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".

The bill directs the air quality control commission (AQCC) to:

- Conduct a public input process necessary to make the initial submittal and thereby qualify for the 2-year extension without making any binding commitments in any way not required by the express provisions of the clean power plan, including to submit a state plan in the future;
- Consider specific factors in developing the state plan; and
- Submit a report, prepared jointly with the public utilities commission, to the general assembly that discusses the proposed state plan in connection with the factors.

Once the AQCC prepares a draft plan, it must submit it to the general assembly. The AQCC cannot submit the plan to the EPA unless the general assembly has approved it by adoption of a joint resolution. If a court stays the clean power plan or holds that it is invalid, implementation of the state plan must be suspended or terminated, as appropriate. The existing process for legislative review of state implementation plans is expanded to include a state plan as required by the clean power plan.

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 - initial submission - state plan - legislative declaration - definitions. (1) THE SHORT TITLE OF THIS SECTION IS THE "PRESERVE STATE CLEAN POWER PLAN OPTIONS ACT".

(2) Legislative declaration. The general assembly hereby:

(a) finds that:

(I) the EPA 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;

(II) these rules will have a major impact on Colorado's
ECONOMY BY REGULATING HOW ELECTRICITY IS PRODUCED, TRANSMITTED, DISTRIBUTED, AND CONSUMED WITHIN COLORADO;

(III) UNDER SECTION 111 (d) OF THE FEDERAL ACT, AND AS INCLUDED IN THE EPA'S RULES, STATES TAKE 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

(IV) IMPLEMENTING THE EPA'S RULES 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 THE PUBLIC, AFFECTED POWER GENERATORS, COLORADO RATEPAYERS, AND THE PUBLIC UTILITY COMMISSION AS THE STATE AGENCY MOST ABLE TO ADDRESS THOSE EFFECTS;

(b) DETERMINES THAT:

(I) DEVELOPMENT AND SUBMISSION OF A STATE PLAN, IN LIEU OF A FEDERAL PLAN, THAT APPROPRIATELY ADDRESSES THE INTERESTS OF THE STATE OF COLORADO AND ELECTRICITY CONSUMERS IS THE PREFERRED METHOD OF COMPLYING WITH THE FEDERAL EMISSION REGULATIONS;

(II) STATES ARE ENTITLED TO A TWO-YEAR EXTENSION OF THE REQUIREMENT TO SUBMIT A STATE PLAN, SO LONG AS THEY SUBMIT AN INITIAL SUBMISSION WITH AN EXTENSION REQUEST THAT MEETS THE REGULATORY REQUIREMENTS BY SEPTEMBER 6, 2016;

(III) THE EPA HAS MADE IT CLEAR IN REGULATORY LANGUAGE, FEDERAL REGISTER PREAMBLE DISCUSSION, WRITTEN GUIDANCE, AND PLEADINGS IN PENDING LITIGATION THAT THE REQUIREMENTS OF A SUFFICIENT INITIAL SUBMITTAL TO SECURE THE TWO-YEAR EXTENSION OF
THE DEADLINE TO SUBMIT A STATE PLAN UNTIL SEPTEMBER 6, 2018, DO
NOT INCLUDE A REQUIREMENT TO SUBMIT OR COMMIT TO A COMPLETE OR
EVEN PARTIAL STATE PLAN BEFORE SEPTEMBER 6, 2016;

(IV) IT IS IN THE INTEREST OF THE COLORADO TO:

(A) PRESERVE ITS OPTIONS RELATING TO IMPLEMENTING THE
FEDERAL EMISSION REGULATIONS WHILE THE VALIDITY OF THOSE
REGULATIONS IS BEING LITIGATED IN THE COURTS; AND

(B) NOT COMMIT TO ANY BINDING OBLIGATIONS BEFORE BEING
REQUIRED TO DO SO, PARTICULARLY WHEN THE STATE IS ENTITLED TO AN
EXTENSION OF ITS STATE PLAN SUBMITTAL DEADLINE; AND

(V) THE FEDERAL ENFORCEABILITY OF A STATE PLAN ONCE
SUBMITTED AND APPROVED BY THE EPA RENDERS THE PREMATURE
SUBMITTAL OF SUCH A STATE PLAN AN ABROGATION OF THE AUTHORITY
OF THE LEGISLATIVE AND EXECUTIVE BRANCHES TO CONTROL THE AFFAIRS
OF THE STATE OF COLORADO AND EFFECTS AN UNCONSTITUTIONAL
DELEGATION OF STATE AUTHORITY TO THE FEDERAL GOVERNMENT; AND

(c) DECLARES THAT THE GENERAL ASSEMBLY'S INTENT IN
ENACTING THIS SECTION IS TO ENSURE THAT THE STATE OF COLORADO
EXERCISES ITS RIGHT TO SECURE SUFFICIENT TIME FOR THE COMMISSION
TO RECEIVE INPUT FROM THE PUBLIC, Affected UTILITIES, RATEPAYERS,
AND THE PUBLIC UTILITIES COMMISSION WITH RESPECT TO A WIDE RANGE
OF STATE PLAN OPTIONS.

(3) Definitions. As used in this section, unless the context
OTHERWISE REQUIRES:

(a) "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.

(b) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

c) "EPA" MEANS THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

d) "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.

e) "FEDERAL PLAN" MEANS A PLAN TO ESTABLISH AND ENFORCE IN COLORADO THE FEDERAL EMISSION REGULATIONS THAT THE EPA MAY ADOPT TO IMPLEMENT COLORADO'S OBLIGATIONS UNDER THE REGULATIONS.

(f) "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.

(4) Initial submittal. The commission;

(a) SHALL:

(I) PROMPTLY INSTITUTE THE REQUIRED PUBLIC INPUT PROCESS CONTEMPLATED BY THE EPA FOR A STATE TO BE ENTITLED TO A TWO-YEAR EXTENSION PURSUANT TO 40 CFR 60.5765; AND

(II) PREPARE AND FILE AN INITIAL SUBMITTAL PURSUANT TO 40...
CFR 60.5765 BY JUNE 1, 2016, OR UPON THE GOVERNOR'S SIGNATURE;

(b) SHALL NOT, IN FILING THE INITIAL SUBMITTAL:

(I) MAKE ANY BINDING COMMITMENTS TO SUBMIT A STATE PLAN

in the future; or

(II) BIND COLORADO IN ANY WAY NOT REQUIRED BY THE EXPRESS

PROVISIONS OF 40 CFR 60.5765.

(5) Public input process. (a) FOR THE PURPOSE OF THE

COMMISSION'S ACTIVITIES AFTER FILING THE INITIAL SUBMITTAL, BEFORE

THE COMMISSION FINALIZES A STATE PLAN OR ANY OTHER COMMITMENT

TO THE FEDERAL GOVERNMENT RELATING TO THE FEDERAL EMISSION

REGULATIONS, THE COMMISSION SHALL REQUEST THE PARTICIPATION OF

THE PUBLIC UTILITIES COMMISSION, ITS DIRECTOR, OR ITS DESIGNATED

STAFF AND 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

DEVELOP THE PROPOSED STATE PLAN.

(b) IN DEVELOPING THE PROPOSED STATE PLAN, THE COMMISSION

SHALL CONSIDER THE FOLLOWING FACTORS:

(I) WHETHER IMPLEMENTATION OF THE PROPOSED STATE PLAN

WILL RESULT IN COMPLIANCE WITH THE FEDERAL EMISSION REGULATIONS;

(II) WHETHER IMPLEMENTATION OF THE PROPOSED STATE PLAN IS

FEASIBLE WITHOUT IMPAIRING THE RELIABILITY OF ELECTRIC UTILITY

SERVICE IN COLORADO;

(III) 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;

(IV) THE DEGREE TO WHICH THE PROPOSED STATE PLAN WILL
RESULT IN REDUCTIONS IN EMISSIONS OF AIR POLLUTANTS OTHER THAN
CARBON DIOXIDE;

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

(VI) 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;

(VII) WHETHER THE PROPOSED STATE PLAN PROMOTES
COLORADO’S ECONOMIC DEVELOPMENT;

(VIII) 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

(IX) 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.

(6) Coordinated assessment of impacts of state plan. A
COMMISSION DECISION ADOPTING THE PROPOSED STATE PLAN MUST BE
ACCOMPANIED BY A REPORT, PREPARED BY THE COMMISSION AND THE
PUBLIC UTILITIES COMMISSION, THAT ASSESSES THE EFFECTS OF THE
PROPOSED STATE PLAN RELATIVE TO THE FACTORS SET FORTH IN
SUBSECTION (5) OF THIS SECTION AND OTHER FACTORS DETERMINED BY
THE COMMISSION AND THE PUBLIC UTILITIES COMMISSION.

(7) Procedures for approval of proposed state plan by general
assembly. (a) NOT LATER THAN FIFTEEN DAYS AFTER THE COMMISSION’S
DEVELOPMENT OF A PROPOSED STATE PLAN PURSUANT TO SUBSECTION (5)
OF THIS SECTION, THE COMMISSION AND THE PUBLIC UTILITIES
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
SUBSECTION (6) OF THIS SECTION.

(b) 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.

(c) IF EITHER CHAMBER OF THE GENERAL ASSEMBLY FAILS TO
APPROVE THE JOINT RESOLUTION REGARDING SUBMISSION OF THE
PROPOSED STATE PLAN UNDER PARAGRAPH (b) OF THIS SUBSECTION (7),
THE DEPARTMENT MAY SUBMIT ONE REVISED VERSION OF THE PROPOSED
STATE PLAN TO THE COMMISSION FOR EVALUATION IN ACCORDANCE WITH
THIS SECTION. FOLLOWING THE COMMISSION’S ADOPTION OF THE REVISED
PROPOSED STATE PLAN, THE COMMISSION AND THE PUBLIC UTILITIES
COMMISSION SHALL JOINTLY SUBMIT THE REVISED PROPOSED STATE PLAN
TO THE GENERAL ASSEMBLY FOR APPROVAL IN ACCORDANCE WITH
PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (7).

(d) UPON APPROVAL OF THE PROPOSED STATE PLAN BY THE
GENERAL ASSEMBLY IN ACCORDANCE WITH PARAGRAPH (b) OF THIS SECTION, THE COMMISSION SHALL SUBMIT THE PROPOSED STATE PLAN TO THE EPA.

(e) Neither the department nor the 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 subsection (7).

(f) The approval by the General Assembly of submission of the state plan to the EPA pursuant to paragraph (b) of this subsection (7) 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.

(g) The approval process set forth in this section 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.

(8) 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 judicial review of the federal emission regulations. If the federal emission regulations are stayed 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. 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 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 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 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).

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.