TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2026-060

August 18, 2026

The Honorable Brad Hall
State Representative
1527 Pointer Trail East
Van Buren, Arkansas 72956

Dear Representative Hall:

I am writing in response to your request for an opinion regarding Act 945 of 2025 (now codified at A.C.A. §§ 23-18-1401 to -1419). You ask the following questions:

1. If a wind energy facility is deemed exempt under A.C.A. § 23-18-1418 of Act 945, is the local legislative body for the jurisdiction in which the wind energy facility is located also exempt from adhering to Act 945?

   Brief response: No. Act 945 does not exempt a local legislative body merely because a wind energy facility in its jurisdiction qualifies for the exemption in A.C.A. § 23-18-1418. That exemption applies to a "wind energy facility project" under development as of April 9, 2025—not to a governmental body, local legislative body, or other entity.

2. Can a local legislative body enact regulations less restrictive than Act 945 for a wind energy facility in their jurisdiction, if that wind energy facility is deemed exempt under A.C.A. § 23-18-1418?

   Brief response: No. Act 945 does not permit a local legislative body to adopt regulations that are less restrictive than the Act. Under A.C.A. § 23-18-1413, local regulations must remain consistent with Act 945, and local permit criteria may not be less restrictive than the criteria established by the Act. Although certain wind energy facility projects are exempt from Act 945 under A.C.A. §§ 23-18-1410(c) and 23-18-1418, that exemption means the subchapter does not apply to those projects; it does not authorize a local legislative body to impose less restrictive requirements under Act 945. This response is limited to Act 945 and does not address independent local, state, or federal laws and permitting requirements that may apply by their own force.

3. Does a local legislative body have the right to pass an ordinance regulating a wind energy facility in their jurisdiction if that wind energy facility has been deemed exempt by the Arkansas Public Service Commission under A.C.A. § 23-18-1418 of Act 945?

   Brief response: No. A local legislative body may not rely on A.C.A. § 23-18-1413 as authority to regulate a wind energy facility project that is exempt under Act 945. As explained in response to Question 2, this conclusion is limited to Act 945 and does not displace independent local, state, or federal requirements that apply by their own force.

DISCUSSION

Question 1: If a wind energy facility is deemed exempt under A.C.A. § 23-18-1418 of Act 945, is the local legislative body for the jurisdiction in which the wind energy facility is located also exempt from adhering to Act 945?

No. A local legislative body is not exempt from Act 945 merely because a wind energy facility project in its jurisdiction qualifies for the exemption set forth in A.C.A. § 23-18-1418. That section provides that "[a] wind energy facility project is exempt from this subchapter if the wind energy facility project is under development as of April 9, 2025." The subject of the exemption is unambiguously a wind energy facility project, not a governmental body, a local legislative body, or any other entity.

Question 2: Can a local legislative body enact regulations less restrictive than Act 945 for a wind energy facility in their jurisdiction, if that wind energy facility is deemed exempt under A.C.A. § 23-18-1418?

No. If a wind energy facility is deemed exempt under A.C.A. § 23-18-1418, then a local legislative body may not use the authority granted to it under § 23-18-1413 to establish permit criteria that are inconsistent with Act 945, including criteria that are less restrictive than those established by the Act.

Under § 23-18-1413, a local legislative body may regulate the "construction, expansion, operation, or redevelopment of a wind energy facility" if the local legislation remains "consistent with this subchapter and existing federal and state law."[1] The same statute also provides that local permit criteria "shall not" be less restrictive than the criteria established in Act 945.[2]

The legislative intent of Act 945, as stated in § 23-18-1402(b)(1), is to establish standards and criteria for permitting and regulating wind energy facilities. Act 945 sets a baseline for regulation, allowing local governments to impose more restrictive measures, but not less restrictive ones.

[1] A.C.A. § 23-18-1413(a)(1).

[2] *Id*. § 23-18-1413(a)(2).

However, the Act specifically exempts certain wind energy facilities from its requirements: (1) facilities that were constructed or for which construction commenced on or before September 1, 2024 and (2) facility projects that qualified as "under development" as of April 9, 2025.[3] For these exempt facilities, the entire subchapter does not apply.[4] Therefore, local legislative bodies may not use Act 945 as a basis to impose less restrictive permitting criteria on such exempt facilities.

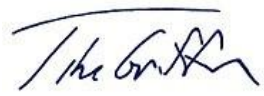
This conclusion is limited to Act 945. The Act does not displace independent local, state, or federal requirements that apply by their own force. It does not amend the Arkansas Water and Air Pollution Control Act; affect the jurisdiction of the Division of Environmental Quality, the Arkansas Pollution Control and Ecology Commission, or the Arkansas Game and Fish Commission; or affect the requirement to obtain permits from any state agency or federal entity with jurisdiction over a facility.[5] Depending on the project and location, those may include generally applicable zoning, subdivision, road-use, building, drainage, floodplain, environmental, wildlife, aviation, utility, or other permitting requirements.

Question 3: Does a local legislative body have the right to pass an ordinance regulating a wind energy facility in their jurisdiction if that wind energy facility has been deemed exempt by the Arkansas Public Service Commission under A.C.A. § 23-18-1418 of Act 945?

No. A local legislative body may not use the authority granted to it by A.C.A. § 23-18-1413 to adopt local legislation to regulate wind energy facilities that are exempt under Act 945. As explained in my answer to Question 2, this conclusion is limited to Act 945, and does not displace independent local, state, or federal requirements that apply by their own force.

Assistant Attorney General Justin Hughes prepared this opinion, which I hereby approve.

Sincerely,



TIM GRIFFIN
Attorney General

[3] *Id*. §§ 23-18-1410(c), -1418.

[4] This opinion does not address the situation where an exempt wind energy facility engages in redevelopment or expansion, as defined in A.C.A. § 23-18-1403(13), (18).

[5] A.C.A. §§ 23-18-1410, -1415.