

**Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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unit to remain operating after the unit was scheduled to retire (order) and continuing every 90 days until the order is no longer in effect, to file a report with the public utilities commission (commission) that contains certain information about the costs to operate the unit and the amount of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 - recommendations to the general assembly - 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) IN DECEMBER 2029, THE COMMISSION SHALL ADOPT A
6 FINAL RULE ESTABLISHING LIMITS ON THE EMISSION OF NITROGEN OXIDES
7 AND SULFUR DIOXIDE FROM EACH COVERED ELECTRIC GENERATING UNIT;
8 EXCEPT THAT THE COMMISSION SHALL NOT ESTABLISH EMISSION LIMITS
9 FOR A COVERED ELECTRIC GENERATING UNIT THAT, BEFORE DECEMBER 31,
10 2029, HAS CEASED OPERATIONS, CONVERTS TO BURN NATURAL GAS OR
11 FUEL OIL ONLY, OR HAS BOTH A FLUE GAS DESULFURIZATION SYSTEM AND
12 A SELECTIVE CATALYTIC REDUCTION SYSTEM INSTALLED.

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

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

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

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

27 (3) THE OWNER OR OPERATOR OF A COVERED ELECTRIC

1 GENERATING UNIT SHALL PROVIDE QUARTERLY EMISSION REPORTS TO THE
2 DIVISION DEMONSTRATING COMPLIANCE WITH THE FINAL RULE.

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

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

14 (5) (a) ON AUGUST 1, 2029, THE COMMISSION SHALL SUBMIT TO
15 THE GENERAL ASSEMBLY A LIST OF ANY COVERED ELECTRIC GENERATING
16 UNITS THAT ARE SUBJECT TO AN ORDER ISSUED BY THE UNITED STATES
17 DEPARTMENT OF ENERGY UNDER SECTION 202 (c) OF THE FEDERAL POWER
18 ACT.

19 (b) IF THERE ARE ANY COVERED ELECTRIC GENERATING UNITS
20 THAT, AS OF THE DATE OF THE SUBMISSION OF THE LIST DESCRIBED IN
21 SUBSECTION (5)(a) OF THIS SECTION, ARE SUBJECT TO AN ORDER ISSUED BY
22 THE UNITED STATES DEPARTMENT OF ENERGY UNDER SECTION 202 (c) OF
23 THE FEDERAL POWER ACT, THE COMMISSION SHALL ALSO SUBMIT ALONG
24 WITH THE LIST DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION
25 RECOMMENDATIONS TO THE GENERAL ASSEMBLY FROM STAKEHOLDERS,
26 INCLUDING UTILITIES THAT OWN OR OPERATE COVERED ELECTRIC
27 GENERATING UNITS, REGARDING WHETHER TO AMEND THIS SECTION,

1 INCLUDING WHETHER TO POSTPONE THE EARLIEST COMPLIANCE DEADLINE
2 DESCRIBED IN SUBSECTION (2)(d) OF THIS SECTION OR ENACT ANY OTHER
3 AMENDMENTS REGARDING COVERED ELECTRIC GENERATING UNITS
4 SUBJECT TO AN ORDER ISSUED UNDER SECTION 202 (c) OF THE FEDERAL
5 POWER ACT.

6 SECTION 3. In Colorado Revised Statutes, add 40-2-140 and
7 40-2-141 as follows:

8 40-2-140. Requirements for electric generating units subject
9 to a federal order - reporting - cost recovery - applicability -
10 definitions.

11 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
12 REQUIRES:

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

14 (I) IS ISSUED BY THE PRESIDENT OF THE UNITED STATES, A
15 REPRESENTATIVE OF THE FEDERAL GOVERNMENT, OR A FEDERAL AGENCY;
16 AND

17 (II) REQUIRES A UNIT TO REMAIN AVAILABLE OR CONNECTED TO
18 THE ELECTRIC GRID TO TRANSMIT OR GENERATE ELECTRICITY AFTER THE
19 DATE THAT THE UNIT WAS SCHEDULED TO RETIRE IN ACCORDANCE WITH
20 AN ELECTRIC RESOURCE PLAN APPROVED BY THE COMMISSION OR THE
21 UTILITY'S GOVERNING ENTITY PRIOR TO THE ISSUANCE OF THE ORDER.

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

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

25 (2) (a) (I) BEGINNING ONE HUNDRED FIFTY DAYS AFTER THE
26 ISSUANCE OF AN ORDER OR ONE HUNDRED FIFTY DAYS AFTER THE
27 EFFECTIVE DATE OF THIS SECTION, WHICHEVER IS LATER, AND CONTINUING

1 EVERY NINETY DAYS UNTIL THE ORDER IS NO LONGER IN EFFECT, AN
2 INVESTOR-OWNED UTILITY OR A WHOLESALE ELECTRIC COOPERATIVE THAT
3 IS THE OWNER OR OPERATOR OF A UNIT SUBJECT TO THE ORDER SHALL FILE
4 A REPORT WITH THE COMMISSION IN THE DOCKET OF THE
5 INVESTOR-OWNED UTILITY'S OR WHOLESALE ELECTRIC COOPERATIVE'S
6 PENDING OR MOST RECENT ELECTRIC RESOURCE PLAN, WHICH REPORT
7 MUST CONTAIN THE FOLLOWING INFORMATION, TO THE EXTENT THE
8 INFORMATION IS AVAILABLE:

9 (A) THE TOTAL OPERATIONS AND MAINTENANCE EXPENSES
10 REQUIRED TO KEEP THE UNIT AVAILABLE OR TO OPERATE THE UNIT DURING
11 THE PRECEDING NINETY DAYS;

12 (B) THE TOTAL CAPITAL EXPENDITURES INCURRED TO KEEP THE
13 UNIT AVAILABLE OR OPERATE THE UNIT DURING THE PRECEDING NINETY
14 DAYS;

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

17 (D) THE ELECTRICAL OUTPUT OF THE UNIT DURING THE PRECEDING
18 NINETY DAYS; AND

19 (E) ANY CURTAILMENT OF RESOURCES CAUSED BY THE ORDER AND
20 THE INCREMENTAL COST OF THE CURTAILMENT.

21 (II) AN INVESTOR-OWNED UTILITY OR A WHOLESALE ELECTRIC
22 COOPERATIVE MAY COMPLY WITH SUBSECTION (2)(a)(I) OF THIS SECTION
23 BY SUBMITTING INFORMATION TO THE COMMISSION THAT THE OPERATOR
24 FILES WITH A FEDERAL AGENCY IF THE INFORMATION ADDRESSES THE
25 TOPICS REQUIRED BY SUBSECTION (2)(a)(I) OF THIS SECTION.

26 (III) IF AN INVESTOR-OWNED UTILITY IS AN OWNER, BUT NOT THE
27 OPERATOR, OF A UNIT SUBJECT TO AN ORDER, THE INVESTOR-OWNED

1 UTILITY SHALL FILE REPORTS WITH THE COMMISSION, ACCORDING TO THE
2 SCHEDULE SPECIFIED BY SUBSECTION (2)(a)(I) OF THIS SECTION,
3 DISCLOSING THE INVESTOR-OWNED UTILITY'S SHARE OF THE TOTAL COSTS
4 SPECIFIED IN SUBSECTIONS (2)(a)(I)(A) AND (2)(a)(I)(B) OF THIS SECTION.

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

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

14 (3) AN INVESTOR-OWNED UTILITY MAY SUBMIT AN APPLICATION
15 FOR A FINANCING ORDER PURSUANT TO SECTION 40-41-103 TO RECOVER
16 THE COSTS OF COMPLYING WITH AN ORDER, EITHER AS A STANDALONE
17 APPLICATION OR AS PART OF A BROADER FINANCING ORDER APPLICATION
18 THAT THE INVESTOR-OWNED UTILITY CHOOSES TO SUBMIT PURSUANT TO
19 SECTION 40-41-103.

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

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

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

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

27 **40-2-141. Requirements for commission review of portfolio**

1 **consisting of supply-side resources - applicability - definition.**

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

5 (2) IF THE COMMISSION ISSUES A WRITTEN DECISION APPROVING OR
6 MODIFYING A PORTFOLIO IN AN ELECTRIC RESOURCE PLAN OR ANY
7 RELATED PROCEEDING IN WHICH THE COMMISSION EVALUATES THE
8 ACQUISITION OF SUPPLY-SIDE RESOURCES FOR AN INVESTOR-OWNED
9 UTILITY SERVING MORE THAN FIVE HUNDRED THOUSAND CUSTOMERS, THE
10 COMMISSION SHALL APPROVE AN AMOUNT OF ACCREDITED CAPACITY,
11 WHICH CAN COME FROM ANY MIX OF SUPPLY-SIDE OR DEMAND-SIDE
12 RESOURCES, THAT ENABLES THE INVESTOR-OWNED UTILITY TO RELIABLY:

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

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

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

24 (4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ALTER THE
25 COMMISSION'S AUTHORITY OR OBLIGATION, IN STATUTE OR IN RULE AS OF
26 THE EFFECTIVE DATE OF THIS SECTION, TO CONSIDER FACTORS IN THE
27 APPROVAL OF A PORTFOLIO, INCLUDING COST AND RATE IMPACTS, IF THE

1 PORTFOLIO THE COMMISSION APPROVES COMPLIES WITH THE ACCREDITED
2 CAPACITY REQUIREMENTS DESCRIBED IN SUBSECTION (2) OF THIS SECTION.

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

11 **SECTION 4. Severability.** If any provision of this act or the
12 application of this act to any person or circumstance is held invalid, the
13 invalidity does not affect other provisions or applications of the act that
14 can be given effect without the invalid provision or application, and to
15 this end the provisions of this act are declared to be severable.

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

18 **SECTION 6. Safety clause.** The general assembly finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, or safety or for appropriations for
21 the support and maintenance of the departments of the state and state
22 institutions.