

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 15-0936.01 Duane Gall x4335

SENATE BILL 15-258

SENATE SPONSORSHIP

Cooke and Sonnenberg,

HOUSE SPONSORSHIP

(None),

Senate Committees

Agriculture, Natural Resources, & Energy
Appropriations

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 DIOXIDE EMISSIONS BY COLORADO ELECTRIC**
104 **UTILITIES, AND, IN CONNECTION THEREWITH, ENACTING THE**
105 **"COLORADO ELECTRIC CONSUMERS' PROTECTION ACT".**

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/billsummaries>.)

The bill requires that, before the Colorado air quality control commission adopts a state plan for the reduction of carbon dioxide

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.

emissions by Colorado electric utilities in accordance with federal regulations, the proposed plan be:

- ! Reviewed by the Colorado public utilities commission (PUC) to determine, among other things, its likely impact on the rates paid for electricity by consumers;
- ! Evaluated by the PUC in a decision that is accompanied by a report summarizing the effects of the plan on rates, reliability, and Colorado's economy; and
- ! Adopted by both houses of the general assembly in a joint resolution approved by a majority vote.

1 *Be it enacted by the General Assembly of the State 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 CARBON DIOXIDE

6 EMISSION REDUCTION MEASURES

7 **40-3.2-301. Short title.** THIS PART 3 SHALL BE KNOWN AND MAY
8 BE CITED AS THE "COLORADO ELECTRIC CONSUMERS' PROTECTION 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 ACT;

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

19 (c) UNDER SECTION 111 (d) OF THE FEDERAL ACT, AND AS
20 INCLUDED IN THE EPA'S PROPOSED EMISSION GUIDELINES, STATES TAKE

1 THE LEAD ROLE IN DEVELOPING PLANS FOR THE ESTABLISHMENT AND
2 IMPLEMENTATION OF PERFORMANCE STANDARDS FOR REDUCING CARBON
3 DIOXIDE EMISSIONS FROM EXISTING FOSSIL FUEL-FIRED ELECTRIC
4 GENERATING UNITS; AND

5 (d) DEVELOPMENT OF A STATE PLAN TO IMPLEMENT THE EPA'S
6 PROPOSED CARBON DIOXIDE EMISSION GUIDELINES COULD AFFECT THE
7 COST, RELIABILITY, AND FUTURE IMPROVEMENT OF ELECTRIC SERVICE
8 WITHIN THE STATE OF COLORADO AND SHOULD, THEREFORE, BE
9 UNDERTAKEN IN A PUBLIC PROCESS WITH INPUT FROM AFFECTED POWER
10 GENERATORS, COLORADO RATEPAYERS, AND THE COMMISSION AS THE
11 STATE AGENCY MOST ABLE TO ADDRESS THOSE EFFECTS.

12 (2) (a) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT THE
13 PURPOSE OF THIS PART 3 IS TO ENSURE THAT THE COLORADO AIR QUALITY
14 CONTROL COMMISSION RECEIVES INPUT FROM THE PUBLIC UTILITIES
15 COMMISSION AND THE GENERAL ASSEMBLY FOR:

16 (I) ANY PROPOSED PLAN TO REGULATE CARBON DIOXIDE
17 EMISSIONS FROM EXISTING FOSSIL FUEL-FIRED ELECTRIC GENERATING
18 UNITS UNDER SECTION 111 (d) OF THE FEDERAL ACT BEFORE THE
19 COLORADO AIR QUALITY CONTROL COMMISSION SUBMITS SUCH PLAN TO
20 THE EPA; AND

21 (II) BEFORE THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND
22 ENVIRONMENT IMPLEMENTS ANY SUCH PLAN FOLLOWING APPROVAL BY
23 THE EPA.

24 (b) THE GENERAL ASSEMBLY FURTHER DECLARES THAT THE
25 PURPOSE OF THIS PART 3 IS TO ENSURE THAT THE DEVELOPMENT OF ANY
26 STATE PLAN TO REGULATE CARBON DIOXIDE EMISSIONS FROM EXISTING
27 FOSSIL FUEL-FIRED ELECTRIC GENERATING UNITS UNDER SECTION 111 (d)

1 OF THE FEDERAL ACT IS INFORMED BY THE CONSIDERATION OF SUCH STATE
2 PLAN BY THE PUBLIC UTILITIES COMMISSION WITH RESPECT TO THE STATE
3 PLAN'S PROJECTED IMPACTS ON THE RELIABILITY AND AFFORDABILITY OF
4 ELECTRICITY IN COLORADO.

5 **40-3.2-303. Definitions.** AS USED IN THIS PART 3, UNLESS THE
6 CONTEXT OTHERWISE REQUIRES:

7 (1) "COVERED ELECTRIC GENERATING UNIT" MEANS AN EXISTING
8 FOSSIL FUEL-FIRED ELECTRIC GENERATING UNIT WITHIN THE STATE OF
9 COLORADO THAT IS SUBJECT TO REGULATION UNDER THE FEDERAL
10 EMISSION REGULATIONS.

11 (2) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF
12 PUBLIC HEALTH AND ENVIRONMENT.

13 (3) "EPA" MEANS THE UNITED STATES ENVIRONMENTAL
14 PROTECTION AGENCY.

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

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

22 (6) "FEDERAL PLAN" MEANS A FEDERAL IMPLEMENTATION PLAN
23 ISSUED BY THE EPA PURSUANT TO THE FEDERAL ACT.

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

26 (8) "STATE PLAN" MEANS ANY PLAN, WHETHER OR NOT
27 INCORPORATED INTO THE STATE IMPLEMENTATION PLAN OR ADOPTED AS

1 A STATE-ONLY RULE, TO ESTABLISH AND ENFORCE CARBON DIOXIDE
2 EMISSION CONTROL REGULATIONS THAT THE COLORADO AIR QUALITY
3 CONTROL COMMISSION MAY ADOPT TO IMPLEMENT THE OBLIGATIONS OF
4 COLORADO UNDER THE FEDERAL EMISSION REGULATIONS.

5 **40-3.2-304. Carbon dioxide emission plans - review by**
6 **commission.** (1) THE COLORADO AIR QUALITY CONTROL COMMISSION
7 SHALL NOT SUBMIT A STATE PLAN TO THE EPA PURSUANT TO THE FEDERAL
8 EMISSION REGULATIONS UNLESS THE PROPOSED STATE PLAN IS FIRST
9 REVIEWED BY THE COMMISSION. THE COLORADO AIR QUALITY CONTROL
10 COMMISSION SHALL SUBMIT ANY PROPOSED STATE PLAN TO THE
11 COMMISSION BY A DATE THAT REASONABLY ALLOWS SUFFICIENT TIME FOR
12 THE COMMISSION AND THE GENERAL ASSEMBLY TO REVIEW THE PROPOSED
13 STATE PLAN AND ACT ON IT AS REQUIRED BY THIS PART 3.

14 (2) FOR THE LIMITED PURPOSES OF THE COMMISSION'S REVIEW OF
15 THE PROPOSED STATE PLAN, THE COMMISSION SHALL REQUEST THE
16 PARTICIPATION OF ALL ELECTRIC GENERATION AND DISTRIBUTION
17 UTILITIES WITHIN COLORADO, INCLUDING INVESTOR-OWNED UTILITIES,
18 COOPERATIVE ELECTRIC ASSOCIATIONS, GENERATION AND TRANSMISSION
19 ASSOCIATIONS, AND MUNICIPAL UTILITIES, AND MAY ALSO REQUEST THE
20 PARTICIPATION OF THE DEPARTMENT AND SUCH OTHER PERSONS OR
21 ENTITIES AS THE COMMISSION MAY FIND NECESSARY OR HELPFUL TO FULLY
22 EVALUATE THE PROPOSED STATE PLAN. OTHER THAN WITH RESPECT TO
23 INVESTOR-OWNED ELECTRIC UTILITIES, THE VOLUNTARY PARTICIPATION
24 IN THE COMMISSION PROCEEDINGS UNDER SECTION 40-3.2-305 BY ANY
25 OTHER ELECTRIC UTILITY, PERSON, OR ENTITY DOES NOT ESTABLISH OR
26 EXTEND THE COMMISSION'S JURISDICTION OVER SUCH ELECTRIC UTILITY,
27 PERSON, OR ENTITY FOR ANY OTHER PURPOSE, INCLUDING RESOURCE

1 PLANNING OR IMPLEMENTATION OF A FINAL APPROVED STATE PLAN.

2 **40-3.2-305. Review of plan by commission - procedure.**

3 (1) THE COMMISSION SHALL COMMENCE A PROCEEDING TO EVALUATE A
4 PROPOSED STATE PLAN AS REQUIRED BY SECTION 40-3.2-304
5 SUBSTANTIALLY IN ACCORDANCE WITH SECTION 40-6-111.

6 (2) IN EVALUATING THE PROPOSED STATE PLAN, THE COMMISSION
7 SHALL CONSIDER THE FOLLOWING FACTORS:

8 (a) WHETHER IMPLEMENTATION OF THE PROPOSED STATE PLAN
9 WILL RESULT IN COMPLIANCE WITH THE FEDERAL EMISSION REGULATIONS;

10 (b) WHETHER IMPLEMENTATION OF THE PROPOSED STATE PLAN IS
11 FEASIBLE WITHOUT IMPAIRING THE RELIABILITY OF ELECTRIC UTILITY
12 SERVICE IN COLORADO;

13 (c) WHETHER THE PROPOSED STATE PLAN IS THE LEAST EXPENSIVE
14 ALTERNATIVE TO MEET THE FEDERAL EMISSION REGULATIONS WITHOUT
15 IMPAIRING THE RELIABILITY OF ELECTRIC UTILITY SERVICE IN COLORADO;

16 (d) THE DEGREE TO WHICH THE PROPOSED STATE PLAN WILL
17 RESULT IN REDUCTIONS IN OTHER AIR POLLUTANT EMISSIONS;

18 (e) THE DEGREE TO WHICH THE PROPOSED STATE PLAN WILL
19 INCREASE UTILIZATION OF EXISTING NATURAL GAS-FIRED GENERATING
20 CAPACITY;

21 (f) THE DEGREE TO WHICH THE PROPOSED STATE PLAN ENHANCES
22 THE ABILITY OF COLORADO ELECTRIC UTILITIES TO MEET STATE OR
23 FEDERAL CLEAN ENERGY REQUIREMENTS, RELIES ON ENERGY EFFICIENCY,
24 OR RELIES ON OTHER LOW-EMITTING RESOURCES;

25 (g) WHETHER THE PROPOSED STATE PLAN PROMOTES COLORADO
26 ECONOMIC DEVELOPMENT;

27 (h) WHETHER THE PROPOSED STATE PLAN IS LIKELY TO HELP

1 PROTECT COLORADO CONSUMERS FROM FUTURE COST INCREASES,
2 INCLUDING COSTS ASSOCIATED WITH REASONABLY FORESEEABLE EMISSION
3 REDUCTION REQUIREMENTS; AND

4 (i) WHETHER THE COST OF THE PROPOSED STATE PLAN RESULTS IN
5 REASONABLE RATE IMPACTS. IN EVALUATING THE RATE IMPACTS OF THE
6 STATE PLAN, THE COMMISSION SHALL EXAMINE THE IMPACTS ON THE
7 RATES OF LOW-INCOME CONSUMERS.

8 **40-3.2-306. Coordinated assessment of impacts of state plan.**

9 ANY COMMISSION DECISION FOLLOWING A PROCEEDING TO EVALUATE THE
10 PROPOSED STATE PLAN MUST BE ACCOMPANIED BY A REPORT, PREPARED
11 BY THE COMMISSION AND THE DEPARTMENT, THAT ASSESSES THE EFFECTS
12 OF THE PROPOSED STATE PLAN RELATIVE TO THE FACTORS SET FORTH IN
13 SECTION 40-3.2-305 AND SUCH OTHER FACTORS AS DETERMINED BY THE
14 COMMISSION AND THE DEPARTMENT.

15 **40-3.2-307. Procedures for approval of proposed state plan by**

16 **general assembly.** (1) NOT LATER THAN FIFTEEN DAYS AFTER THE
17 COMMISSION'S EVALUATION OF A PROPOSED STATE PLAN PURSUANT TO
18 SECTION 40-3.2-304, THE COMMISSION AND THE COLORADO AIR QUALITY
19 CONTROL COMMISSION SHALL JOINTLY TRANSMIT TO EACH CHAMBER OF
20 THE GENERAL ASSEMBLY A COPY OF THE PROPOSED STATE PLAN, THE
21 COMMISSION'S DECISION EVALUATING THE PROPOSED STATE PLAN, AND
22 THE ACCOMPANYING REPORT DEVELOPED IN ACCORDANCE WITH SECTION
23 40-3.2-306.

24 (2) UPON RECEIVING THE PROPOSED STATE PLAN, COMMISSION
25 DECISION, AND ACCOMPANYING REPORT, EACH CHAMBER OF THE GENERAL
26 ASSEMBLY SHALL VOTE ON A JOINT RESOLUTION TO APPROVE SUBMISSION
27 OF THE PROPOSED STATE PLAN TO THE EPA. THE JOINT RESOLUTION SHALL

1 BE DEEMED APPROVED BY THE GENERAL ASSEMBLY IF A MAJORITY OF
2 EACH CHAMBER OF THE GENERAL ASSEMBLY VOTES IN FAVOR OF THE JOINT
3 RESOLUTION APPROVING SUBMISSION OF THE PROPOSED STATE PLAN.

4 (3) IF EITHER CHAMBER OF THE GENERAL ASSEMBLY FAILS TO
5 APPROVE THE JOINT RESOLUTION REGARDING SUBMISSION OF THE
6 PROPOSED STATE PLAN UNDER SUBSECTION (2) OF THIS SECTION, THE
7 COLORADO AIR QUALITY CONTROL COMMISSION MAY SUBMIT ONE REVISED
8 VERSION OF THE PROPOSED STATE PLAN TO THE COMMISSION FOR
9 EVALUATION IN ACCORDANCE WITH SECTIONS 40-3.2-304 TO 40-3.2-306.
10 FOLLOWING THE COMMISSION'S EVALUATION OF THE REVISED PROPOSED
11 STATE PLAN, THE COMMISSION AND THE COLORADO AIR QUALITY CONTROL
12 COMMISSION SHALL JOINTLY SUBMIT THE REVISED PROPOSED STATE PLAN
13 TO THE GENERAL ASSEMBLY FOR APPROVAL IN ACCORDANCE WITH
14 SUBSECTIONS (1) AND (2) OF THIS SECTION.

15 (4) UPON APPROVAL OF THE PROPOSED STATE PLAN BY THE
16 GENERAL ASSEMBLY IN ACCORDANCE WITH SUBSECTION (2) OF THIS
17 SECTION, THE COLORADO AIR QUALITY CONTROL COMMISSION SHALL
18 SUBMIT THE PROPOSED STATE PLAN TO THE EPA.

19 (5) IF THE PROPOSED STATE PLAN IS APPROVED BY THE EPA
20 WITHOUT MATERIAL MODIFICATION, THE COLORADO AIR QUALITY
21 CONTROL COMMISSION SHALL SUBMIT THE EPA-APPROVED STATE PLAN TO
22 THE GENERAL ASSEMBLY FOR FINAL APPROVAL CONSISTENT WITH THE
23 PROCEDURE SET FORTH IN SUBSECTION (2) OF THIS SECTION.

24 (6) IF THE EPA DISAPPROVES THE PROPOSED STATE PLAN IN WHOLE
25 OR IN PART AND PUTS IN PLACE A FEDERAL PLAN, THE COLORADO AIR
26 QUALITY CONTROL COMMISSION SHALL SUBMIT THE FEDERAL PLAN TO THE
27 COMMISSION TO DETERMINE WHETHER FURTHER CONSIDERATION OF THE

1 FEDERAL PLAN IS NECESSARY, CONSISTENT WITH THE PROCEDURE SET
2 FORTH IN SECTIONS 40-3.2-304 TO 40-3.2-306. THEREAFTER, THE
3 COLORADO AIR QUALITY CONTROL COMMISSION SHALL SUBMIT THE
4 FEDERAL PLAN, THE COMMISSION'S DECISION EVALUATING THE FEDERAL
5 PLAN, AND THE ACCOMPANYING REPORT TO THE GENERAL ASSEMBLY FOR
6 FURTHER CONSIDERATION AS MAY BE APPROPRIATE.

7 (7) NEITHER THE DEPARTMENT NOR THE COLORADO AIR QUALITY
8 CONTROL COMMISSION SHALL SUBMIT ANY STATE PLAN TO THE EPA IF A
9 JOINT RESOLUTION APPROVING THE STATE PLAN HAS NOT BEEN PASSED BY
10 BOTH CHAMBERS OF THE GENERAL ASSEMBLY IN ACCORDANCE WITH THIS
11 SECTION.

12 (8) THE APPROVAL BY THE GENERAL ASSEMBLY OF SUBMISSION OF
13 THE STATE PLAN TO THE EPA PURSUANT TO SUBSECTION (2) OF THIS
14 SECTION OR OF THE FINAL STATE PLAN ITSELF PURSUANT TO SUBSECTIONS
15 (4) AND (5) OF THIS SECTION DOES NOT PRECLUDE SUBSEQUENT JUDICIAL
16 REVIEW OF THE STATE PLAN BY A COURT OF COMPETENT JURISDICTION TO
17 DETERMINE WHETHER THE STATE PLAN COMPLIES WITH ALL APPLICABLE
18 STATE AND FEDERAL LAWS.

19 (9) THE APPROVAL PROCESS SET FORTH IN THIS PART 3 APPLIES TO
20 A COLORADO STATE PLAN AS WELL AS ANY REGIONAL PLAN IN WHICH THE
21 STATE OF COLORADO PARTICIPATES PURSUANT TO THE FEDERAL ACT OR
22 THE FEDERAL EMISSION REGULATIONS.

23 **40-3.2-308. State plan dependent on federal emission**
24 **regulations.** NOTWITHSTANDING APPROVAL BY THE GENERAL ASSEMBLY
25 OF SUBMISSION OF A PROPOSED STATE PLAN TO THE EPA OR APPROVAL OF
26 A FINAL STATE PLAN, FURTHER ACTION BY THE DEPARTMENT AND THE
27 COMMISSION TO IMPLEMENT OR ENFORCE THE FINAL APPROVED STATE

1 PLAN OR ANY FEDERAL PLAN IS DEPENDENT UPON THE FINAL ADOPTION OF
2 THE FEDERAL EMISSION REGULATIONS. IF THE FEDERAL EMISSION
3 REGULATIONS ARE NOT ADOPTED, OR ARE ADOPTED AND SUBSEQUENTLY
4 SUSPENDED OR HELD TO BE CONTRARY TO LAW, THE DEPARTMENT AND
5 THE COMMISSION SHALL SUSPEND OR TERMINATE, AS APPROPRIATE,
6 FURTHER ACTION TO IMPLEMENT OR ENFORCE THE STATE PLAN OR THE
7 FEDERAL PLAN, AND THE STATE PLAN OR FEDERAL PLAN HAS NO FURTHER
8 FORCE OR EFFECT CONSISTENT WITH THE VALIDITY OF THE FEDERAL
9 EMISSION REGULATIONS.

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