

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: S2/4/15 S2/9/15

A Bill

SENATE BILL 183

5 By: Senators E. Williams, *Files*
6

For An Act To Be Entitled

8 AN ACT TO CREATE PROCEDURES FOR OVERSIGHT OF FOSSIL-
9 FUEL-FIRED ELECTRIC GENERATING UNITS; TO REQUIRE THE
10 ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY TO
11 PERFORM STUDIES RELATED TO A STATE PLAN TO REGULATE
12 CARBON DIOXIDE EMISSIONS; TO CREATE PROCEDURES FOR
13 APPROVAL OF THE STATE PLAN BY THE LEGISLATIVE
14 COUNCIL; AND FOR OTHER PURPOSES.
15

Subtitle

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18 TO CREATE PROCEDURES FOR OVERSIGHT OF
19 FOSSIL-FUEL-FIRED ELECTRIC GENERATING
20 UNITS; TO REGULATE CARBON DIOXIDE
21 EMISSIONS; AND TO CREATE PROCEDURES FOR
22 APPROVAL OF THE STATE PLAN BY THE
23 LEGISLATIVE COUNCIL.
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25
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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28 SECTION 1. Arkansas Code Title 8, Chapter 3, is amended to add
29 an additional subchapter to read as follows:

Subchapter 2 – State Emission Plans – Procedures – Approval

8-3-201. Findings – Purpose.

(a) The General Assembly finds that:

34 (1) The United States Environmental Protection Agency has
35 proposed emission guidelines for the regulation of carbon dioxide emissions
36 from existing fossil-fuel-fired electric generating units under Section



1 111(d) of the Clean Air Act, 42 U.S.C. § 7411;

2 (2) The proposed guidelines will have a major impact on the
3 economy of Arkansas by regulating how electricity is produced, transmitted,
4 distributed, and consumed within the state;

5 (3) The United States Environmental Protection Agency requires
6 states to take the lead role in the regulation of existing fossil-fuel-fired
7 electric generating units under Section 111(d) of the Clean Air Act, 42
8 U.S.C. § 7411, by developing state plans for the establishment and
9 implementation of performance standards for reducing carbon dioxide emissions
10 from fossil-fuel-fired electric generating units;

11 (4) The role of the United States Environmental Protection
12 Agency is limited to establishing federal emission guidelines that assist the
13 states in the development of their state plans to regulate carbon dioxide
14 emissions from existing fossil-fuel-fired electric generating units and, in
15 establishing federal emission guidelines, the United States Environmental
16 Protection Agency must defer to the states regarding methods for regulating
17 fossil-fuel-fired electric generating units within their jurisdictions; and

18 (5) This subchapter expresses the intent of the General Assembly
19 to exercise the powers of under Issue 1 of 2014 to:

20 (A) Review and approve state agency rules;

21 (B) Ensure rules become effective only after review and
22 approval by the legislative committee charge with review of the rules; and

23 (C) Review rules during the interim or a regular, special,
24 or fiscal session of the General Assembly.

25 (b) The purpose of this subchapter is to ensure that:

26 (1) The Arkansas Department of Environmental Quality receives
27 approval from the General Assembly for any state plan to regulate carbon
28 dioxide emissions from existing fossil-fuel-fired electric generating units
29 under Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411, before the
30 department submits the state plan to the United States Environmental
31 Protection Agency; and

32 (2) The state plan is reviewed through a transparent public
33 process that assesses the full impacts of the state plan on rates,
34 reliability, and manufacturing greenhouse gas leakage.

35
36 8-3-202. Definitions.

1 As used in this subchapter:

2 (1) "Covered electric generating unit" means an existing fossil-
3 fuel-fired electric generating unit within the state that is subject to
4 regulation under federal emission guidelines;

5 (2) "Federal emission guidelines" means a final rule,
6 regulation, guideline, or other requirement that the United States
7 Environmental Protection Agency may adopt for regulating carbon dioxide
8 emissions from covered electric generating units under Section 111(d) of the
9 Clean Air Act, 42 U.S.C. § 7411; and

10 (3) "State plan" means a plan to establish and enforce carbon
11 dioxide emission control measures that the Arkansas Department of
12 Environmental Quality may adopt to implement the obligations of the state
13 under the federal emission guidelines.

14
15 8-3-203. State plan not mandatory.

16 This subchapter does not require the Arkansas Department of
17 Environmental Quality to develop a state plan to regulate carbon dioxide
18 emissions from existing fossil-fuel-fired electric generating units under
19 section 111(d) of the Clean Air Act, 42 U.S.C. § 7411.

20
21 8-3-204. Contested controversial case – Adjudicatory process.

22 (a) The Arkansas Department of Environmental Quality shall:

23 (1) Consider a state plan as a contested controversial case; and

24 (2)(A) Give notice to all interested persons that a proposed
25 state plan is a contested controversial case.

26 (B) Notice under subdivision (a)(2)(A) of this section
27 shall be in writing, set forth the agency action, inform the person of the
28 right, procedure, and time limit to file a contested-case petition, and
29 provide a copy of the agency procedures governing the contested controversial
30 case.

31 (b)(1) For a contested controversial case, the department shall assign
32 a presiding officer who shall give each party a timely opportunity to file
33 pleadings, motions, and objections.

34 (2) The presiding officer may give each party the opportunity to
35 file briefs, proposed findings of fact and conclusions of law, and proposed
36 recommended, initial, or final orders.

1 (c) To the extent necessary for full disclosure of all relevant facts
2 and issues, the presiding officer of a contested controversial case shall
3 give each party the opportunity to respond, present evidence and argument,
4 conduct cross-examination, and submit rebuttal evidence.

5 (d)(1) The presiding officer of a contested controversial case shall
6 conduct an evidentiary hearing.

7 (2) The evidentiary hearing shall be open to the public.

8 (e) A party to a contested controversial case, at the party's expense,
9 may be represented by counsel or may be advised, accompanied, or represented
10 by another individual.

11 (f)(1) A presiding officer of a contested controversial case shall
12 ensure that a hearing record is created that complies with this section.

13 (2) A decision in a contested controversial case shall:

14 (A) Be based on the hearing record; and

15 (B) Contain a statement of the factual and legal bases of
16 the decision.

17 (3) A decision in a contested controversial case shall be
18 prepared electronically and made available in writing.

19 (4) The hearing record in a contested controversial case shall
20 constitute the exclusive basis for action by the department regarding the
21 case and shall contain:

22 (A) A recording of each proceeding;

23 (B) Notice of each proceeding;

24 (C) Prehearing orders;

25 (D) Motions, pleadings, briefs, petitions, requests, and
26 intermediate rulings;

27 (E) Evidence admitted;

28 (F) A statement of any matter officially noticed;

29 (G) Proffer of proof and objection and a ruling on the
30 proffered proof;

31 (H) Proposed findings, requested order, and exceptions, if
32 any;

33 (I) A transcript of the proceeding prepared at the
34 direction of the department; and

35 (J) A recommended order, final order, or order on
36 reconsideration.

1
2 8-3-205. Assessing impacts of state plan.

3 In developing a state plan for regulating carbon dioxide emissions from
4 covered electric generating units, the Arkansas Department of Environmental
5 Quality shall prepare a report, separate from the decision under § 8-3-204,
6 that assesses the effects of the state plan on:

7 (1) The electric power sector, including without limitation:

8 (A) The ability of the state to provide affordable
9 electricity through diversified sources of electricity generation;

10 (B) The type and amount of electric generating capacity
11 within the state that is likely to withdraw from the state or switch to
12 another fuel;

13 (C) Stranded investment in electric generating and
14 transmission capacity and other assets and infrastructure;

15 (D) Potential risks to electric reliability within the
16 state, including without limitation, resource adequacy risks, transmission
17 constraints, and natural gas supply and transmission adequacy; and

18 (E)(i) The amount by which retail electricity and any
19 replacement fuel prices within the state are forecast to increase.

20 (ii) A rate impact assessment shall consider non-
21 fuel costs, including generation, transmission, distribution, surcharges for
22 renewable energy and energy efficiency, capital investment, upgrades to meet
23 environmental requirements, utility profits, financing costs for new
24 investments, unappreciated capital assets retired prematurely, and other
25 nonfuel costs and surcharges;

26 (2) Electricity consumers within the state, including without
27 limitation any disproportionate impacts of electricity and other replacement
28 energy price increases on middle-income and lower-income households;

29 (3) Employment within the state, including without limitation
30 direct and indirect employment effects and jobs potentially lost within
31 affected sectors of the state's economy;

32 (4) Economic development within the state, including without
33 limitation effects on manufacturing, commercial, and other sectors of the
34 state's economy;

35 (5) The competitive position of the state in relation to
36 neighboring states and other economic competitors; and

1 (6) State and local governments, including without limitation
2 potential impacts resulting from changes in tax revenues.

3
4 8-3-206. Submission of state plan.

5 (a) The Arkansas Department of Environmental Quality shall not submit
6 a state plan to the United States Environmental Protection Agency under § 8-
7 3-207 if the state plan:

8 (1) Results in a rate increase annually for any rate class of
9 two percent (2%) of the total delivered electricity cost per kilowatt hour or
10 two percent (2%) of the total natural gas cost per thousand cubic feet; or

11 (2) Results in unreasonable reliability risks.

12 (b) The department shall not submit a state plan to the United States
13 Environmental Protection Agency until the Legislative Council has approved
14 the state plan under § 8-3-207.

15
16 8-3-207. Procedures for approval of state plan.

17 (a) Not later than fifteen (15) days after adopting a state plan, the
18 Arkansas Department of Environmental Quality shall transmit to the cochairs
19 of the Legislative Council a copy of the state plan and the accompanying
20 report developed under § 8-3-205.

21 (b)(1) Upon receiving the state plan and the accompanying report
22 transmitted under subsection (a) of this section and after sufficient time
23 has been provided to assess the state plan and the accompanying report, the
24 Legislative Council shall vote on approval of the state plan.

25 (2) An affirmative majority vote of the Legislative Council is
26 required for approval of the state plan.

27 (c) If the Legislative Council fails to approve a state plan under
28 subsection (b) of this section, the department may submit a revised version
29 of the state plan, with an accompanying revised report, to the cochairs of
30 the Legislative Council for approval under this section.

31
32 8-3-208. Rate and reliability safety valve.

33 (a) If a state plan approved under this subchapter would result in a
34 two percent (2%) increase in the total electric or natural gas bill annually
35 for any customer class, the Arkansas Department of Environmental Quality
36 shall reopen the proceeding under § 8-3-204 and, after the opportunity for a

1 hearing, revise the state plan to satisfy § 8-3-206(a)(1) and transmit the
2 revised state plan to the cochaIRS of the Legislative Council for approval
3 under § 8-3-207.

4 (b)(1) Each year the regional independent system operators in Arkansas
5 shall conduct an electric system reliability review and submit the results of
6 the review to the department.

7 (2) If the electric system reliability review under subdivision
8 (b)(1) of this section results in the identification of unreasonable
9 reliability risks, the department shall reopen the proceeding under § 8-3-204
10 and, after the opportunity for hearing, revise the state plan to satisfy § 8-
11 3-206(a)(2) and transmit the revised state plan to the cochaIRS of the
12 Legislative Council for approval under § 8-3-207.

13 (c)(1) Each year the Arkansas Department of Environmental Quality
14 shall evaluate the impact of electricity rate increases on the energy-
15 intensive-trade-exposed manufacturers and the resulting greenhouse gas
16 leakage.

17 (2) If increased electric rates are found to be contributing to
18 increased manufacturing greenhouse gas leakage, the department shall reopen
19 the proceeding under § 8-3-204 and, after the opportunity for a hearing,
20 revise the state plan to avoid manufacturing greenhouse gas leakage and
21 transmit the revised state plan to the cochaIRS of the Legislative Council
22 for approval under § 8-3-207.

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24 */s/E. Williams*
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