

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0566.01 Thomas Morris x4218

SENATE BILL 16-046

SENATE SPONSORSHIP

Cooke,

HOUSE SPONSORSHIP

(None),

Senate Committees
Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING MANAGEMENT OF THE PROCESS OF RESPONDING TO THE**
102 **FEDERAL ENVIRONMENTAL PROTECTION AGENCY'S RULES FOR**
103 **THE REGULATION OF CARBON DIOXIDE EMISSIONS FROM**
104 **ELECTRIC GENERATING UNITS IN A MANNER THAT MAXIMIZES**
105 **COLORADO'S ABILITY TO CONTROL ITS AFFAIRS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries.>)

The federal environmental protection agency (EPA) has promulgated rules to regulate carbon dioxide emissions from existing

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

fossil-fuel-fired electric generating units (the "clean power plan"). The rules require states to submit a plan to the EPA detailing how they will comply with the clean power plan, but allow states to qualify for a 2-year extension on filing a plan by filing an "initial submittal".

The bill directs the air quality control commission (AQCC) to:

- ! Conduct a public input process necessary to make the initial submittal and thereby qualify for the 2-year extension without making any binding commitments in any way not required by the express provisions of the clean power plan, including to submit a state plan in the future;
- ! Consider specific factors in developing the state plan; and
- ! Submit a report, prepared jointly with the public utilities commission, to the general assembly that discusses the proposed state plan in connection with the factors.

Once the AQCC prepares a draft plan, it must submit it to the general assembly. The AQCC cannot submit the plan to the EPA unless the general assembly has approved it by adoption of a joint resolution. If a court stays the clean power plan or holds that it is invalid, implementation of the state plan must be suspended or terminated, as appropriate. The existing process for legislative review of state implementation plans is expanded to include a state plan as required by the clean power plan.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 25-7-140 as
3 follows:

4 **25-7-140. Clean power plan - initial submission - state plan -**
5 **legislative declaration - definitions.** (1) THE SHORT TITLE OF THIS
6 SECTION IS THE "PRESERVE STATE CLEAN POWER PLAN OPTIONS ACT".

7 (2) **Legislative declaration.** THE GENERAL ASSEMBLY HEREBY:

8 (a) FINDS THAT:

9 (I) THE EPA HAS ADOPTED RULES UNDER SECTION 111 (d) OF THE
10 FEDERAL ACT THAT DIRECT STATES TO REGULATE CARBON DIOXIDE
11 EMISSIONS FROM EXISTING FOSSIL FUEL-FIRED ELECTRIC GENERATING
12 UNITS;

13 (II) THESE RULES WILL HAVE A MAJOR IMPACT ON COLORADO'S

1 ECONOMY BY REGULATING HOW ELECTRICITY IS PRODUCED,
2 TRANSMITTED, DISTRIBUTED, AND CONSUMED WITHIN COLORADO;

3 (III) UNDER SECTION 111 (d) OF THE FEDERAL ACT, AND AS
4 INCLUDED IN THE EPA'S RULES, STATES TAKE THE LEAD ROLE IN
5 DEVELOPING PLANS FOR THE ESTABLISHMENT AND IMPLEMENTATION OF
6 PERFORMANCE STANDARDS FOR REDUCING CARBON DIOXIDE EMISSIONS
7 FROM EXISTING FOSSIL FUEL-FIRED ELECTRIC GENERATING UNITS; AND

8 (IV) IMPLEMENTING THE EPA'S RULES COULD AFFECT THE COST,
9 RELIABILITY, AND FUTURE IMPROVEMENT OF ELECTRIC SERVICE WITHIN
10 THE STATE OF COLORADO AND SHOULD, THEREFORE, BE UNDERTAKEN IN
11 A PUBLIC PROCESS WITH INPUT FROM THE PUBLIC, Affected POWER
12 GENERATORS, COLORADO RATEPAYERS, AND THE PUBLIC UTILITY
13 COMMISSION AS THE STATE AGENCY MOST ABLE TO ADDRESS THOSE
14 EFFECTS;

15 (b) DETERMINES THAT:

16 (I) DEVELOPMENT AND SUBMISSION OF A STATE PLAN, IN LIEU OF
17 A FEDERAL PLAN, THAT APPROPRIATELY ADDRESSES THE INTERESTS OF THE
18 STATE OF COLORADO AND ELECTRICITY CONSUMERS IS THE PREFERRED
19 METHOD OF COMPLYING WITH THE FEDERAL EMISSION REGULATIONS;

20 (II) STATES ARE ENTITLED TO A TWO-YEAR EXTENSION OF THE
21 REQUIREMENT TO SUBMIT A STATE PLAN, SO LONG AS THEY SUBMIT AN
22 INITIAL SUBMISSION WITH AN EXTENSION REQUEST THAT MEETS THE
23 REGULATORY REQUIREMENTS BY SEPTEMBER 6, 2016;

24 (III) THE EPA HAS MADE IT CLEAR IN REGULATORY LANGUAGE,
25 FEDERAL REGISTER PREAMBLE DISCUSSION, WRITTEN GUIDANCE, AND
26 PLEADINGS IN PENDING LITIGATION THAT THE REQUIREMENTS OF A
27 SUFFICIENT INITIAL SUBMITTAL TO SECURE THE TWO-YEAR EXTENSION OF

1 THE DEADLINE TO SUBMIT A STATE PLAN UNTIL SEPTEMBER 6, 2018, DO
2 NOT INCLUDE A REQUIREMENT TO SUBMIT OR COMMIT TO A COMPLETE OR
3 EVEN PARTIAL STATE PLAN BEFORE SEPTEMBER 6, 2016;

4 (IV) IT IS IN THE INTEREST OF THE COLORADO TO:

5 (A) PRESERVE ITS OPTIONS RELATING TO IMPLEMENTING THE
6 FEDERAL EMISSION REGULATIONS WHILE THE VALIDITY OF THOSE
7 REGULATIONS IS BEING LITIGATED IN THE COURTS; AND

8 (B) NOT COMMIT TO ANY BINDING OBLIGATIONS BEFORE BEING
9 REQUIRED TO DO SO, PARTICULARLY WHEN THE STATE IS ENTITLED TO AN
10 EXTENSION OF ITS STATE PLAN SUBMITTAL DEADLINE; AND

11 (V) THE FEDERAL ENFORCEABILITY OF A STATE PLAN ONCE
12 SUBMITTED AND APPROVED BY THE EPA RENDERS THE PREMATURE
13 SUBMITTAL OF SUCH A STATE PLAN AN ABROGATION OF THE AUTHORITY
14 OF THE LEGISLATIVE AND EXECUTIVE BRANCHES TO CONTROL THE AFFAIRS
15 OF THE STATE OF COLORADO AND EFFECTS AN UNCONSTITUTIONAL
16 DELEGATION OF STATE AUTHORITY TO THE FEDERAL GOVERNMENT; AND

17 (c) DECLARES THAT THE GENERAL ASSEMBLY'S INTENT IN
18 ENACTING THIS SECTION IS TO ENSURE THAT THE STATE OF COLORADO
19 EXERCISES ITS RIGHT TO SECURE SUFFICIENT TIME FOR THE COMMISSION
20 TO RECEIVE INPUT FROM THE PUBLIC, AFFECTED UTILITIES, RATEPAYERS,
21 AND THE PUBLIC UTILITIES COMMISSION WITH RESPECT TO A WIDE RANGE
22 OF STATE PLAN OPTIONS.

23 (3) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT
24 OTHERWISE REQUIRES:

25 (a) "COVERED ELECTRIC GENERATING UNIT" MEANS AN EXISTING
26 FOSSIL FUEL-FIRED ELECTRIC GENERATING UNIT WITHIN THE STATE OF
27 COLORADO THAT IS SUBJECT TO REGULATION UNDER THE FEDERAL

1 EMISSION REGULATIONS.

2 (b) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
3 AND ENVIRONMENT.

4 (c) "EPA" MEANS THE UNITED STATES ENVIRONMENTAL
5 PROTECTION AGENCY.

6 (d) "FEDERAL EMISSION REGULATIONS", ALSO KNOWN AS THE
7 CLEAN POWER PLAN, MEANS ANY FINAL RULES, REGULATIONS, GUIDELINES,
8 OR OTHER REQUIREMENTS THAT THE EPA MAY ADOPT FOR REGULATING
9 CARBON DIOXIDE EMISSIONS FROM COVERED ELECTRIC GENERATING UNITS
10 UNDER SECTION 111 (d) OF THE FEDERAL ACT, INCLUDING SPECIFICALLY
11 40 CFR PART 60 SUBPART TTTT.

12 (e) "FEDERAL PLAN" MEANS A PLAN TO ESTABLISH AND ENFORCE
13 IN COLORADO THE FEDERAL EMISSION REGULATIONS THAT THE EPA MAY
14 ADOPT TO IMPLEMENT COLORADO'S OBLIGATIONS UNDER THE
15 REGULATIONS.

16 (f) "STATE PLAN" MEANS A PLAN, OR PORTION OF A PLAN,
17 WHETHER OR NOT INCORPORATED INTO THE STATE IMPLEMENTATION PLAN
18 OR ADOPTED AS A STATE-ONLY RULE, TO ESTABLISH AND ENFORCE IN
19 COLORADO THE FEDERAL EMISSION REGULATIONS THAT THE COMMISSION
20 MAY ADOPT TO IMPLEMENT COLORADO'S OBLIGATIONS UNDER THE
21 REGULATIONS.

22 (4) **Initial submittal.** THE COMMISSION:

23 (a) SHALL:

24 (I) PROMPTLY INSTITUTE THE REQUIRED PUBLIC INPUT PROCESS
25 CONTEMPLATED BY THE EPA FOR A STATE TO BE ENTITLED TO A
26 TWO-YEAR EXTENSION PURSUANT TO 40 CFR 60.5765; AND

27 (II) PREPARE AND FILE AN INITIAL SUBMITTAL PURSUANT TO 40

1 CFR 60.5765 BY JUNE 1, 2016, OR UPON THE GOVERNOR'S SIGNATURE;

2 (b) SHALL NOT, IN FILING THE INITIAL SUBMITTAL:

3 (I) MAKE ANY BINDING COMMITMENTS TO SUBMIT A STATE PLAN
4 IN THE FUTURE; OR

5 (II) BIND COLORADO IN ANY WAY NOT REQUIRED BY THE EXPRESS
6 PROVISIONS OF 40 CFR 60.5765.

7 (5) **Public input process.** (a) FOR THE PURPOSE OF THE
8 COMMISSION'S ACTIVITIES AFTER FILING THE INITIAL SUBMITTAL, BEFORE
9 THE COMMISSION FINALIZES A STATE PLAN OR ANY OTHER COMMITMENT
10 TO THE FEDERAL GOVERNMENT RELATING TO THE FEDERAL EMISSION
11 REGULATIONS, THE COMMISSION SHALL REQUEST THE PARTICIPATION OF
12 THE PUBLIC UTILITIES COMMISSION, ITS DIRECTOR, OR ITS DESIGNATED
13 STAFF AND ALL ELECTRIC GENERATION AND DISTRIBUTION UTILITIES
14 WITHIN COLORADO, INCLUDING INVESTOR-OWNED UTILITIES,
15 COOPERATIVE ELECTRIC ASSOCIATIONS, GENERATION AND TRANSMISSION
16 ASSOCIATIONS, AND MUNICIPAL UTILITIES, AND MAY ALSO REQUEST THE
17 PARTICIPATION OF THE DEPARTMENT AND SUCH OTHER PERSONS OR
18 ENTITIES AS THE COMMISSION MAY FIND NECESSARY OR HELPFUL TO
19 DEVELOP THE PROPOSED STATE PLAN.

20 (b) IN DEVELOPING THE PROPOSED STATE PLAN, THE COMMISSION
21 SHALL CONSIDER THE FOLLOWING FACTORS:

22 (I) WHETHER IMPLEMENTATION OF THE PROPOSED STATE PLAN
23 WILL RESULT IN COMPLIANCE WITH THE FEDERAL EMISSION REGULATIONS;

24 (II) WHETHER IMPLEMENTATION OF THE PROPOSED STATE PLAN IS
25 FEASIBLE WITHOUT IMPAIRING THE RELIABILITY OF ELECTRIC UTILITY
26 SERVICE IN COLORADO;

27 (III) WHETHER THE PROPOSED STATE PLAN IS THE LEAST

1 EXPENSIVE ALTERNATIVE TO MEET THE FEDERAL EMISSION REGULATIONS
2 WITHOUT IMPAIRING THE RELIABILITY OF ELECTRIC UTILITY SERVICE IN
3 COLORADO;

4 (IV) THE DEGREE TO WHICH THE PROPOSED STATE PLAN WILL
5 RESULT IN REDUCTIONS IN EMISSIONS OF AIR POLLUTANTS OTHER THAN
6 CARBON DIOXIDE;

7 (V) THE DEGREE TO WHICH THE PROPOSED STATE PLAN WILL
8 INCREASE UTILIZATION OF EXISTING NATURAL GAS-FIRED GENERATING
9 CAPACITY;

10 (VI) THE DEGREE TO WHICH THE PROPOSED STATE PLAN ENHANCES
11 THE ABILITY OF COLORADO ELECTRIC UTILITIES TO MEET STATE OR
12 FEDERAL CLEAN ENERGY REQUIREMENTS, RELIES ON ENERGY EFFICIENCY,
13 OR RELIES ON OTHER LOW-EMITTING RESOURCES;

14 (VII) WHETHER THE PROPOSED STATE PLAN PROMOTES
15 COLORADO'S ECONOMIC DEVELOPMENT;

16 (VIII) WHETHER THE PROPOSED STATE PLAN IS LIKELY TO HELP
17 PROTECT COLORADO CONSUMERS FROM FUTURE COST INCREASES,
18 INCLUDING COSTS ASSOCIATED WITH REASONABLY FORESEEABLE EMISSION
19 REDUCTION REQUIREMENTS; AND

20 (IX) WHETHER THE COST OF THE PROPOSED STATE PLAN RESULTS
21 IN REASONABLE RATE IMPACTS. IN EVALUATING THE RATE IMPACTS OF THE
22 STATE PLAN, THE COMMISSION SHALL EXAMINE THE IMPACTS ON THE
23 RATES OF LOW-INCOME CONSUMERS.

24 (6) **Coordinated assessment of impacts of state plan.** A
25 COMMISSION DECISION ADOPTING THE PROPOSED STATE PLAN MUST BE
26 ACCOMPANIED BY A REPORT, PREPARED BY THE COMMISSION AND THE
27 PUBLIC UTILITIES COMMISSION, THAT ASSESSES THE EFFECTS OF THE

1 PROPOSED STATE PLAN RELATIVE TO THE FACTORS SET FORTH IN
2 SUBSECTION (5) OF THIS SECTION AND OTHER FACTORS DETERMINED BY
3 THE COMMISSION AND THE PUBLIC UTILITIES COMMISSION.

4 **(7) Procedures for approval of proposed state plan by general**
5 **assembly.** (a) NOT LATER THAN FIFTEEN DAYS AFTER THE COMMISSION'S
6 DEVELOPMENT OF A PROPOSED STATE PLAN PURSUANT TO SUBSECTION (5)
7 OF THIS SECTION, THE COMMISSION AND THE PUBLIC UTILITIES
8 COMMISSION SHALL JOINTLY TRANSMIT TO EACH CHAMBER OF THE
9 GENERAL ASSEMBLY A COPY OF THE PROPOSED STATE PLAN, THE
10 COMMISSION'S DECISION EVALUATING THE PROPOSED STATE PLAN, AND
11 THE ACCOMPANYING REPORT DEVELOPED IN ACCORDANCE WITH
12 SUBSECTION (6) OF THIS SECTION.

13 (b) UPON RECEIVING THE PROPOSED STATE PLAN, COMMISSION
14 DECISION, AND ACCOMPANYING REPORT, EACH CHAMBER OF THE GENERAL
15 ASSEMBLY SHALL VOTE ON A JOINT RESOLUTION TO APPROVE SUBMISSION
16 OF THE PROPOSED STATE PLAN TO THE EPA.

17 (c) IF EITHER CHAMBER OF THE GENERAL ASSEMBLY FAILS TO
18 APPROVE THE JOINT RESOLUTION REGARDING SUBMISSION OF THE
19 PROPOSED STATE PLAN UNDER PARAGRAPH (b) OF THIS SUBSECTION (7),
20 THE DEPARTMENT MAY SUBMIT ONE REVISED VERSION OF THE PROPOSED
21 STATE PLAN TO THE COMMISSION FOR EVALUATION IN ACCORDANCE WITH
22 THIS SECTION. FOLLOWING THE COMMISSION'S ADOPTION OF THE REVISED
23 PROPOSED STATE PLAN, THE COMMISSION AND THE PUBLIC UTILITIES
24 COMMISSION SHALL JOINTLY SUBMIT THE REVISED PROPOSED STATE PLAN
25 TO THE GENERAL ASSEMBLY FOR APPROVAL IN ACCORDANCE WITH
26 PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (7).

27 (d) UPON APPROVAL OF THE PROPOSED STATE PLAN BY THE

1 GENERAL ASSEMBLY IN ACCORDANCE WITH PARAGRAPH (b) OF THIS
2 SECTION, THE COMMISSION SHALL SUBMIT THE PROPOSED STATE PLAN TO
3 THE EPA.

4 (e) NEITHER THE DEPARTMENT NOR THE COMMISSION SHALL
5 SUBMIT ANY STATE PLAN TO THE EPA IF A JOINT RESOLUTION APPROVING
6 THE STATE PLAN HAS NOT BEEN PASSED BY BOTH CHAMBERS OF THE
7 GENERAL ASSEMBLY IN ACCORDANCE WITH THIS SUBSECTION (7).

8 (f) THE APPROVAL BY THE GENERAL ASSEMBLY OF SUBMISSION OF
9 THE STATE PLAN TO THE EPA PURSUANT TO PARAGRAPH (b) OF THIS
10 SUBSECTION (7) DOES NOT PRECLUDE SUBSEQUENT JUDICIAL REVIEW OF
11 THE STATE PLAN BY A COURT OF COMPETENT JURISDICTION TO DETERMINE
12 WHETHER THE STATE PLAN COMPLIES WITH ALL APPLICABLE STATE AND
13 FEDERAL LAWS.

14 (g) THE APPROVAL PROCESS SET FORTH IN THIS SECTION APPLIES
15 TO A COLORADO STATE PLAN AS WELL AS ANY REGIONAL PLAN IN WHICH
16 THE STATE OF COLORADO PARTICIPATES PURSUANT TO THE FEDERAL ACT
17 OR THE FEDERAL EMISSION REGULATIONS.

18 **(8) State plan dependent on federal emission regulations.**
19 NOTWITHSTANDING APPROVAL BY THE GENERAL ASSEMBLY OF
20 SUBMISSION OF A PROPOSED STATE PLAN TO THE EPA OR APPROVAL OF A
21 FINAL STATE PLAN, FURTHER ACTION BY THE DEPARTMENT AND THE
22 COMMISSION TO IMPLEMENT OR ENFORCE THE FINAL APPROVED STATE
23 PLAN OR ANY FEDERAL PLAN IS DEPENDENT UPON THE JUDICIAL REVIEW OF
24 THE FEDERAL EMISSION REGULATIONS. IF THE FEDERAL EMISSION
25 REGULATIONS ARE STAYED OR HELD TO BE CONTRARY TO LAW, THE
26 DEPARTMENT AND THE COMMISSION SHALL SUSPEND OR TERMINATE, AS
27 APPROPRIATE, FURTHER ACTION TO IMPLEMENT OR ENFORCE THE STATE

1 PLAN OR THE FEDERAL PLAN, AND THE STATE PLAN OR FEDERAL PLAN HAS
2 NO FURTHER FORCE OR EFFECT CONSISTENT WITH THE VALIDITY OF THE
3 FEDERAL EMISSION REGULATIONS.

4 **SECTION 2.** In Colorado Revised Statutes, 25-7-133, **amend** (1)
5 as follows:

6 **25-7-133. Legislative review and approval of state**
7 **implementation plans and rules - legislative declaration.**
8 (1) (a) Notwithstanding any other provision of law but subject to
9 subsection (7) of this section, by January 15 of each year the commission
10 shall certify in a report to the chairperson of the legislative council in
11 summary form any additions or changes to elements of the state
12 implementation plan adopted during the prior year that are to be
13 submitted to the administrator for purposes of federal enforceability. Such
14 report shall be written in plain, nontechnical language using words with
15 common and everyday meaning that are understandable to the average
16 reader. Copies of ~~such~~ THE report shall be available to the public and shall
17 be made available to each member of the general assembly. ~~The~~
18 ~~provisions of~~ This section ~~shall~~ DOES not apply to control measures and
19 strategies that have been adopted and implemented by the enacting
20 jurisdiction of a local unit of government if ~~such~~ THE measures and
21 strategies do not result in mandatory direct costs upon any entity other
22 than the enacting jurisdiction.

23 (b) FOR PURPOSES OF THIS SECTION, "STATE IMPLEMENTATION
24 PLAN" INCLUDES A STATE PLAN AS THAT TERM IS DEFINED IN SECTION
25 25-7-140 (3).

26 **SECTION 3. Safety clause.** The general assembly hereby finds,

1 determines, and declares that this act is necessary for the immediate
2 preservation of the public peace, health, and safety.