A BILL FOR AN ACT

Concerning a requirement for coordinated review prior to the adoption of a state plan for the reduction of carbon dioxide emissions by Colorado electric utilities, and, in connection therewith, enacting the "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 emissions by Colorado electric utilities, the commission coordinate with the appropriate committees of the General Assembly.

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.

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

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

PART 3

COORDINATED REVIEW OF CARBON DIOXIDE EMISSION REDUCTION MEASURES

40-3.2-301. Short title. This part 3 shall be known and may be cited as the "COLORADO ELECTRIC CONSUMERS' PROTECTION ACT".

40-3.2-302. Legislative declaration - purpose. (1) The general assembly finds and determines that:

(a) The United States environmental protection agency has proposed emission guidelines for the regulation of carbon dioxide emissions from existing fossil fuel-fired electric generating units under section 111 (d) of the federal act;

(b) These proposed guidelines will have a major impact on the economy of Colorado by regulating how electricity is produced, transmitted, distributed, and consumed within Colorado;

(c) Under section 111 (d) of the federal act, and as included in the EPA's proposed emission guidelines, states take

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

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

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

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

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

(b) THE GENERAL ASSEMBLY FURTHER DECLARES THAT THE
PURPOSE OF THIS PART 3 IS TO ENSURE THAT THE DEVELOPMENT OF ANY
STATE PLAN TO REGULATE CARBON DIOXIDE EMISSIONS FROM EXISTING
FOSSIL FUEL-FIRED ELECTRIC GENERATING UNITS UNDER SECTION 111 (d)
OF THE FEDERAL ACT IS INFORMED BY THE CONSIDERATION OF SUCH STATE
PLAN BY THE PUBLIC UTILITIES COMMISSION WITH RESPECT TO THE STATE
PLAN'S PROJECTED IMPACTS ON THE RELIABILITY AND AFFORDABILITY OF
ELECTRICITY IN COLORADO.

40-3.2-303. Definitions. As used in this Part 3, unless the
context otherwise requires:
(1) "Covered electric generating unit" means an existing
fossil fuel-fired electric generating unit within the state of
Colorado that is subject to regulation under the federal
emission regulations.
(2) "Department" means the Colorado Department of
public health and environment.
(3) "EPA" means the United States environmental
protection agency.
(4) "Federal act" means the federal "Clean Air Act", 42
(5) "Federal emission regulations" means any final rules,
regulations, guidelines, or other requirements that the EPA
may adopt for regulating carbon dioxide emissions from covered
electric generating units under Section 111 (d) of the federal
act.
(6) "Federal plan" means a federal implementation plan
issued by the EPA pursuant to the federal act.
(7) "State act" means the "Colorado Air Pollution
Prevention and Control Act", article 7 of title 25, C.R.S.
(8) "State plan" means any plan, whether or not
incorporated into the State Implementation Plan or adopted as
A STATE-ONLY RULE, TO ESTABLISH AND ENFORCE CARBON DIOXIDE EMISSION CONTROL REGULATIONS THAT THE COLORADO AIR QUALITY CONTROL COMMISSION MAY ADOPT TO IMPLEMENT THE OBLIGATIONS OF COLORADO UNDER THE FEDERAL EMISSION REGULATIONS.

40-3.2-304. Carbon dioxide emission plans - review by commission. (1) The Colorado Air Quality Control Commission shall not submit a state plan to the EPA pursuant to the federal emission regulations unless the proposed state plan is first reviewed by the commission. The Colorado Air Quality Control Commission shall submit any proposed state plan to the commission by a date that reasonably allows sufficient time for the commission and the general assembly to review the proposed state plan and act on it as required by this part 3.

(2) For the limited purposes of the commission's review of the proposed state plan, the commission shall request the participation of all electric generation and distribution utilities within Colorado, including investor-owned utilities, cooperative electric associations, generation and transmission associations, and municipal utilities, and may also request the participation of the department and such other persons or entities as the commission may find necessary or helpful to fully evaluate the proposed state plan. Other than with respect to investor-owned electric utilities, the voluntary participation in the commission proceedings under section 40-3.2-305 by any other electric utility, person, or entity does not establish or extend the commission's jurisdiction over such electric utility, person, or entity for any other purpose, including resource
PLANNING OR IMPLEMENTATION OF A FINAL APPROVED STATE PLAN.

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

(1) The commission shall commence a proceeding to evaluate a proposed state plan as required by section 40-3.2-304 substantially in accordance with section 40-6-111.

(2) In evaluating the proposed state plan, the commission shall consider the following factors:

(a) Whether implementation of the proposed state plan will result in compliance with the federal emission regulations;

(b) Whether implementation of the proposed state plan is feasible without impairing the reliability of electric utility service in Colorado;

(c) Whether the proposed state plan is the least expensive alternative to meet the federal emission regulations without impairing the reliability of electric utility service in Colorado;

(d) The degree to which the proposed state plan will result in reductions in other air pollutant emissions;

(e) The degree to which the proposed state plan will increase utilization of existing natural gas-fired generating capacity;

(f) The degree to which the proposed state plan enhances the ability of Colorado electric utilities to meet state or federal clean energy requirements, relies on energy efficiency, or relies on other low-emitting resources;

(g) Whether the proposed state plan promotes Colorado economic development;

(h) Whether the proposed state plan is likely to help
PROTECT COLORADO CONSUMERS FROM FUTURE COST INCREASES, INCLUDING COSTS ASSOCIATED WITH REASONABLY FORESEEABLE EMISSION REDUCTION REQUIREMENTS; AND

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

40-3.2-306. Coordinated assessment of impacts of state plan. Any commission decision following a proceeding to evaluate the proposed state plan must be accompanied by a report, prepared by the commission and the department, that assesses the effects of the proposed state plan relative to the factors set forth in section 40-3.2-305 and such other factors as determined by the commission and the department.

40-3.2-307. Procedures for approval of proposed state plan by general assembly. (1) Not later than fifteen days after the commission's evaluation of a proposed state plan pursuant to section 40-3.2-304, the commission and the Colorado air quality control commission shall jointly transmit to each chamber of the general assembly a copy of the proposed state plan, the commission's decision evaluating the proposed state plan, and the accompanying report developed in accordance with section 40-3.2-306.

(2) Upon receiving the proposed state plan, commission decision, and accompanying report, each chamber of the general assembly shall vote on a joint resolution to approve submission of the proposed state plan to the EPA. The joint resolution shall
BE DEEMED APPROVED BY THE GENERAL ASSEMBLY IF A MAJORITY OF
EACH CHAMBER OF THE GENERAL ASSEMBLY VOTES IN FAVOR OF THE JOINT
RESOLUTION APPROVING SUBMISSION OF THE PROPOSED STATE PLAN.

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

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

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

(6) IF THE EPA DISAPPROVES THE PROPOSED STATE PLAN IN WHOLE
OR IN PART AND PUTS IN PLACE A FEDERAL PLAN, THE COLORADO AIR
QUALITY CONTROL COMMISSION SHALL SUBMIT THE FEDERAL PLAN TO THE
COMMISSION TO DETERMINE WHETHER FURTHER CONSIDERATION OF THE
FEDERAL PLAN IS NECESSARY, CONSISTENT WITH THE PROCEDURE SET
FORTH IN SECTIONS 40-3.2-304 TO 40-3.2-306. THEREAFTER, THE
COLORADO AIR QUALITY CONTROL COMMISSION SHALL SUBMIT THE
FEDERAL PLAN, THE COMMISSION'S DECISION EVALUATING THE FEDERAL
PLAN, AND THE ACCOMPANYING REPORT TO THE GENERAL ASSEMBLY FOR
FURTHER CONSIDERATION AS MAY BE APPROPRIATE.

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

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

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

40-3.2-308. State plan dependent on federal emission
regulations. NOTWITHSTANDING APPROVAL BY THE GENERAL ASSEMBLY
OF SUBMISSION OF A PROPOSED STATE PLAN TO THE EPA OR APPROVAL OF
A FINAL STATE PLAN, FURTHER ACTION BY THE DEPARTMENT AND THE
COMMISSION TO IMPLEMENT OR ENFORCE THE FINAL APPROVED STATE
PLAN OR ANY FEDERAL PLAN IS DEPENDENT UPON THE FINAL ADOPTION OF
THE FEDERAL EMISSION REGULATIONS. IF THE FEDERAL EMISSION
REGULATIONS ARE NOT ADOPTED, OR ARE ADOPTED AND SUBSEQUENTLY
SUSPENDED OR HELD TO BE CONTRARY TO LAW, THE DEPARTMENT AND
THE COMMISSION SHALL SUSPEND OR TERMINATE, AS APPROPRIATE,
FURTHER ACTION TO IMPLEMENT OR ENFORCE THE STATE PLAN OR THE
FEDERAL PLAN, AND THE STATE PLAN OR FEDERAL PLAN HAS NO FURTHER
FORCE OR EFFECT CONSISTENT WITH THE VALIDITY OF THE FEDERAL
EMISSION REGULATIONS.

SECTION 2. 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.