

CHAPTER 227

**HEALTH AND ENVIRONMENT**

**SENATE BILL 95-110**

BY SENATORS Norton and Tebedo;  
also REPRESENTATIVES Berry, Lamborn, Martin, Paschall, and Taylor.

**AN ACT**

**CONCERNING LEGISLATIVE PROCEDURES FOR THE APPROVAL OF STATE IMPLEMENTATION PLANS AND REGULATIONS RELATED TO AIR POLLUTION.**

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

**SECTION 1.** 25-7-105 (1) (a), Colorado Revised Statutes, 1989 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

**25-7-105. Duties of commission.** (1) Except as provided in sections 25-7-130 and 25-7-131, the commission shall promulgate such rules and regulations as are consistent with the legislative declaration set forth in section 25-7-102 and necessary for the proper implementation and administration of this article, including but not limited to:

(a) (III) THE REVISIONS TO THE DENVER ELEMENT OF THE PM-10 STATE IMPLEMENTATION PLAN ADOPTED BY THE COMMISSION ON FEBRUARY 16, 1995, WHICH CONTAIN A SIXTY TONS-PER-DAY PM-10 MOBILE SOURCE EMISSIONS BUDGET WHICH EXPIRES JANUARY 1, 1998, AND REVERTS TO A FORTY-FOUR TONS-PER-DAY BUDGET, ARE AMENDED TO PROVIDE THAT SUCH FORTY-FOUR TONS-PER-DAY REVERSION SHALL NOT BE A PART OF THE STATE IMPLEMENTATION PLAN AND SHALL ONLY APPLY AS A REGULATION ADOPTED EXCLUSIVELY UNDER RESERVED STATE AUTHORITY PURSUANT TO THE PROVISIONS OF SECTION 25-7-105.1. THE SIXTY TONS-PER-DAY EMISSIONS BUDGET SHALL, UNLESS MODIFIED BY THE COMMISSION THROUGH RULE-MAKING, APPLY FOR FEDERAL TRANSPORTATION CONFORMITY AND IS INCLUDED IN THE STATE IMPLEMENTATION PLAN ONLY AS REQUIRED BY THE FEDERAL ACT. ANY ENTITY WITH AUTHORITY TO ADOPT A TRANSPORTATION PLAN REQUIRED UNDER SECTION 43-1-1103, C.R.S., SHALL CONSIDER ANY MOBILE SOURCE EMISSIONS BUDGETS IN EFFECT UNDER THIS ARTICLE IN THE DEVELOPMENT OF TRANSPORTATION IMPROVEMENT PROGRAMS FOR FEDERAL PURPOSES.

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

**SECTION 2.** 25-7-133, Colorado Revised Statutes, 1989 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

**25-7-133. Legislative review and approval of state implementation plans and rules - repeal.** (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE GENERAL ASSEMBLY SHALL REVIEW AND APPROVE STATE IMPLEMENTATION PLANS (SIP) AND REVISIONS AND ANY RULES PERTAINING THERETO PURSUANT TO THE PROCEDURES SET FORTH IN SECTION 24-4-103 (8) (c) AND (8) (d), C.R.S., AND THIS SECTION. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO CONTROL MEASURES AND STRATEGIES WHICH HAVE BEEN ADOPTED BY AND IMPLEMENTED BY THE ENACTING JURISDICTION OF A LOCAL UNIT OF GOVERNMENT IF SUCH MEASURES AND STRATEGIES DO NOT RESULT IN MANDATORY DIRECT COSTS UPON ANY ENTITY OTHER THAN THE ENACTING JURISDICTION.

(2) THE COMMISSION MAY ONLY SUBMIT A SIP, AS DEFINED IN SECTION 110 OF THE FEDERAL ACT, ANY RULE WHICH IS A PART THEREOF, OR ANY REVISION THERETO, AS SPECIFIED IN SUBSECTION (1) OF THIS SECTION, TO THE ADMINISTRATOR FOR CONDITIONAL APPROVAL OR TEMPORARY APPROVAL. NO SUCH SIP, REVISION, RULE REQUIRED BY THE SIP OR REVISION, OR RULE RELATED TO THE IMPLEMENTATION OF THE SIP OR REVISION SO SUBMITTED TO THE ADMINISTRATOR MAY TAKE EFFECT FOR PURPOSES OF FEDERAL ENFORCEABILITY, OR ENFORCEMENT OF ANY KIND AT THE STATE LEVEL AGAINST ANY PERSON OR ENTITY BASED ONLY ON THE COMMISSION'S GENERAL AUTHORITY TO ADOPT A SIP UNDER SECTION 25-7-105 (1), UNLESS EXPIRATION OF THE SIP, RULE REQUIRED FOR THE SIP, OR REVISION HAS BEEN POSTPONED BY THE GENERAL ASSEMBLY ACTING BY BILL IN THE SAME MANNER AS PROVIDED IN SECTION 24-4-103 (8) (c) AND (8) (d), C.R.S. IN ADDITION TO THE REQUIREMENTS SET FORTH IN SECTION 24-4-103 (8) (c) AND (8) (d), C.R.S., THE LEGISLATIVE COUNCIL SHALL CONDUCT A REVIEW OF THE SIP, RULE, OR REVISION THERETO TO DETERMINE WHETHER IT ACCOMPLISHES THE RESULTS INTENDED BY ENACTMENT OF THE STATUTORY PROVISIONS UNDER WHICH THE SIP, RULE, OR REVISION WAS ADOPTED. THE LEGISLATIVE COUNCIL MAY, AFTER ALLOWING A PUBLIC HEARING PRECEDED BY ADEQUATE NOTICE TO THE PUBLIC AND THE COMMISSION, MAKE SUCH RECOMMENDATIONS AS IT DEEMS APPROPRIATE BASED ON THE RESULTS OF SUCH REVIEW. THE PROVISIONS OF THIS SUBSECTION (2) SHALL APPLY TO ACTIONS OF THE COMMISSION TAKEN AFTER JANUARY 1, 1995. ANY MEMBER OF THE GENERAL ASSEMBLY MAY INTRODUCE A BILL TO MODIFY OR DELETE ALL OR A PORTION OF THE SIP OR ANY RULE OR REVISION WHICH IS A COMPONENT THEREOF.

(3) IN ORDER TO FURTHER THE GOALS OF SECTION 25-7-105.1 IN ASSURING THAT NONFEDERALLY-REQUIRED RULES OR POLICIES ARE NOT SUBMITTED TO THE ADMINISTRATOR FOR INCLUSION IN A SIP, THE COMMISSION SHALL, EFFECTIVE JULY 1, 1995, WITH RESPECT TO ANY RULE OR ANY PORTION THEREOF NOT REQUIRED BY THE FEDERAL ACT OR WHICH IS OTHERWISE MORE STRINGENT IN WHOLE OR IN PART THAN REQUIREMENTS OF THE FEDERAL ACT, ENSURE THAT THE PUBLIC NOTICE AND THE GENERAL STATEMENT OF SUCH RULE'S BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REQUIRED BY SECTION 24-4-103, C.R.S., IN CONNECTION WITH THE COMMISSION'S PROPOSAL AND PROMULGATION OF SUCH RULE SHALL ALSO SPECIFICALLY IDENTIFY WHAT PORTION OF SUCH RULE IS NOT REQUIRED BY PROVISIONS OF THE FEDERAL ACT OR IS OTHERWISE MORE STRINGENT THAN REQUIREMENTS OF THE FEDERAL ACT.

(4) (a) THE GENERAL ASSEMBLY RECOGNIZES THAT THE COMMISSION MUST EXERCISE DISCRETION IN SELECTING FROM AVAILABLE OPTIONS IN DEVELOPING A COST EFFECTIVE SIP WHICH ATTAINS OR MAINTAINS NATIONAL AMBIENT AIR QUALITY STANDARDS.

(b) ON OR BEFORE NOVEMBER 15 OF EACH YEAR, THE COMMISSION, IN COORDINATION WITH DESIGNATED ORGANIZATIONS FOR AIR QUALITY PLANNING IN LOCAL AREAS, SHALL PROVIDE THE LEGISLATIVE COUNCIL:

(I) A COMPREHENSIVE LISTING OF SIPs OR REVISIONS THERETO THAT THE COMMISSION AND LOCAL AREAS WILL CONSIDER DURING THE FOLLOWING CALENDAR YEAR;

(II) THE PROJECTED SCHEDULE FOR LOCAL ACTION AND COMMISSION CONSIDERATION OF SUCH MEASURES;

(III) THE PROJECTED SCHEDULE FOR SUBMITTAL BY THE COMMISSION TO LEGISLATIVE COUNCIL FOR THE SIP OR ANY REVISIONS THERETO;

(IV) THE STATUTORY DEADLINE, IF ANY, FOR SUBMITTAL TO THE ADMINISTRATOR OF THE SIP OR REVISION, AND THE CORRESPONDING FEDERAL SANCTIONS OR CONSEQUENCES FOR FAILURE TO SUBMIT THE SIP OR REVISIONS THERETO BY THE DEADLINE UNDER THE FEDERAL ACT;

(V) A BRIEF DESCRIPTION OF THE PRINCIPAL TECHNICAL AND POLICY ISSUES AND AVAILABLE OPTIONS PRESENTED FOR DECISION IN EACH SIP OR REVISION THERETO.

(c) THE COMMISSION, IN COORDINATION WITH DESIGNATED ORGANIZATIONS FOR AIR QUALITY PLANNING IN LOCAL AREAS, SHALL COMMUNICATE REGULARLY WITH THE LEGISLATIVE COUNCIL REGARDING EACH OF THE SIPs OR REVISIONS THERETO SCHEDULED FOR ADOPTION AND SUBMISSION TO THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. THE COMMISSION SHALL PROVIDE IMMEDIATE NOTICE IN WRITING WHEN THE PROJECTED SCHEDULES REQUIRED IN SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (b) OF THIS SUBSECTION (4) WILL BE DELAYED, INCLUDING AN ALTERNATIVE PROJECTED SCHEDULE CONSIDERING THE DELAY.

(5) THE INFORMATION REQUIRED BY PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION SHALL BE SUBMITTED TO THE LEGISLATIVE COUNCIL IN THE FORM AND MANNER AND ACCOMPANIED BY SUPPORTING MATERIALS PRESCRIBED BY THE LEGISLATIVE COUNCIL.

(6) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2000.

**SECTION 3. No appropriation.** The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 31, 1995