas Energy Office to implement this section; and

17 (3) Water-deficiency requirements and energy-efficiency
18 requirements.

19
20 SECTION 22. Arkansas Code § 22-3-2009 is amended to read as follows:
21 22-3-2009. ~~Rules~~ Regulations and administration.

22 ~~(a) The Arkansas Energy Office shall:~~

23 ~~(1) Adopt rules for the implementation of operation and~~
24 ~~maintenance energy conservation measures in a public building; and~~

25 ~~(2) Develop or revise the Arkansas Energy Office's architectural~~
26 ~~and engineering standards to provide assistance in determining:~~

27 ~~(A) Which energy conservation measures are best suited to~~
28 ~~the unique characteristics of each building; and~~

29 ~~(B) The specifications for the energy conservation~~
30 ~~measures under this subchapter; and~~

31 ~~(3) Adopt rules for the development of education and training~~
32 ~~requirements for the various personnel that may be involved in a major~~
33 ~~facility or a major renovation under this subchapter.~~

34 ~~(b) The Arkansas Energy Office may adopt:~~

35 ~~(1) Rules to implement this subchapter; and~~

36 ~~(2) Architectural or engineering standards as needed to~~

1 ~~implement this section.~~

2 (a) The Arkansas Pollution Control and Ecology Commission shall
3 promulgate regulations for the implementation of operation and maintenance
4 energy conservation measures in public buildings.

5 (b) The Arkansas Energy Office of the Arkansas Department of
6 Environmental Quality shall:

7 (1) Develop or revise the architectural and engineering
8 standards to provide assistance in determining:

9 (A) The energy conservation measures that are best suited
10 to the unique characteristics of each building; and

11 (B) The specifications for the energy conservation
12 measures under this subchapter; and

13 (2) Develop and adopt guidelines for the development of
14 education and training requirements for the various personnel that may be
15 involved in a major facility or a major renovation under this subchapter.

16 (c) The Arkansas Pollution Control and Ecology Commission may
17 promulgate regulations to implement this subchapter.

18
19 SECTION 23. The introductory language of Arkansas Code § 22-3-2010(a),
20 concerning performance review, is amended to read as follows:

21 (a) The Arkansas Energy Office of the Arkansas Department of
22 Environmental Quality, to the extent funds are available, shall conduct a
23 performance review of the Sustainable Energy-Efficient Buildings Program that
24 includes at least the following:

25
26 SECTION 24. Arkansas Code § 22-3-2011(c), concerning applicability
27 under the Sustainable Energy-Efficient Buildings Program, is amended to read
28 as follows:

29 (c) This subchapter does not:

30 (1) Preclude an institution of higher education from adopting
31 the policies and technical guidelines for a major facility or a major
32 renovation that are established by the Arkansas Energy Office of the Arkansas
33 Department of Environmental Quality under § 22-3-2003(b)(1); or

34 (2) Affect the processes or exemptions under § 22-6-601.

35
36 SECTION 25. Arkansas Code § 25-11-103 is amended to read as follows:

