

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 26-0324.01 Sarah Lozano x3858

HOUSE BILL 26-1226

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A BILL FOR AN ACT

101 CONCERNING MEASURES TO REDUCE EMISSIONS FROM CERTAIN
102 ELECTRIC GENERATING UNITS IN THE STATE.

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://leg.colorado.gov>.)

Section 2 of the bill requires the air quality control commission, no later than December 31, 2029, to adopt a final rule (rule) establishing certain limits on the emission of nitrogen oxides and sulfur dioxide from an electric generating unit (unit) that is owned or operated by an electric utility, is located in the state, and emitted 200 tons or more of nitrogen oxides, sulfur dioxide, or both in calendar year 2024 (covered electric

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

generating unit). The rule must require compliance with the emission limits as soon as practicable after December 31, 2030, and must not cover units that have ceased operations, burn natural gas or fuel oil only, or have certain systems installed before December 31, 2029. The owner or operator of a covered electric generating unit is required to provide quarterly emission reports showing compliance with the rule to the division of administration in the department of public health and environment (division).

Section 3 requires an investor-owned utility or wholesale electric cooperative that is the owner or operator of a unit, beginning 150 days after the issuance of a federal order requiring the unit to remain operating after the unit was scheduled to retire (order) and continuing every 90 days until the order is no longer in effect, to file a report with the public utilities commission (commission) that contains certain information about the costs to operate the unit and the amount of electricity generated by the unit. The commission must make these reports publicly available.

Section 3 also allows an investor-owned utility to submit an application for a financing order to recover the costs of complying with an order.

Section 3 also requires that, if the commission issues a written decision approving a portfolio that consists of supply-side resources for an investor-owned utility serving more than 500,000 customers, the commission must approve a total amount of accredited capacity for the investor-owned utility to reliably implement certain retirement dates or operational restrictions applicable to the investor-owned utility's covered electric generating unit and comply with any applicable carbon dioxide emission reduction requirements. This accredited capacity requirement applies to an investor-owned utility serving more than 500,000 customers until the division determines that the investor-owned utility has achieved certain carbon dioxide emission reductions or until the investor-owned utility has retired all covered electric generating units, whichever is later.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that:

4 (a) The federal government has taken a series of actions to
5 override the choices that Colorado electric utilities and state agencies
6 have made;

7 (b) For example, the federal government has ordered a power

1 plant to remain available past the closure date that 3 Colorado utilities had
2 decided was in the best interest of their customers;

3 (c) Federal actions threaten to raise electricity costs for consumers
4 by requiring utilities to undertake costly repairs for old plants that were
5 scheduled to close, by potentially crowding out cheaper replacement
6 resources, and by forcing customers to pay for the replacement resources
7 and then pay again to keep the plant online that was intended to close;

8 (d) The general assembly has previously authorized the use of a
9 low-cost financing tool, securitization, for certain costs, and it is desirable
10 to allow the use of this tool for costs to comply with a federal order;

11 (e) Federal actions also risk increasing air pollution;

12 (f) In addition, certain power plants in Colorado were constructed
13 several decades ago and have not installed the most modern, effective
14 pollution controls that more recently built power plants have installed;

15 (g) Electric power plants are the largest stationary sources of air
16 pollution from nitrogen oxides and sulfur dioxide in the state;

17 (h) Certain power plants in the state are currently scheduled to
18 close by the end of 2029;

19 (i) In addition, the general assembly has required that a qualifying
20 retail utility reduce its carbon dioxide emissions 80% by 2030 relative to
21 2005 levels;

22 (j) The qualifying retail utility has also planned to replace certain
23 older power plants in order to reduce customer costs; and

24 (k) Resource adequacy and reliability are of paramount
25 importance.

26 (2) The general assembly therefore declares that:

27 (a) If certain power plants operate past their currently scheduled

1 retirement dates and into the 2030s, it is appropriate to require that these
2 older plants be modernized to install the most effective pollution controls
3 that are currently available;

4 (b) In order to understand the cost and environmental impacts of
5 certain federal orders, investor-owned utilities and wholesale electric
6 cooperatives should be required to report on how compliance with certain
7 federal orders will affect Colorado's ratepayers and environment; and

8 (c) The public utilities commission should approve enough
9 resources for a qualifying retail utility to reliably implement its approved
10 plans to replace older power plants and to meet the 2030 clean energy
11 target the general assembly has adopted.

12 **SECTION 2.** In Colorado Revised Statutes, **add 25-7-148** as
13 follows:

14 **25-7-148. Nitrogen oxides and sulfur dioxide emission limits**
15 **for covered electric generating units after 2030 - rules - quarterly**
16 **reports - definitions.**

17 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
18 REQUIRES:

19 (a) (I) "COVERED ELECTRIC GENERATING UNIT" OR "UNIT" MEANS
20 AN ELECTRIC GENERATING UNIT THAT IS OWNED OR OPERATED BY AN
21 ELECTRIC UTILITY; THAT IS LOCATED IN THE STATE; AND THAT, IN
22 CALENDAR YEAR 2024, EMITTED TWO HUNDRED TONS OR MORE OF
23 NITROGEN OXIDES, TWO HUNDRED TONS OR MORE OF SULFUR DIOXIDE, OR
24 BOTH.

25 (II) "COVERED ELECTRIC GENERATING UNIT" OR "UNIT" DOES NOT
26 INCLUDE AN ELECTRIC GENERATING UNIT THAT:

27 (A) BURNS NATURAL GAS OR FUEL OIL ONLY; OR

1 (B) HAS BOTH A FLUE GAS DESULFURIZATION SYSTEM AND A
2 SELECTIVE CATALYTIC REDUCTION SYSTEM INSTALLED.

3 (b) "FINAL RULE" MEANS THE FINAL RULE ADOPTED BY THE
4 COMMISSION PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION.

5 (2) (a) NO LATER THAN DECEMBER 31, 2029, THE COMMISSION
6 SHALL ADOPT A FINAL RULE ESTABLISHING LIMITS ON THE EMISSION OF
7 NITROGEN OXIDES AND SULFUR DIOXIDE FROM EACH COVERED ELECTRIC
8 GENERATING UNIT; EXCEPT THAT THE COMMISSION SHALL NOT ESTABLISH
9 EMISSION LIMITS FOR A COVERED ELECTRIC GENERATING UNIT THAT,
10 BEFORE DECEMBER 31, 2029, HAS CEASED OPERATIONS, CONVERTS TO
11 BURN NATURAL GAS OR FUEL OIL ONLY, OR HAS BOTH A FLUE GAS
12 DESULFURIZATION SYSTEM AND A SELECTIVE CATALYTIC REDUCTION
13 SYSTEM INSTALLED.

14 (b) FOR EACH UNIT, THE LIMIT ON THE EMISSION OF NITROGEN
15 OXIDES IN THE FINAL RULE MUST BE BASED UPON, AND REFLECTIVE OF,
16 OPERATION OF A SELECTIVE CATALYTIC REDUCTION SYSTEM AT THE UNIT.

17 (c) FOR EACH UNIT, THE LIMIT ON THE EMISSION OF SULFUR
18 DIOXIDE IN THE FINAL RULE MUST BE BASED UPON, AND REFLECTIVE OF,
19 OPERATION OF EITHER A FLUE GAS DESULFURIZATION SYSTEM OR A DRY
20 SPRAY ABSORBER AT THE UNIT.

21 (d) FOR EACH UNIT, THE COMMISSION SHALL REQUIRE COMPLIANCE
22 WITH THE EMISSION LIMITS REQUIRED BY THE FINAL RULE ON AND AFTER
23 A DATE THAT THE COMMISSION DETERMINES IS PRACTICABLE, WHICH DATE
24 MUST BE AFTER DECEMBER 31, 2030.

25 (e) A COVERED ELECTRIC GENERATING UNIT THAT CONVERTS TO
26 BURN NATURAL GAS OR FUEL OIL ONLY IS NOT SUBJECT TO THE EMISSION
27 LIMITS IN THE FINAL RULE.

1 (3) THE OWNER OR OPERATOR OF A COVERED ELECTRIC
2 GENERATING UNIT SHALL PROVIDE QUARTERLY EMISSION REPORTS TO THE
3 DIVISION DEMONSTRATING COMPLIANCE WITH THE FINAL RULE.

4 (4) (a) IN AN ELECTRIC RESOURCE PLAN FILED WITH THE PUBLIC
5 UTILITIES COMMISSION IN WHICH A UTILITY EVALUATES THE OPERATION OF
6 A COVERED ELECTRIC GENERATING UNIT AFTER DECEMBER 31, 2030, THE
7 UTILITY SHALL INCLUDE AN ESTIMATE OF THE COSTS TO COMPLY WITH THIS
8 SECTION.

9 (b) A UTILITY THAT DOES NOT FILE AN ELECTRIC RESOURCE PLAN
10 WITH THE PUBLIC UTILITIES COMMISSION IS ENCOURAGED TO INCLUDE AN
11 ESTIMATE OF THE COSTS TO COMPLY WITH THIS SECTION IN AN
12 EVALUATION OF THE OPERATION OF A COVERED ELECTRIC GENERATING
13 UNIT AFTER DECEMBER 31, 2030, AND TO MAKE THE ESTIMATE PUBLICLY
14 AVAILABLE.

15 **SECTION 3.** In Colorado Revised Statutes, **add 40-2-140 and**
16 **40-2-141** as follows:

17 **40-2-140. Requirements for electric generating units subject**
18 **to a federal order - reporting - cost recovery - applicability -**
19 **definitions.**

20 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
21 REQUIRES:

22 (a) "ORDER" MEANS AN ORDER THAT:

23 (I) IS ISSUED BY THE PRESIDENT OF THE UNITED STATES, A
24 REPRESENTATIVE OF THE FEDERAL GOVERNMENT, OR A FEDERAL AGENCY;
25 AND

26 (II) REQUIRES A UNIT TO REMAIN AVAILABLE OR CONNECTED TO
27 THE ELECTRIC GRID TO TRANSMIT OR GENERATE ELECTRICITY AFTER THE

1 DATE THAT THE UNIT WAS SCHEDULED TO RETIRE IN ACCORDANCE WITH
2 AN ELECTRIC RESOURCE PLAN APPROVED BY THE COMMISSION OR THE
3 UTILITY'S GOVERNING ENTITY PRIOR TO THE ISSUANCE OF THE ORDER.

4 (b) "UNIT" MEANS AN ELECTRIC GENERATING UNIT IN THE STATE.

5 (c) "WHOLESALE ELECTRIC COOPERATIVE" HAS THE MEANING SET
6 FORTH IN SECTION 40-2-134 (2).

7 (2) (a) (I) BEGINNING ONE HUNDRED FIFTY DAYS AFTER THE
8 ISSUANCE OF AN ORDER OR ONE HUNDRED FIFTY DAYS AFTER THE
9 EFFECTIVE DATE OF THIS SECTION, WHICHEVER IS LATER, AND CONTINUING
10 EVERY NINETY DAYS UNTIL THE ORDER IS NO LONGER IN EFFECT, AN
11 INVESTOR-OWNED UTILITY OR A WHOLESALE ELECTRIC COOPERATIVE THAT
12 IS THE OWNER OR OPERATOR OF A UNIT SUBJECT TO THE ORDER SHALL FILE
13 A REPORT WITH THE COMMISSION IN THE DOCKET OF THE
14 INVESTOR-OWNED UTILITY'S OR WHOLESALE ELECTRIC COOPERATIVE'S
15 PENDING OR MOST RECENT ELECTRIC RESOURCE PLAN, WHICH REPORT
16 MUST CONTAIN THE FOLLOWING INFORMATION, TO THE EXTENT THE
17 INFORMATION IS AVAILABLE:

18 (A) THE TOTAL OPERATIONS AND MAINTENANCE EXPENSES
19 REQUIRED TO KEEP THE UNIT AVAILABLE OR TO OPERATE THE UNIT DURING
20 THE PRECEDING NINETY DAYS;

21 (B) THE TOTAL CAPITAL EXPENDITURES INCURRED TO KEEP THE
22 UNIT AVAILABLE OR OPERATE THE UNIT DURING THE PRECEDING NINETY
23 DAYS;

24 (C) THE TOTAL NUMBER OF HOURS THAT THE UNIT GENERATED
25 ELECTRICITY DURING THE PRECEDING NINETY DAYS;

26 (D) THE ELECTRICAL OUTPUT OF THE UNIT DURING THE PRECEDING
27 NINETY DAYS; AND

1 (E) ANY CURTAILMENT OF RESOURCES CAUSED BY THE ORDER AND
2 THE INCREMENTAL COST OF THE CURTAILMENT.

3 (II) AN INVESTOR-OWNED UTILITY OR A WHOLESALE ELECTRIC
4 COOPERATIVE MAY COMPLY WITH SUBSECTION (2)(a)(I) OF THIS SECTION
5 BY SUBMITTING INFORMATION TO THE COMMISSION THAT THE OPERATOR
6 FILES WITH A FEDERAL AGENCY IF THE INFORMATION ADDRESSES THE
7 TOPICS REQUIRED BY SUBSECTION (2)(a)(I) OF THIS SECTION.

8 (III) IF AN INVESTOR-OWNED UTILITY IS AN OWNER, BUT NOT THE
9 OPERATOR, OF A UNIT SUBJECT TO AN ORDER, THE INVESTOR-OWNED
10 UTILITY SHALL FILE REPORTS WITH THE COMMISSION, ACCORDING TO THE
11 SCHEDULE SPECIFIED BY SUBSECTION (2)(a)(I) OF THIS SECTION,
12 DISCLOSING THE INVESTOR-OWNED UTILITY'S SHARE OF THE TOTAL COSTS
13 SPECIFIED IN SUBSECTIONS (2)(a)(I)(A) AND (2)(a)(I)(B) OF THIS SECTION.

14 (b) (I) EXCEPT AS SET FORTH IN SUBSECTION (2)(b)(II) OF THIS
15 SECTION, THE COMMISSION SHALL MAKE INFORMATION PROVIDED
16 PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION PUBLICLY AVAILABLE.

17 (II) IF AN INVESTOR-OWNED UTILITY OR WHOLESALE ELECTRIC
18 COOPERATIVE DESIGNATES INFORMATION PROVIDED PURSUANT TO
19 SUBSECTION (2)(a) OF THIS SECTION AS CONFIDENTIAL, THE COMMISSION
20 SHALL MAKE THAT INFORMATION AVAILABLE ONLY TO A PERSON THAT HAS
21 SIGNED AND FILED WITH THE COMMISSION THE APPROPRIATE
22 NONDISCLOSURE AGREEMENT REQUIRED BY COMMISSION RULES.

23 (3) AN INVESTOR-OWNED UTILITY MAY SUBMIT AN APPLICATION
24 FOR A FINANCING ORDER PURSUANT TO SECTION 40-41-103 TO RECOVER
25 THE COSTS OF COMPLYING WITH AN ORDER, EITHER AS A STANDALONE
26 APPLICATION OR AS PART OF A BROADER FINANCING ORDER APPLICATION
27 THAT THE INVESTOR-OWNED UTILITY CHOOSES TO SUBMIT PURSUANT TO

1 SECTION 40-41-103.

2 (4) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
3 CONTRARY, THIS SECTION APPLIES ONLY:

4 (a) TO THE OWNER OR OPERATOR OF A UNIT THAT IS SUBJECT TO AN
5 ORDER AND THAT IS REQUIRED TO FILE AN ELECTRIC RESOURCE PLAN WITH
6 THE COMMISSION;

7 (b) DURING THE TIME PERIOD THAT AN ORDER IS IN EFFECT; AND

8 (c) TO THE EXTENT NOT INCONSISTENT WITH AN ORDER.

9 **40-2-141. Requirements for commission review of portfolio**
10 **consisting of supply-side resources - applicability - definition.**

11 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
12 REQUIRES, "COVERED ELECTRIC GENERATING UNIT" HAS THE MEANING SET
13 FORTH IN SECTION 25-7-148 (1)(a).

14 (2) IF THE COMMISSION ISSUES A WRITTEN DECISION APPROVING A
15 PORTFOLIO THAT CONSISTS IN WHOLE OR IN PART OF SUPPLY-SIDE
16 RESOURCES FOR AN INVESTOR-OWNED UTILITY SERVING MORE THAN FIVE
17 HUNDRED THOUSAND CUSTOMERS, THE COMMISSION SHALL APPROVE A
18 TOTAL AMOUNT OF ACCREDITED CAPACITY, WHICH CAN COME FROM ANY
19 MIX OF SUPPLY-SIDE OR DEMAND-SIDE RESOURCES, THAT IS SUFFICIENT
20 FOR THE INVESTOR-OWNED UTILITY TO RELIABLY:

21 (a) IMPLEMENT THE RETIREMENT DATES OR OPERATIONAL
22 RESTRICTIONS IN EFFECT AT THE TIME OF THE COMMISSION'S DECISION
23 REGARDING A COVERED ELECTRIC GENERATING UNIT OWNED OR OPERATED
24 BY THE INVESTOR-OWNED UTILITY; AND

25 (b) COMPLY WITH ANY APPLICABLE STATE LAW REQUIREMENTS TO
26 ACHIEVE CARBON DIOXIDE EMISSION REDUCTIONS, INCLUDING THE
27 REQUIREMENTS DESCRIBED IN SECTION 40-2-125.5.

1 (3) THE COMMISSION SHALL CERTIFY IN WRITING IN THE WRITTEN
2 DECISION APPROVING THE PORTFOLIO THAT THE PORTFOLIO MEETS THE
3 ACCREDITED CAPACITY REQUIREMENTS DESCRIBED IN SUBSECTION (2) OF
4 THIS SECTION.

5 (4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ALTER THE
6 COMMISSION'S AUTHORITY OR OBLIGATION, IN STATUTE OR IN RULE AS OF
7 THE EFFECTIVE DATE OF THIS SECTION, TO CONSIDER FACTORS IN THE
8 APPROVAL OF A PORTFOLIO, INCLUDING COST AND RATE IMPACTS, IF THE
9 PORTFOLIO THE COMMISSION APPROVES COMPLIES WITH THE ACCREDITED
10 CAPACITY REQUIREMENTS DESCRIBED IN SUBSECTION (2) OF THIS SECTION.

11 (5) THIS SECTION APPLIES TO AN INVESTOR-OWNED UTILITY
12 SERVING MORE THAN FIVE HUNDRED THOUSAND CUSTOMERS UNTIL THE
13 DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF PUBLIC HEALTH AND
14 ENVIRONMENT DETERMINES THAT THE INVESTOR-OWNED UTILITY HAS
15 ACHIEVED THE CARBON DIOXIDE EMISSION REDUCTIONS DESCRIBED IN
16 SECTION 40-2-125.5 (4)(c) OR UNTIL THE INVESTOR-OWNED UTILITY HAS
17 RETIRED EACH COVERED ELECTRIC GENERATING UNIT OWNED OR
18 OPERATED BY THE INVESTOR-OWNED UTILITY, WHICHEVER IS LATER.

19 **SECTION 4. Severability.** If any provision of this act or the
20 application of this act to any person or circumstance is held invalid, the
21 invalidity does not affect other provisions or applications of the act that
22 can be given effect without the invalid provision or application, and to
23 this end the provisions of this act are declared to be severable.

24 **SECTION 5. Applicability.** This act applies to conduct occurring
25 on or after the effective date of this act.

26 **SECTION 6. Safety clause.** The general assembly finds,
27 determines, and declares that this act is necessary for the immediate

1 preservation of the public peace, health, or safety or for appropriations for
2 the support and maintenance of the departments of the state and state
3 institutions.