

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 26-1226

BY REPRESENTATIVE(S) Willford and Froelich, Bacon, Brown, Camacho, Clifford, Garcia, Goldstein, Hamrick, Mabrey, McCormick, Nguyen, Sirota, Smith, Stewart R., Story, Titone, Valdez, Velasco, Woodrow, Zokaie, Boesenecker, English, Jackson, Joseph, Lindsay, Paschal, Rutinel, McCluskie, Duran, Mauro;
also SENATOR(S) Weissman and Cutter, Kipp, Wallace, Amabile, Benavidez, Danielson, Hinrichsen, Jodeh, Coleman.

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

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

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

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

(b) For example, the federal government has ordered a power plant to remain available past the closure date that 3 Colorado utilities had decided was in the best interest of their customers;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

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

(e) Federal actions also risk increasing air pollution;

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

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

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

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

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

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

(2) The general assembly therefore declares that:

(a) If certain power plants operate past their currently scheduled retirement dates and into the 2030s, it is appropriate to require that these older plants be modernized to install the most effective pollution controls that are currently available;

(b) In order to understand the cost and environmental impacts of

certain federal orders, investor-owned utilities and wholesale electric cooperatives should be required to report on how compliance with certain federal orders will affect Colorado's ratepayers and environment; and

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

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

25-7-148. Nitrogen oxides and sulfur dioxide emission limits for covered electric generating units after 2034 - rules - quarterly reports - recommendations to the general assembly - definitions.

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

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

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

(A) BURNS NATURAL GAS, FUEL OIL, OR BOTH ONLY; OR

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

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

(2) (a) NO LATER THAN JULY 2029, THE DIVISION SHALL PROPOSE A FINAL RULE ESTABLISHING LIMITS ON THE EMISSION OF NITROGEN OXIDES AND SULFUR DIOXIDE FROM EACH COVERED ELECTRIC GENERATING UNIT; EXCEPT THAT THE COMMISSION SHALL NOT ESTABLISH EMISSION LIMITS FOR

A COVERED ELECTRIC GENERATING UNIT THAT, BEFORE DECEMBER 31, 2029, HAS CEASED OPERATIONS, CONVERTS TO BURN NATURAL GAS, FUEL OIL, OR BOTH ONLY, OR HAS BOTH A FLUE GAS DESULFURIZATION SYSTEM AND A SELECTIVE CATALYTIC REDUCTION SYSTEM INSTALLED.

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

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

(d) FOR EACH UNIT, THE COMMISSION SHALL REQUIRE COMPLIANCE WITH THE EMISSION LIMITS REQUIRED BY THE FINAL RULE ON AND AFTER A DATE THAT THE COMMISSION DETERMINES IS PRACTICABLE, WHICH DATE MUST BE AFTER DECEMBER 31, 2034.

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

(f) A COVERED ELECTRIC GENERATING UNIT THAT PLANS TO OPERATE AFTER DECEMBER 31, 2034, AND THAT OPERATES AFTER DECEMBER 31, 2034, SHALL INSTALL AND OPERATE THE POLLUTION CONTROLS DESCRIBED IN SUBSECTIONS (2)(b) AND (2)(c) OF THIS SECTION ON OR BEFORE DECEMBER 31, 2034, AND MEET THE EMISSION LIMITS ADOPTED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION UNLESS THE UNIT HAS CEASED OPERATIONS OR HAS CONVERTED TO BURN NATURAL GAS, FUEL OIL, OR BOTH ONLY ON OR BEFORE DECEMBER 31, 2034.

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

(4) (a) IN AN ELECTRIC RESOURCE PLAN FILED WITH THE PUBLIC UTILITIES COMMISSION IN WHICH A UTILITY EVALUATES THE OPERATION OF A COVERED ELECTRIC GENERATING UNIT AFTER DECEMBER 31, 2034, THE UTILITY SHALL INCLUDE AN ESTIMATE OF THE COSTS TO COMPLY WITH THIS

SECTION.

(b) A UTILITY THAT DOES NOT FILE AN ELECTRIC RESOURCE PLAN WITH THE PUBLIC UTILITIES COMMISSION IS ENCOURAGED TO INCLUDE AN ESTIMATE OF THE COSTS TO COMPLY WITH THIS SECTION IN AN EVALUATION OF THE OPERATION OF A COVERED ELECTRIC GENERATING UNIT AFTER DECEMBER 31, 2034, AND TO MAKE THE ESTIMATE PUBLICLY AVAILABLE.

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

(b) IF THERE ARE ANY COVERED ELECTRIC GENERATING UNITS THAT, AS OF THE DATE OF THE SUBMISSION OF THE LIST DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION, ARE SUBJECT TO AN ORDER ISSUED BY THE UNITED STATES DEPARTMENT OF ENERGY UNDER SECTION 202 (c) OF THE FEDERAL POWER ACT, THE COMMISSION SHALL ALSO SUBMIT ALONG WITH THE LIST DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION RECOMMENDATIONS TO THE GENERAL ASSEMBLY FROM STAKEHOLDERS, INCLUDING UTILITIES THAT OWN OR OPERATE COVERED ELECTRIC GENERATING UNITS, REGARDING WHETHER TO AMEND THIS SECTION, INCLUDING WHETHER TO POSTPONE THE EARLIEST COMPLIANCE DEADLINE DESCRIBED IN SUBSECTION (2)(d) OF THIS SECTION OR ENACT ANY OTHER AMENDMENTS REGARDING COVERED ELECTRIC GENERATING UNITS SUBJECT TO AN ORDER ISSUED UNDER SECTION 202 (c) OF THE FEDERAL POWER ACT.

SECTION 3. In Colorado Revised Statutes, **add** 40-2-141 and 40-2-142 as follows:

40-2-141. Requirements for electric generating units subject to a federal order - reporting - cost recovery - applicability - definitions.

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

(a) "ORDER" MEANS AN ORDER THAT:

(I) IS ISSUED BY THE PRESIDENT OF THE UNITED STATES, A

REPRESENTATIVE OF THE FEDERAL GOVERNMENT, OR A FEDERAL AGENCY;
AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40-2-142. Requirements for commission review of portfolio consisting of supply-side resources - applicability - definition.

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

(2) ANY DECISION BY THE COMMISSION APPROVING OR MODIFYING A PORTFOLIO IN AN ELECTRIC RESOURCE PLAN OR ANY RELATED PROCEEDING IN WHICH THE COMMISSION EVALUATES THE ACQUISITION OF SUPPLY-SIDE RESOURCES FOR AN INVESTOR-OWNED UTILITY SERVING MORE THAN FIVE HUNDRED THOUSAND CUSTOMERS MUST APPROVE AN AMOUNT OF ACCREDITED CAPACITY THAT ENABLES THE INVESTOR-OWNED UTILITY TO RELIABLY:

(a) IMPLEMENT THE RETIREMENT DATES OR OPERATIONAL RESTRICTIONS IN EFFECT AT THE TIME OF THE COMMISSION'S DECISION REGARDING COVERED ELECTRIC GENERATING UNITS; AND

(b) COMPLY WITH ANY APPLICABLE STATE LAW REQUIREMENTS, INCLUDING THE REQUIREMENTS TO REDUCE CARBON DIOXIDE EMISSIONS DESCRIBED IN SECTION 40-2-125.5.

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

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

(5) THIS SECTION APPLIES TO AN INVESTOR-OWNED UTILITY SERVING MORE THAN FIVE HUNDRED THOUSAND CUSTOMERS UNTIL THE DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF PUBLIC HEALTH AND

ENVIRONMENT DETERMINES THAT THE INVESTOR-OWNED UTILITY HAS ACHIEVED THE CARBON DIOXIDE EMISSION REDUCTIONS DESCRIBED IN SECTION 40-2-125.5 (4)(c) OR UNTIL THE INVESTOR-OWNED UTILITY HAS RETIRED EACH COVERED ELECTRIC GENERATING UNIT OWNED OR OPERATED BY THE INVESTOR-OWNED UTILITY, WHICHEVER IS LATER.

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

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

SECTION 6. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for

the support and maintenance of the departments of the state and state institutions.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO