A BILL FOR AN ACT

CONCERNING A REQUIREMENT FOR COORDINATED REVIEW PRIOR TO THE ADOPTION OF A STATE PLAN FOR THE REDUCTION OF 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/billsummaries.)

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
(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.

Be it enacted by the General Assembly of Colorado 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 EMISSIONS REDUCTION MEASURES

40-3.2-301. Short title. This part 3 shall be known and may be cited as the "Colorado Carbon Emissions Reduction 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 "Clean Air 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) States are required to take the lead role in the regulation of existing fossil fuel-fired electric generating units under Section 111 (d) of the federal "Clean Air Act" by developing plans for the establishment and implementation of performance standards for reducing carbon dioxide emissions from such units; and

(d) The role of the EPA is limited to establishing federal emission guidelines that assist the states in the development of their plans to regulate carbon dioxide emissions from existing fossil fuel-fired electric generating units and, in so doing, the EPA must defer to the states as to how to regulate such units within their jurisdictions.

(2) Therefore, the general assembly declares that the purpose of this Part 3 is to ensure that the Department of Public Health and Environment receives approval from the General Assembly for any plan to regulate carbon dioxide emissions from existing fossil fuel-fired electric generating units under Section 111 (d) of the federal "Clean Air Act" before the department submits any such plan to the EPA.

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 Colorado that is subject to regulation under the federal emission guidelines.

(2) "Department" means the 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 U.S.C. sec. 7401 et seq., as amended.

(5) "Federal emission guidelines" 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) "State Act" means the "Colorado Air Pollution Prevention and Control Act", article 7 of title 25, C.R.S.

(7) "State implementation plan" means the plan required by and described in section 110 (a) and other provisions of the Federal Act.

(8) "State plan" means any plan, whether or not incorporated into the State implementation plan, to establish and enforce carbon dioxide emission control measures that the department may adopt to implement the obligations of Colorado under the Federal emission guidelines.

40-3.2-304. Carbon dioxide emission plans - preapproval by commission. (1) The department shall not submit a state plan to the EPA pursuant to 40 CFR 60.5710 or any other guidelines developed in accordance with section 111 (d) of the Federal Act unless the plan is approved by an order of the Commission following an evidentiary hearing and a majority of the Commissioners sign the State plan.

(2) For purposes of considering the State plan and
ENTERING AN ORDER, THE COMMISSION HAS INTEGRATED RESOURCE
PLANNING JURISDICTION OVER ANY AND ALL ELECTRIC GENERATION AND
DISTRIBUTION UTILITIES WITHIN COLORADO, INCLUDING MUNICIPAL
UTILITIES, COOPERATIVE ELECTRIC ASSOCIATIONS, ENERGY EFFICIENCY
PROVIDERS, AND OWNERS AND OPERATORS OF RENEWABLE OR
ZERO-EMISSION ELECTRIC FACILITIES THAT OPT IN TO COMMISSION
JURISDICTION FOR THIS PURPOSE PURSUANT TO SUBSECTION (3) OF THIS
SECTION. THE COMMISSION'S JURISDICTION OVER OPTING-IN GENERATION
AND DISTRIBUTION UTILITIES UNDER SUBSECTION (3) OF THIS SECTION IS
FOR THE LIMITED AND SOLE PURPOSE OF SUBMISSION OF A PLAN UNDER
SUBSECTION (1) OF THIS SECTION. NOTHING IN THIS PART 3 EXTENDS THE
COMMISSION’S JURISDICTION OVER ANY PERSON OR ENTITY FOR ANY
OTHER PURPOSE.

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

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

    SHALL ..... (NAME OF THE ELECTRIC GENERATION OR
DISTRIBUTION UTILITY) BE EXEMPT FROM THE
REQUIREMENTS OF THE COLORADO CARBON EMISSIONS
REDUCTION ACT?

( ) Yes ( ) No

(b) The ballot must be postmarked or returned in an
envelope accompanying the ballot with return postage paid
within thirty days after it was mailed to the member or
consumer.

(c) The secretary of the board of directors of the utility
shall certify results of the election no later than sixty days
after the ballots are mailed to the members and consumers, and
the secretary shall file the results with the commission.

(d) Upon an affirmative vote of the members and
consumers of the utility regarding the question of exempting
the utility, the utility is exempt from this Part 3, beginning on
the date the election results are filed with the commission.

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

(1) The commission shall conduct the hearing on a proposed
state plan as required by section 40-3.2-304 substantially in
accordance with section 40-6-111.

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

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

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

(c) The degree to which the plan enhances the ability of
(d) Whether the plan promotes Colorado economic development;

(e) Whether the plan preserves reliable electric service for Colorado consumers;

(f) Whether the plan is likely to help protect Colorado customers from future cost increases, including costs associated with reasonably foreseeable emission reduction requirements; and

(g) Whether the cost of the plan results in reasonable rate impacts. In evaluating the rate impacts of the plan, the commission shall examine the impact of the rates on low-income customers.


(1) Any order following an evidentiary hearing approving the state plan must be accompanied by a joint report, prepared and signed by the commission and the department, that assesses the effects of the state plan on:

(a) The electric power sector, including:

(I) The ability of Colorado utilities to provide affordable electricity through diversified sources of electricity generation;

(II) The type and amount of electric generating capacity within Colorado that is likely to retire or switch to another fuel;
(III) Stranded investment in electric generating capacity;

(IV) Potential risks to electric reliability within Colorado, including resource adequacy risks and transmission constraints; and

(V) The amount by which retail electricity prices within Colorado are forecast to increase;

(b) Electricity consumers within Colorado, including any disproportionate impacts of electricity and other energy price increases on middle-income and lower-income households;

(c) Employment within Colorado, including direct and indirect employment effects and jobs lost within affected sectors of Colorado's economy;

(d) Economic development within Colorado, including effects on manufacturing, commercial, and other sectors of Colorado's economy;

(e) The competitive position of Colorado relative to neighboring states and other economic competitors; and

(f) State and local governments, including potential impacts resulting from changes in tax revenues.

40-3.2-307. Submission of state plan to EPA - additional prerequisites. (1) Notwithstanding the commission's approval of a proposed state plan pursuant to section 40-3.2-304, the department shall not submit any state plan to the EPA if:

(a) Implementation of the plan would result in:

(I) An average annual retail rate increase of two percent or more for electric utility customers; or

(II) Any unreasonable reliability risks; or
(b) A resolution approving the plan has not been passed by both chambers of the general assembly in accordance with section 40-3.2-308.

40-3.2-308. Procedures for approval of state plan by the general assembly. (1) Not later than fifteen days after the commission's approval of a proposed state plan pursuant to section 40-3.2-304, the department shall transmit to each chamber of the general assembly a copy of the state plan, the commission's order approving the state plan, and the accompanying report developed in accordance with section 40-3.2-306.

(2) Upon receiving the state plan and accompanying report transmitted under subsection (1) of this section, each chamber of the general assembly shall vote on a resolution to approve the state plan after sufficient time has been provided to assess the state plan and accompanying report. The resolution shall be deemed approved by the general assembly if two-thirds of each chamber of the general assembly votes in favor of the resolution.

(3) If either chamber of the general assembly fails to approve a state plan under subsection (2) of this section, the department may submit a revised version of the state plan, with an accompanying revised report, to the commission for approval in accordance with sections 40-3.2-304 to 40-3.2-306 and to the general assembly for approval in accordance with subsection (1) of this section.

(4) The approval of the state plan by the general
ASSEMBLY 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.

40-3.2-309. Reliability - annual review by utilities - reports to commission. Each year, each utility with a covered electric generating unit shall conduct an electric system reliability review and submit the results of the review to the commission. The commission shall evaluate whether the electric system reliability review results in the identification of reliability risks. The commission may open an evidentiary proceeding to address potential reliability risks, including extending the life of generation units and taking other measures to ensure adequate capacity to meet demand.

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.