

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0598.01 Duane Gall x4335

SENATE BILL 15-092

SENATE SPONSORSHIP

Cooke, Sonnenberg

HOUSE SPONSORSHIP

(None),

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING A REQUIREMENT FOR COORDINATED REVIEW PRIOR TO
102 THE ADOPTION OF A STATE PLAN FOR THE REDUCTION OF
103 CARBON EMISSIONS BY COLORADO ELECTRIC UTILITIES.

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://www.leg.state.co.us/bills summaries>.)

The bill requires that, before the Colorado department of public health and environment (department) adopts a state plan for the reduction of carbon emissions by Colorado electric utilities in accordance with pending federal regulations, the proposed plan be:

! Reviewed by the Colorado public utilities commission

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

(PUC) in an evidentiary hearing to determine, among other things, its likely impact on the rates paid for electricity by consumers;

- ! Limited in its impact on rates to a 2% or less average annual increase;
- ! Approved by the PUC in an order that is accompanied by a report, jointly signed by the PUC and the department, summarizing the effects of the plan on rates, reliability, and Colorado's economy;
- ! Adopted by both houses of the general assembly in a resolution approved by a two-thirds affirmative vote; and
- ! Subject to annual review by utilities with regard to its effects on reliability.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 3 to article
3 3.2 of title 40 as follows:

4 PART 3

5 COORDINATED REVIEW OF

6 CARBON EMISSIONS REDUCTION MEASURES

7 **40-3.2-301. Short title.** THIS PART 3 SHALL BE KNOWN AND MAY
8 BE CITED AS THE "COLORADO CARBON EMISSIONS REDUCTION ACT".

9 **40-3.2-302. Legislative declaration - purpose.** (1) THE GENERAL
10 ASSEMBLY FINDS AND DETERMINES THAT:

11 (a) THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
12 HAS PROPOSED EMISSION GUIDELINES FOR THE REGULATION OF CARBON
13 DIOXIDE EMISSIONS FROM EXISTING FOSSIL FUEL-FIRED ELECTRIC
14 GENERATING UNITS UNDER SECTION 111 (d) OF THE FEDERAL "CLEAN AIR
15 ACT";

16 (b) THESE PROPOSED GUIDELINES WILL HAVE A MAJOR IMPACT ON
17 THE ECONOMY OF COLORADO BY REGULATING HOW ELECTRICITY IS
18 PRODUCED, TRANSMITTED, DISTRIBUTED, AND CONSUMED WITHIN

1 COLORADO;

2 (c) STATES ARE REQUIRED TO TAKE THE LEAD ROLE IN THE
3 REGULATION OF EXISTING FOSSIL FUEL-FIRED ELECTRIC GENERATING UNITS
4 UNDER SECTION 111 (d) OF THE FEDERAL "CLEAN AIR ACT" BY
5 DEVELOPING PLANS FOR THE ESTABLISHMENT AND IMPLEMENTATION OF
6 PERFORMANCE STANDARDS FOR REDUCING CARBON DIOXIDE EMISSIONS
7 FROM SUCH UNITS; AND

8 (d) THE ROLE OF THE EPA IS LIMITED TO ESTABLISHING FEDERAL
9 EMISSION GUIDELINES THAT ASSIST THE STATES IN THE DEVELOPMENT OF
10 THEIR PLANS TO REGULATE CARBON DIOXIDE EMISSIONS FROM EXISTING
11 FOSSIL FUEL-FIRED ELECTRIC GENERATING UNITS AND, IN SO DOING, THE
12 EPA MUST DEFER TO THE STATES AS TO HOW TO REGULATE SUCH UNITS
13 WITHIN THEIR JURISDICTIONS.

14 (2) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT THE
15 PURPOSE OF THIS PART 3 IS TO ENSURE THAT THE DEPARTMENT OF PUBLIC
16 HEALTH AND ENVIRONMENT RECEIVES APPROVAL FROM THE GENERAL
17 ASSEMBLY FOR ANY PLAN TO REGULATE CARBON DIOXIDE EMISSIONS FROM
18 EXISTING FOSSIL FUEL-FIRED ELECTRIC GENERATING UNITS UNDER SECTION
19 111 (d) OF THE FEDERAL "CLEAN AIR ACT" BEFORE THE DEPARTMENT
20 SUBMITS ANY SUCH PLAN TO THE EPA.

21 **40-3.2-303. Definitions.** AS USED IN THIS PART 3, UNLESS THE
22 CONTEXT OTHERWISE REQUIRES:

23 (1) "COVERED ELECTRIC GENERATING UNIT" MEANS AN EXISTING
24 FOSSIL FUEL-FIRED ELECTRIC GENERATING UNIT WITHIN COLORADO THAT
25 IS SUBJECT TO REGULATION UNDER THE FEDERAL EMISSION GUIDELINES.

26 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
27 AND ENVIRONMENT.

1 (3) "EPA" MEANS THE UNITED STATES ENVIRONMENTAL
2 PROTECTION AGENCY.

3 (4) "FEDERAL ACT" MEANS THE FEDERAL "CLEAN AIR ACT", 42
4 U.S.C. SEC. 7401 ET SEQ., AS AMENDED.

5 (5) "FEDERAL EMISSION GUIDELINES" MEANS ANY FINAL RULES,
6 REGULATIONS, GUIDELINES, OR OTHER REQUIREMENTS THAT THE EPA
7 MAY ADOPT FOR REGULATING CARBON DIOXIDE EMISSIONS FROM COVERED
8 ELECTRIC GENERATING UNITS UNDER SECTION 111(d) OF THE FEDERAL
9 ACT.

10 (6) "STATE ACT" MEANS THE "COLORADO AIR POLLUTION
11 PREVENTION AND CONTROL ACT", ARTICLE 7 OF TITLE 25, C.R.S.

12 (7) "STATE IMPLEMENTATION PLAN" MEANS THE PLAN REQUIRED
13 BY AND DESCRIBED IN SECTION 110 (a) AND OTHER PROVISIONS OF THE
14 FEDERAL ACT.

15 (8) "STATE PLAN" MEANS ANY PLAN, WHETHER OR NOT
16 INCORPORATED INTO THE STATE IMPLEMENTATION PLAN, TO ESTABLISH
17 AND ENFORCE CARBON DIOXIDE EMISSION CONTROL MEASURES THAT THE
18 DEPARTMENT MAY ADOPT TO IMPLEMENT THE OBLIGATIONS OF COLORADO
19 UNDER THE FEDERAL EMISSION GUIDELINES.

20 **40-3.2-304. Carbon dioxide emission plans - preapproval by**
21 **commission.** (1) THE DEPARTMENT SHALL NOT SUBMIT A STATE PLAN TO
22 THE EPA PURSUANT TO 40 CFR 60.5710 OR ANY OTHER GUIDELINES
23 DEVELOPED IN ACCORDANCE WITH SECTION 111 (d) OF THE FEDERAL ACT
24 UNLESS THE PLAN IS APPROVED BY AN ORDER OF THE COMMISSION
25 FOLLOWING AN EVIDENTIARY HEARING AND A MAJORITY OF THE
26 COMMISSIONERS SIGN THE STATE PLAN.

27 (2) FOR PURPOSES OF CONSIDERING THE STATE PLAN AND

1 ENTERING AN ORDER, THE COMMISSION HAS INTEGRATED RESOURCE
2 PLANNING JURISDICTION OVER ANY AND ALL ELECTRIC GENERATION AND
3 DISTRIBUTION UTILITIES WITHIN COLORADO, INCLUDING MUNICIPAL
4 UTILITIES, COOPERATIVE ELECTRIC ASSOCIATIONS, ENERGY EFFICIENCY
5 PROVIDERS, AND OWNERS AND OPERATORS OF RENEWABLE OR
6 ZERO-EMISSION ELECTRIC FACILITIES THAT OPT IN TO COMMISSION
7 JURISDICTION FOR THIS PURPOSE PURSUANT TO SUBSECTION (3) OF THIS
8 SECTION. THE COMMISSION'S JURISDICTION OVER OPTING-IN GENERATION
9 AND DISTRIBUTION UTILITIES UNDER SUBSECTION (3) OF THIS SECTION IS
10 FOR THE LIMITED AND SOLE PURPOSE OF SUBMISSION OF A PLAN UNDER
11 SUBSECTION (1) OF THIS SECTION. NOTHING IN THIS PART 3 EXTENDS THE
12 COMMISSION'S JURISDICTION OVER ANY PERSON OR ENTITY FOR ANY
13 OTHER PURPOSE.

14 (3) THE BOARD OF DIRECTORS OF ANY ELECTRIC GENERATION OR
15 DISTRIBUTION UTILITY WITHIN COLORADO THAT IS NOT SUBJECT TO RATE
16 REGULATION BY THE COMMISSION MAY, IN ITS DISCRETION, SUBMIT THE
17 QUESTION OF ITS EXEMPTION FROM THIS PART 3 TO ITS MEMBERS AND ITS
18 CONSUMERS. APPROVAL BY A MAJORITY OF THOSE VOTING IN THE
19 ELECTION IS REQUIRED FOR THE EXEMPTION. THE PROCEDURE FOR
20 EXEMPTION IS AS FOLLOWS:

21 (a) THE BOARD OF DIRECTORS OF THE UTILITY SHALL MAIL THE
22 BALLOTS TO ALL MEMBERS AND CONSUMERS OF THE UTILITY, COUNTING
23 THE RETURNED BALLOTS, AND DETERMINING THE RESULT OF THE ELECTION
24 AND SHALL ALSO ENSURE THAT THE ELECTION IS NOT HELD IN A
25 DISHONEST, CORRUPT, OR FRAUDULENT MANNER. THE BALLOT MUST
26 CONTAIN THE FOLLOWING LANGUAGE:

27 SHALL (NAME OF THE ELECTRIC GENERATION OR

1 DISTRIBUTION UTILITY) BE EXEMPT FROM THE
2 REQUIREMENTS OF THE COLORADO CARBON EMISSIONS
3 REDUCTION ACT?

4 () YES () NO

5 (b) THE BALLOT MUST BE POSTMARKED OR RETURNED IN AN
6 ENVELOPE ACCOMPANYING THE BALLOT WITH RETURN POSTAGE PAID
7 WITHIN THIRTY DAYS AFTER IT WAS MAILED TO THE MEMBER OR
8 CONSUMER.

9 (c) THE SECRETARY OF THE BOARD OF DIRECTORS OF THE UTILITY
10 SHALL CERTIFY RESULTS OF THE ELECTION NO LATER THAN SIXTY DAYS
11 AFTER THE BALLOTS ARE MAILED TO THE MEMBERS AND CONSUMERS, AND
12 THE SECRETARY SHALL FILE THE RESULTS WITH THE COMMISSION.

13 (d) UPON AN AFFIRMATIVE VOTE OF THE MEMBERS AND
14 CONSUMERS OF THE UTILITY REGARDING THE QUESTION OF EXEMPTING
15 THE UTILITY, THE UTILITY IS EXEMPT FROM THIS PART 3, BEGINNING ON
16 THE DATE THE ELECTION RESULTS ARE FILED WITH THE COMMISSION.

17 **40-3.2-305. Review of plan by commission - procedure.**

18 (1) THE COMMISSION SHALL CONDUCT THE HEARING ON A PROPOSED
19 STATE PLAN AS REQUIRED BY SECTION 40-3.2-304 SUBSTANTIALLY IN
20 ACCORDANCE WITH SECTION 40-6-111.

21 (2) IN EVALUATING THE PLAN, THE COMMISSION SHALL CONSIDER
22 THE FOLLOWING FACTORS:

23 (a) THE DEGREE TO WHICH THE PLAN WILL RESULT IN REDUCTIONS
24 IN OTHER AIR POLLUTANT EMISSIONS;

25 (b) THE DEGREE TO WHICH THE PLAN WILL INCREASE UTILIZATION
26 OF EXISTING NATURAL GAS-FIRED GENERATING CAPACITY;

27 (c) THE DEGREE TO WHICH THE PLAN ENHANCES THE ABILITY OF

1 THE UTILITY TO MEET STATE OR FEDERAL CLEAN ENERGY REQUIREMENTS,
2 RELIES ON ENERGY EFFICIENCY, OR RELIES ON OTHER LOW-EMITTING
3 RESOURCES;

4 (d) WHETHER THE PLAN PROMOTES COLORADO ECONOMIC
5 DEVELOPMENT;

6 (e) WHETHER THE PLAN PRESERVES RELIABLE ELECTRIC SERVICE
7 FOR COLORADO CONSUMERS;

8 (f) WHETHER THE PLAN IS LIKELY TO HELP PROTECT COLORADO
9 CUSTOMERS FROM FUTURE COST INCREASES, INCLUDING COSTS
10 ASSOCIATED WITH REASONABLY FORESEEABLE EMISSION REDUCTION
11 REQUIREMENTS; AND

12 (g) WHETHER THE COST OF THE PLAN RESULTS IN REASONABLE
13 RATE IMPACTS. IN EVALUATING THE RATE IMPACTS OF THE PLAN, THE
14 COMMISSION SHALL EXAMINE THE IMPACT OF THE RATES ON LOW-INCOME
15 CUSTOMERS.

16 **40-3.2-306. Coordinated assessment of impacts of state plan.**

17 (1) ANY ORDER FOLLOWING AN EVIDENTIARY HEARING APPROVING THE
18 STATE PLAN MUST BE ACCOMPANIED BY A JOINT REPORT, PREPARED AND
19 SIGNED BY THE COMMISSION AND THE DEPARTMENT, THAT ASSESSES THE
20 EFFECTS OF THE STATE PLAN ON:

21 (a) THE ELECTRIC POWER SECTOR, INCLUDING:

22 (I) THE ABILITY OF COLORADO UTILITIES TO PROVIDE AFFORDABLE
23 ELECTRICITY THROUGH DIVERSIFIED SOURCES OF ELECTRICITY
24 GENERATION;

25 (II) THE TYPE AND AMOUNT OF ELECTRIC GENERATING CAPACITY
26 WITHIN COLORADO THAT IS LIKELY TO RETIRE OR SWITCH TO ANOTHER
27 FUEL;

1 (III) STRANDED INVESTMENT IN ELECTRIC GENERATING CAPACITY;

2 (IV) POTENTIAL RISKS TO ELECTRIC RELIABILITY WITHIN
3 COLORADO, INCLUDING RESOURCE ADEQUACY RISKS AND TRANSMISSION
4 CONSTRAINTS; AND

5 (V) THE AMOUNT BY WHICH RETAIL ELECTRICITY PRICES WITHIN
6 COLORADO ARE FORECAST TO INCREASE;

7 (b) ELECTRICITY CONSUMERS WITHIN COLORADO, INCLUDING ANY
8 DISPROPORTIONATE IMPACTS OF ELECTRICITY AND OTHER ENERGY PRICE
9 INCREASES ON MIDDLE-INCOME AND LOWER-INCOME HOUSEHOLDS;

10 (c) EMPLOYMENT WITHIN COLORADO, INCLUDING DIRECT AND
11 INDIRECT EMPLOYMENT EFFECTS AND JOBS LOST WITHIN AFFECTED
12 SECTORS OF COLORADO'S ECONOMY;

13 (d) ECONOMIC DEVELOPMENT WITHIN COLORADO, INCLUDING
14 EFFECTS ON MANUFACTURING, COMMERCIAL, AND OTHER SECTORS OF
15 COLORADO'S ECONOMY;

16 (e) THE COMPETITIVE POSITION OF COLORADO RELATIVE TO
17 NEIGHBORING STATES AND OTHER ECONOMIC COMPETITORS; AND

18 (f) STATE AND LOCAL GOVERNMENTS, INCLUDING POTENTIAL
19 IMPACTS RESULTING FROM CHANGES IN TAX REVENUES.

20 **40-3.2-307. Submission of state plan to EPA - additional**
21 **prerequisites.** (1) NOTWITHSTANDING THE COMMISSION'S APPROVAL OF
22 A PROPOSED STATE PLAN PURSUANT TO SECTION 40-3.2-304, THE
23 DEPARTMENT SHALL NOT SUBMIT ANY STATE PLAN TO THE EPA IF:

24 (a) IMPLEMENTATION OF THE PLAN WOULD RESULT IN:

25 (I) AN AVERAGE ANNUAL RETAIL RATE INCREASE OF TWO PERCENT
26 OR MORE FOR ELECTRIC UTILITY CUSTOMERS; OR

27 (II) ANY UNREASONABLE RELIABILITY RISKS; OR

1 (b) A RESOLUTION APPROVING THE PLAN HAS NOT BEEN PASSED BY
2 BOTH CHAMBERS OF THE GENERAL ASSEMBLY IN ACCORDANCE WITH
3 SECTION 40-3.2-308.

4 **40-3.2-308. Procedures for approval of state plan by the**
5 **general assembly.** (1) NOT LATER THAN FIFTEEN DAYS AFTER THE
6 COMMISSION'S APPROVAL OF A PROPOSED STATE PLAN PURSUANT TO
7 SECTION 40-3.2-304, THE DEPARTMENT SHALL TRANSMIT TO EACH
8 CHAMBER OF THE GENERAL ASSEMBLY A COPY OF THE STATE PLAN, THE
9 COMMISSION'S ORDER APPROVING THE STATE PLAN, AND THE
10 ACCOMPANYING REPORT DEVELOPED IN ACCORDANCE WITH SECTION
11 40-3.2-306.

12 (2) UPON RECEIVING THE STATE PLAN AND ACCOMPANYING
13 REPORT TRANSMITTED UNDER SUBSECTION (1) OF THIS SECTION, EACH
14 CHAMBER OF THE GENERAL ASSEMBLY SHALL VOTE ON A RESOLUTION TO
15 APPROVE THE STATE PLAN AFTER SUFFICIENT TIME HAS BEEN PROVIDED TO
16 ASSESS THE STATE PLAN AND ACCOMPANYING REPORT. THE RESOLUTION
17 SHALL BE DEEMED APPROVED BY THE GENERAL ASSEMBLY IF TWO-THIRDS
18 OF EACH CHAMBER OF THE GENERAL ASSEMBLY VOTES IN FAVOR OF THE
19 RESOLUTION.

20 (3) IF EITHER CHAMBER OF THE GENERAL ASSEMBLY FAILS TO
21 APPROVE A STATE PLAN UNDER SUBSECTION (2) OF THIS SECTION, THE
22 DEPARTMENT MAY SUBMIT A REVISED VERSION OF THE STATE PLAN, WITH
23 AN ACCOMPANYING REVISED REPORT, TO THE COMMISSION FOR APPROVAL
24 IN ACCORDANCE WITH SECTIONS 40-3.2-304 TO 40-3.2-306 AND TO THE
25 GENERAL ASSEMBLY FOR APPROVAL IN ACCORDANCE WITH SUBSECTION
26 (1) OF THIS SECTION.

27 (4) THE APPROVAL OF THE STATE PLAN BY THE GENERAL

1 ASSEMBLY DOES NOT PRECLUDE SUBSEQUENT JUDICIAL REVIEW OF THE
2 STATE PLAN BY A COURT OF COMPETENT JURISDICTION TO DETERMINE
3 WHETHER THE STATE PLAN COMPLIES WITH ALL APPLICABLE STATE AND
4 FEDERAL LAWS.

5 **40-3.2-309. Reliability - annual review by utilities - reports to**
6 **commission.** EACH YEAR, EACH UTILITY WITH A COVERED ELECTRIC
7 GENERATING UNIT SHALL CONDUCT AN ELECTRIC SYSTEM RELIABILITY
8 REVIEW AND SUBMIT THE RESULTS OF THE REVIEW TO THE COMMISSION.
9 THE COMMISSION SHALL EVALUATE WHETHER THE ELECTRIC SYSTEM
10 RELIABILITY REVIEW RESULTS IN THE IDENTIFICATION OF RELIABILITY
11 RISKS. THE COMMISSION MAY OPEN AN EVIDENTIARY PROCEEDING TO
12 ADDRESS POTENTIAL RELIABILITY RISKS, INCLUDING EXTENDING THE LIFE
13 OF GENERATION UNITS AND TAKING OTHER MEASURES TO ENSURE
14 ADEQUATE CAPACITY TO MEET DEMAND.

15 **SECTION 2. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.