SENATE SPONSORSHIP
Cooke and Sonnenberg,

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Dore,

A BILL FOR AN ACT
CONCERNING MANAGEMENT OF THE PROCESS OF RESPONDING TO THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY'S RULES FOR THE REGULATION OF CARBON DIOXIDE EMISSIONS FROM ELECTRIC GENERATING UNITS IN A MANNER THAT MAXIMIZES COLORADO'S ABILITY TO CONTROL ITS AFFAIRS.

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 federal environmental protection agency (EPA) has promulgated rules to regulate carbon dioxide emissions from existing
fossil-fuel-fired electric generating units (the "clean power plan"). The rules require states to submit a plan to the EPA detailing how they will comply with the clean power plan, but allow states to qualify for a 2-year extension on filing a plan by filing an "initial submittal". On February 9, 2016, the United States Supreme Court granted a stay of the clean power plan, effective through the completion of any proceedings in the Supreme Court.

The bill requires the air quality control commission and the division of administration in the department of public health and environment to suspend all activities in furtherance of developing a state plan to implement the clean power plan until the Supreme Court's stay is lifted and new deadlines for submission of state plans have been established. The existing process for legislative review of state implementation plans is expanded to include a state plan as required by the clean power plan.

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

SECTION 1. In Colorado Revised Statutes, add 25-7-140 as follows:

25-7-140. Clean power plan - state plan - legislative declaration - definitions. (1) Legislative declaration. The General Assembly hereby:

(a) Finds that:

(I) The United States Environmental Protection Agency has adopted rules under section 111(d) of the Federal Act that direct states to regulate carbon dioxide emissions from existing fossil-fuel-fired electric generating units; and

(II) On February 9, 2016, based on a finding that irreparable harm would result if a stay was not granted, the Supreme Court of the United States granted a stay of EPA's 111(d) rule through the completion of proceedings in both the United States Court of Appeals for the D.C. Circuit and the Supreme Court of the United States;
(b) DETERMINES THAT:

(I) BECAUSE IMPLEMENTING THE EPA'S RULES COULD AFFECT THE COST, RELIABILITY, AND FUTURE IMPROVEMENT OF ELECTRIC SERVICE WITHIN THE STATE OF COLORADO, THE PROCESS OF DEVELOPING A STATE PLAN TO IMPLEMENT EPA'S RULES WILL BE COMPLEX AND RESOURCE-CONSUMING; AND

(II) IN THE ABSENCE OF A LEGALLY ENFORCEABLE FEDERAL MANDATE TO DO SO, NO LEGAL STATE AUTHORITY EXISTS FOR ANY AGENCY OF THE STATE TO CONTINUE TO DEVELOP A STATE PLAN RELATING TO CARBON DIOXIDE EMISSIONS FROM AN ELECTRIC GENERATING UNIT UNLESS SUCH A PLAN IS LIMITED TO WHAT IS TECHNICALLY ACHIEVABLE INSIDE THE PHYSICAL BOUNDARIES OF AN ELECTRIC GENERATING UNIT, BASED ON THE EXISTING FUEL AND BOILER DESIGN, THAT THE PLAN WOULD PROPOSE TO LIMIT; AND

(c) DECLARES THAT:

(I) IT IS IN THE INTEREST OF THE STATE OF COLORADO TO SUSPEND ALL STATE AGENCY ACTIVITIES RELATING TO IMPLEMENTING THE FEDERAL EMISSION REGULATIONS WHILE THE SUPREME COURT'S STAY IS IN EFFECT IN ORDER TO STAY WITHIN THE CONFINES OF STATE LEGAL AUTHORITY AND TO CONSERVE STATE RESOURCES THAT WOULD BE EXPENDED WORKING ON A PLAN TO IMPLEMENT A REGULATION THAT MAY NEVER BE REINSTATED IN ITS CURRENT FORM; AND

(II) THE EXISTING LEGISLATIVE REVIEW PROCESS FOR STATE IMPLEMENTATION PLANS SHOULD BE EXPANDED TO INCLUDE A STATE PLAN TO IMPLEMENT EPA'S RULES.

(2) Effect of stay. THE COMMISSION AND THE DIVISION SHALL SUSPEND ALL ACTIVITIES RELATING TO IMPLEMENTING THE FEDERAL
EMISSION REGULATIONS UNTIL THE UNITED STATES SUPREME COURT’S STAY HAS BEEN LIFTED AND A NEW DEADLINE FOR THE SUBMISSION OF STATE PLANS HAS BEEN ESTABLISHED.

(3) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "EPA" MEANS THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

(b) "FEDERAL EMISSION REGULATIONS", ALSO KNOWN AS THE CLEAN POWER PLAN, 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, INCLUDING SPECIFICALLY 40 CFR PART 60 SUBPART TTTT.

(c) "STATE PLAN" MEANS A PLAN, OR PORTION OF A PLAN, WHETHER OR NOT INCORPORATED INTO THE STATE IMPLEMENTATION PLAN OR ADOPTED AS A STATE-ONLY RULE, TO ESTABLISH AND ENFORCE IN COLORADO THE FEDERAL EMISSION REGULATIONS THAT THE COMMISSION MAY ADOPT TO IMPLEMENT COLORADO’S OBLIGATIONS UNDER THE REGULATIONS.

**SECTION 2.** In Colorado Revised Statutes, 25-7-133, amend (1) as follows:

25-7-133. Legislative review and approval of state implementation plans and rules - legislative declaration.

(1) (a) Notwithstanding any other provision of law but subject to subsection (7) of this section, by January 15 of each year the commission shall certify in a report to the chairperson of the legislative council in summary form any additions or changes to elements of the state
implementation plan adopted during the prior year that are to be submitted to the administrator for purposes of federal enforceability. Such report shall be written in plain, nontechnical language using words with common and everyday meaning that are understandable to the average reader. Copies of such the report shall be available to the public and shall be made available to each member of the general assembly. The provisions of This section shall does not apply to control measures and strategies that have been adopted and implemented by the enacting jurisdiction of a local unit of government if such the measures and strategies do not result in mandatory direct costs upon any entity other than the enacting jurisdiction.

(b) FOR PURPOSES OF THIS SECTION, "STATE IMPLEMENTATION PLAN" INCLUDES A STATE PLAN AS THAT TERM IS DEFINED IN SECTION 25-7-140 (3) (c).

SECTION 3. 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.