A BILL FOR AN ACT

CONCERNING THE PROTECTION OF ELECTRIC UTILITY RATEPAYERS
FROM THE INCREASED COSTS ASSOCIATED WITH
IMPLEMENTATION OF REQUIREMENTS TO REGULATE CARBON
DIOXIDE EMISSIONS FROM EXISTING FOSSIL-FUEL-FIRED
ELECTRIC GENERATING UNITS.

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 directs the public utilities commission to create a ratepayer protection program, pursuant to which an electric utility's increased costs

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.
attributable to compliance with the federal environmental protection agency's regulations that limit carbon dioxide emissions from existing fossil-fuel-fired electric generating units are paid from a state fund rather than by the utility's customers. The fund is financed by appropriations from the stationary sources control fund.

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

SECTION 1. In Colorado Revised Statutes, add part 2 to article 8.7 of title 40 as follows:

PART 2

ELECTRIC RATEPAYER PROTECTION

40-8.7-201. Short title. The short title of this part 2 is the "Ratepayer Protection Act".

40-8.7-202. Legislative declaration. (1) The general assembly hereby:

(a) Finds that:

(I) The EPA has adopted rules under section 111 (d) of the federal "Clean Air 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) Although the governor and the department have committed to develop a state plan that will not adversely impact ratepayers, implementing the EPA's rules could affect the cost, reliability, and future improvement of electric service within the state of Colorado, and the department, as the agency responsible for developing the state plan, should bear the fiscal
IMPACT OF A STATE PLAN THAT EFFECTS A RATE INCREASE;
(b) DETERMINES THAT ELECTRIC UTILITY RATEPAYERS SHOULD BE
PROTECTED FROM THESE ADVERSE IMPACTS; AND
(c) DECLARES THAT THE GENERAL ASSEMBLY'S INTENT IN
ENACTING THIS PART 2 IS TO AUTHORIZE A PROGRAM THAT ALLOWS
ELECTRIC UTILITIES TO RECOVER THEIR COSTS ATTRIBUTABLE TO
COMPLIANCE WITH THE FEDERAL EMISSION REGULATIONS WITHOUT
IMPOSING THOSE COSTS ON ELECTRIC UTILITY RATEPAYERS.

40-8.7-203. Definitions. As used in this Part 2, unless the
context otherwise requires:
(1) "COMMISSION" means the Public Utilities Commission.
(2) "DEPARTMENT" means the Department of Public Health
and Environment.
(3) "EPA" means the Federal Environmental Protection
Agency.
(4) "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
"CLEAN AIR ACT", 42 U.S.C. SEC. 7401 ET SEQ., INCLUDING SPECIFICALLY
40 CFR PART 60 SUBPART TTTT, ALSO KNOWN AS THE CLEAN POWER
PLAN.
(5) "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.
(6) "FUND" means the ratepayer protection fund created
"State plan" means 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 Air Quality Control Commission may adopt to implement Colorado's obligations under the regulations.

40-8.7-204. Ratepayer protection. (1) On or before the effective date of any federal or state plan, the Commission, after consultation with affected utilities and after holding a hearing pursuant to Article 6 of this title, shall develop a program to implement this Part 2, including:

(a) Guidance for utilities regarding the allocation of compliance costs to customers;

(b) Procedures for the quarterly remittance to utilities of money from the fund; and

(c) An annual report to the Joint Budget Committee of the General Assembly by November 1 of each year that identifies the amount of money that is projected to be reported to the Commission in the succeeding state fiscal year pursuant to paragraph (b) of subsection (2) of this section.

(2) Each utility that, due to its compliance with the federal emission regulations, incurs increased costs that the utility is entitled to recover in full or in part shall:

(a) Separately state on each customer's remittance device:

(I) The amount of such costs that are allocated to the
CUSTOMER DURING THE BILLING PERIOD COVERED BY THE REMITTANCE
DEVICE; AND

(II) THAT THE CUSTOMER'S ALLOCATION IS PAID THROUGH THE
RATEPAYER PROTECTION PROGRAM CREATED BY THIS PART 2;

(b) REPORT THE AMOUNT TO THE COMMISSION; AND

(c) NOT CHARGE THE AMOUNT TO THE CUSTOMER.

(3) THE COMMISSION SHALL QUARTERLY REMIT FROM THE FUND TO
EACH UTILITY THAT REPORTS AN AMOUNT TO THE COMMISSION PURSUANT
TO PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION THE TOTAL OF
SUCH AMOUNTS REPORTED BY THAT UTILITY DURING THE PREVIOUS
QUARTER. IF THE AVAILABLE BALANCE IN THE FUND IS INSUFFICIENT TO
FULLY REMIT ALL AMOUNTS, THE COMMISSION SHALL:

(a) USE SO MUCH OF THE AVAILABLE BALANCE IN THE STATIONARY
SOURCES CONTROL FUND CREATED IN SECTION 25-7-114.7 (2) (b) (I),
C.R.S., AS IS NECESSARY TO FULLY REMIT ALL AMOUNTS; AND

(b) IF THE AVAILABLE BALANCE IS INSUFFICIENT, REDUCE ALL
REMITTANCES PRO RATA.

40-8.7-205. Fund created. (1) THE RATEPAYER PROTECTION
FUND IS HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS
OF MONEY APPROPRIATED TO THE FUND PURSUANT TO SECTION 40-8.7-206
(2). THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME
DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO
THE FUND.

(2) THE COMMISSION SHALL USE THE FUND ONLY TO:

(a) REMIT TO UTILITIES THE AMOUNTS REPORTED TO THE
COMMISSION AS SPECIFIED IN SECTION 40-8.7-204 (1) (b); AND

(b) COVER ITS DIRECT COSTS IN ADMINISTERING THE PROGRAM,
WHICH MUST NOT EXCEED THREE PERCENT OF THE AVERAGE ANNUAL
BALANCE OF THE FUND.

(c) Money in the fund is continuously Appropriated to the
Commission for these purposes.

40-8.7-206. Ratepayer impact analysis - appropriation.
(1) The Commission shall conduct and periodically update,
including during any utility rate-making hearing and
integrated resource planning proceeding, an economic analysis
of utilities' costs of compliance with the federal emission
regulations for the purpose of making the annual report to the
joint budget committee pursuant to section 40-8.7-204 (1) (c). The
Commission shall make specific findings regarding its
conclusions about the costs of compliance and whether its
current ratepayer impact analysis is accurate or must be
adjusted.

(2) The general assembly shall annually appropriate to
the fund sufficient money from the stationary sources control
fund created in section 25-7-114.7 (2) (b) (I), C.R.S., to enable the
Commission to make the remittances required by this section.

SECTION 2. In Colorado Revised Statutes, 25-7-114.7, amend
(2) (b) (I) as follows:

25-7-114.7. Emission fees - fund. (2) (b) (I) (A) The moneys
money collected pursuant to this section shall be remitted to the state
treasurer, who shall credit the same to the stationary sources control fund,
which fund is hereby created. From such fund, the general assembly shall
appropriate to the department of public health and environment, at least
annually, such moneys money as may be necessary to cover the division's
direct and indirect costs required to develop and administer the programs established pursuant to parts 1 to 4 and 10 of this article for the control of air pollution from stationary sources AND FOR THE PROGRAM ESTABLISHED IN PART 2 OF ARTICLE 8.7 OF TITLE 40, C.R.S. Any permit fee money not appropriated by the general assembly and any appropriated funds not spent by the division shall remain in the stationary sources control fund and shall not revert to the general fund of the state at the end of any fiscal year. Any such money shall be separately accounted for. All interest earned on money in the stationary sources control fund shall remain in the fund and shall not revert to the general fund or to any other fund.

(B) THE COMMISSION SHALL NOT INCREASE ANY FEE COLLECTED DUE TO THE ENACTMENT OF THE PROGRAM ESTABLISHED IN PART 2 OF ARTICLE 8.7 OF TITLE 40, C.R.S.

SECTION 3. In Colorado Revised Statutes, amend 40-8.7-101 as follows:

40-8.7-101. Short title. The short title of this article shall be known and may be cited as PART I IS THE "Low-income Energy Assistance Act".

SECTION 4. In Colorado Revised Statutes, 40-8.7-103, amend introductory portion and (1) as follows:

40-8.7-103. Definitions. As used in this article PART I, unless the context otherwise requires:

(1) "Alternative energy assistance program" means a program operated by a municipally owned electric and gas utility or cooperative electric association that is not part of the energy assistance program established pursuant to this article PART I.
SECTION 5. In Colorado Revised Statutes, 40-8.7-104, amend (1) and (2) as follows:

40-8.7-104. Energy assistance program - creation - energy assistance charge - rules. (1) There is hereby created the low-income energy assistance program to collect and disburse an optional energy assistance contribution in Colorado in accordance with this article PART 1.

(2) Except as otherwise provided in this article PART 1, every utility doing business in Colorado shall participate in the energy assistance program and shall provide the opportunity for utility customers to make an optional energy assistance contribution on the monthly remittance device on their utility billing statement beginning September 1, 2006. Each utility shall provide the opportunity for customers to donate the optional energy assistance contribution as provided in section 40-8.7-105 (2).

SECTION 6. In Colorado Revised Statutes, 40-8.7-106, amend (1) introductory portion, (2), and (3) (a) as follows:

40-8.7-106. Municipally owned gas, electric, and gas and electric utilities and cooperative electric associations. (1) If a municipally owned gas, electric, or gas and electric utility or a cooperative electric association operates an alternative energy assistance program to support its low-income customers with their home energy needs, then the governing body of the municipally owned gas, electric, or gas and electric utility or cooperative electric association may self-certify its alternative energy assistance program and, upon self-certification, shall have no obligations under this article PART 1. The municipally owned utility or cooperative electric association shall submit a statement to the
organization that such utility or cooperative electric association has an alternative energy assistance program. In order for such utility or cooperative electric association to self-certify, such alternative energy assistance program shall meet the following criteria:

(2) If the governing body of a municipally owned gas, electric, or gas and electric utility or a cooperative electric association determines that the service area of such utility or cooperative has a limited number of people who qualify for energy assistance, such utility or cooperative electric association may be exempt from the obligations of this article PART 1.

(3) If a municipally owned gas, electric, or gas and electric utility or cooperative electric association has not self-certified an alternative energy assistance program pursuant to subsection (1) of this section or has not exempted itself pursuant to subsection (2) of this section, such utility or cooperative electric association shall collect an optional energy assistance charge from its customers as provided in section 40-8.7-104 (1) and (2) or pursuant to a procedure approved by the governing municipal utility or cooperative, which procedure shall be designed to notify all customers at least twice each year of the option to contribute by means of a monthly energy assistance charge and shall provide a convenient means for customers to exercise that option. In such circumstances, the governing body of such utility or cooperative shall determine the disposition and delivery of the optional energy assistance charge that it collects on the following basis:

(a) The governing body may elect to deliver the optional charge that it collects to the organization for distribution in accordance with this article PART 1.
SECTION 7. In Colorado Revised Statutes, 40-8.7-107, amend (1) introductory portion and (3) as follows:

40-8.7-107. Disposition of money. (1) Each gas and electric utility shall transfer the moneys money from the energy assistance contributions collected under this article PART 1 to the organization on the following schedule:

(3) The organization shall pay the public utilities commission from the moneys money transferred to the organization pursuant to subsection (1) of this section for any administrative costs incurred pursuant to this article PART 1.

SECTION 8. In Colorado Revised Statutes, 40-8.7-108, amend (1) and (3) as follows:

40-8.7-108. Energy outreach Colorado - administration of the energy assistance charge. (1) The organization shall hold and administer all moneys money collected pursuant to this article PART 1 delivered to it by the utilities pursuant to section 40-8.7-107 in a separately identifiable account, which shall be restricted to the purposes set forth in this article PART 1. The organization shall maintain its books and records pertaining to the energy assistance contributions in accordance with generally accepted accounting principles and, in addition, shall maintain records adequate to identify the moneys money collected by each utility. If the organization commingles the moneys money collected and delivered with other assets of the organization for investment purposes, the organization shall maintain accurate accounts of the investment moneys money and shall credit or charge a pro rata portion of all investment earnings, gains, or losses to the account that holds the energy assistance charges.
(3) The organization shall, on an annual basis, develop a budget for the energy assistance program to determine the allocation of the energy assistance contributions collected under this article PART 1.

SECTION 9. In Colorado Revised Statutes, 40-8.5-103.5, amend (4) (a) introductory portion as follows:

40-8.5-103.5. Commission created - duties. (4) (a) No later than December 15, 2008, the commission shall make recommendations to the governor, the speaker of the house of representatives, and the president of the senate regarding any necessary legislative changes to improve the effectiveness and efficiency of the state's low-income energy assistance services provided pursuant to PART 1 of article 8.7 of this title and section 26-1-109, C.R.S. With assistance and consultation from representatives from two counties chosen by the executive director, or his or her designee, of Colorado counties, incorporated, or its successor organization, the commission shall assess the strengths and weaknesses of the current service delivery systems within the state and shall review effective service delivery systems and models of other states that may be appropriate for utilization in this state. The commission's recommendations shall build upon the positive aspects of the current service delivery system, including, but not limited to, the effective and efficient management of current funding to maximize assistance to the state's low-income population, infrastructure that is already in place to efficiently distribute benefits to eligible clients in a timely manner, and coordination already established between energy conservation measures and direct assistance. The commission's recommendations shall include, but shall not be limited to:

SECTION 10. Applicability. This act applies to conduct
occurring on or after the effective date of this act.

SECTION 11. 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.