

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 15-0936.01 Duane Gall x4335

SENATE BILL 15-258

SENATE SPONSORSHIP

Cooke and Sonnenberg,

HOUSE SPONSORSHIP

Dore,

Senate Committees

Agriculture, Natural Resources, & Energy
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT FOR COORDINATED REVIEW PRIOR TO**
102 **THE ADOPTION OF A STATE PLAN FOR THE REDUCTION OF**
103 **CARBON DIOXIDE EMISSIONS BY COLORADO ELECTRIC**
104 **UTILITIES, AND, IN CONNECTION THEREWITH, ENACTING THE**
105 **"COLORADO ELECTRIC CONSUMERS' PROTECTION ACT" AND**
106 **MAKING AN APPROPRIATION.**

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/bills summaries>.)

The bill requires that, before the Colorado air quality control

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.

SENATE
Amended 2nd Reading
April 22, 2015

commission adopts a state plan for the reduction of carbon dioxide 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.

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

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

4 PART 3

5 COORDINATED REVIEW OF CARBON DIOXIDE

6 EMISSION REDUCTION MEASURES

7 **40-3.2-301. Short title.** THIS PART 3 SHALL BE KNOWN AND MAY
8 BE CITED AS THE "COLORADO ELECTRIC CONSUMERS' PROTECTION ACT".

9 **40-3.2-302. Legislative declaration - purpose.** (1) THE GENERAL
10 ASSEMBLY FINDS AND DETERMINES THAT:

11 (a) THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
12 HAS PROPOSED EMISSION GUIDELINES FOR THE REGULATION OF CARBON
13 DIOXIDE EMISSIONS FROM EXISTING FOSSIL FUEL-FIRED ELECTRIC
14 GENERATING UNITS UNDER SECTION 111 (d) OF THE FEDERAL ACT;

15 (b) THESE PROPOSED GUIDELINES WILL HAVE A MAJOR IMPACT ON
16 THE ECONOMY OF COLORADO BY REGULATING HOW ELECTRICITY IS
17 PRODUCED, TRANSMITTED, DISTRIBUTED, AND CONSUMED WITHIN
18 COLORADO;

19 (c) UNDER SECTION 111 (d) OF THE FEDERAL ACT, AND AS

1 INCLUDED IN THE EPA'S PROPOSED EMISSION GUIDELINES, STATES TAKE
2 THE LEAD ROLE IN DEVELOPING PLANS FOR THE ESTABLISHMENT AND
3 IMPLEMENTATION OF PERFORMANCE STANDARDS FOR REDUCING CARBON
4 DIOXIDE EMISSIONS FROM EXISTING FOSSIL FUEL-FIRED ELECTRIC
5 GENERATING UNITS;

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

13 (e) DEVELOPMENT AND SUBMISSION OF A STATE PLAN THAT
14 APPROPRIATELY ADDRESSES THE INTERESTS OF THE STATE OF COLORADO
15 ANDELECTRICITY CONSUMERS IS THE PREFERRED METHOD OF COMPLYING
16 WITH THE FEDERAL EMISSION REGULATIONS.

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

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

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

1 THE EPA.

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

10 **40-3.2-303. Definitions.** AS USED IN THIS PART 3, UNLESS THE
11 CONTEXT OTHERWISE REQUIRES:

12 (1) "COVERED ELECTRIC GENERATING UNIT" MEANS AN EXISTING
13 FOSSIL FUEL-FIRED ELECTRIC GENERATING UNIT WITHIN THE STATE OF
14 COLORADO THAT IS SUBJECT TO REGULATION UNDER THE FEDERAL
15 EMISSION REGULATIONS.

16 (2) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF
17 PUBLIC HEALTH AND ENVIRONMENT.

18 (3) "EPA" MEANS THE UNITED STATES ENVIRONMENTAL
19 PROTECTION AGENCY.

20 (4) "FEDERAL ACT" MEANS THE FEDERAL "CLEAN AIR ACT", 42
21 U.S.C. SEC. 7401, ET SEQ., AS AMENDED.

22 (5) "FEDERAL EMISSION REGULATIONS" MEANS ANY FINAL RULES,
23 REGULATIONS, GUIDELINES, OR OTHER REQUIREMENTS THAT THE EPA
24 MAY ADOPT FOR REGULATING CARBON DIOXIDE EMISSIONS FROM COVERED
25 ELECTRIC GENERATING UNITS UNDER SECTION 111 (d) OF THE FEDERAL
26 ACT.

27 (6) "FEDERAL PLAN" MEANS A FEDERAL IMPLEMENTATION PLAN

1 ISSUED BY THE EPA PURSUANT TO THE FEDERAL ACT.

2 (7) "STATE ACT" MEANS THE "COLORADO AIR POLLUTION
3 PREVENTION AND CONTROL ACT", ARTICLE 7 OF TITLE 25, C.R.S.

4 (8) "STATE PLAN" MEANS ANY PLAN, WHETHER OR NOT
5 INCORPORATED INTO THE STATE IMPLEMENTATION PLAN OR ADOPTED AS
6 A STATE-ONLY RULE, TO ESTABLISH AND ENFORCE CARBON DIOXIDE
7 EMISSION CONTROL REGULATIONS THAT THE COLORADO AIR QUALITY
8 CONTROL COMMISSION MAY ADOPT TO IMPLEMENT THE OBLIGATIONS OF
9 COLORADO UNDER THE FEDERAL EMISSION REGULATIONS.

10 **40-3.2-304. Carbon dioxide emission plans - review by**
11 **commission.** (1) THE COLORADO AIR QUALITY CONTROL COMMISSION
12 SHALL NOT SUBMIT A STATE PLAN TO THE EPA PURSUANT TO THE FEDERAL
13 EMISSION REGULATIONS UNLESS THE PROPOSED STATE PLAN IS FIRST
14 REVIEWED BY THE COMMISSION. THE COLORADO AIR QUALITY CONTROL
15 COMMISSION SHALL SUBMIT ANY PROPOSED STATE PLAN TO THE
16 COMMISSION BY A DATE THAT REASONABLY ALLOWS SUFFICIENT TIME FOR
17 THE COMMISSION AND THE GENERAL ASSEMBLY TO REVIEW THE PROPOSED
18 STATE PLAN AND ACT ON IT AS REQUIRED BY THIS PART 3.

19 (2) FOR THE LIMITED PURPOSES OF THE COMMISSION'S REVIEW OF
20 THE PROPOSED STATE PLAN, THE COMMISSION SHALL REQUEST THE
21 PARTICIPATION OF ALL ELECTRIC GENERATION AND DISTRIBUTION
22 UTILITIES WITHIN COLORADO, INCLUDING INVESTOR-OWNED UTILITIES,
23 COOPERATIVE ELECTRIC ASSOCIATIONS, GENERATION AND TRANSMISSION
24 ASSOCIATIONS, AND MUNICIPAL UTILITIES, AND MAY ALSO REQUEST THE
25 PARTICIPATION OF THE DEPARTMENT AND SUCH OTHER PERSONS OR
26 ENTITIES AS THE COMMISSION MAY FIND NECESSARY OR HELPFUL TO FULLY
27 EVALUATE THE PROPOSED STATE PLAN. OTHER THAN WITH RESPECT TO

1 INVESTOR-OWNED ELECTRIC UTILITIES, THE VOLUNTARY PARTICIPATION
2 IN THE COMMISSION PROCEEDINGS UNDER SECTION 40-3.2-305 BY ANY
3 OTHER ELECTRIC UTILITY, PERSON, OR ENTITY DOES NOT ESTABLISH OR
4 EXTEND THE COMMISSION'S JURISDICTION OVER SUCH ELECTRIC UTILITY,
5 PERSON, OR ENTITY FOR ANY OTHER PURPOSE, INCLUDING RESOURCE
6 PLANNING OR IMPLEMENTATION OF A FINAL APPROVED STATE PLAN.

7 **40-3.2-305. Review of plan by commission - procedure.**

8 (1) THE COMMISSION SHALL COMMENCE A PROCEEDING TO EVALUATE A
9 PROPOSED STATE PLAN AS REQUIRED BY SECTION 40-3.2-304
10 SUBSTANTIALLY IN ACCORDANCE WITH SECTION 40-6-111.

11 (2) IN EVALUATING THE PROPOSED STATE PLAN, THE COMMISSION
12 SHALL CONSIDER THE FOLLOWING FACTORS:

13 (a) WHETHER IMPLEMENTATION OF THE PROPOSED STATE PLAN
14 WILL RESULT IN COMPLIANCE WITH THE FEDERAL EMISSION REGULATIONS;

15 (b) WHETHER IMPLEMENTATION OF THE PROPOSED STATE PLAN IS
16 FEASIBLE WITHOUT IMPAIRING THE RELIABILITY OF ELECTRIC UTILITY
17 SERVICE IN COLORADO;

18 (c) WHETHER THE PROPOSED STATE PLAN IS THE LEAST EXPENSIVE
19 ALTERNATIVE TO MEET THE FEDERAL EMISSION REGULATIONS WITHOUT
20 IMPAIRING THE RELIABILITY OF ELECTRIC UTILITY SERVICE IN COLORADO;

21 (d) THE DEGREE TO WHICH THE PROPOSED STATE PLAN WILL
22 RESULT IN REDUCTIONS IN OTHER AIR POLLUTANT EMISSIONS;

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

26 (f) THE DEGREE TO WHICH THE PROPOSED STATE PLAN ENHANCES
27 THE ABILITY OF COLORADO ELECTRIC UTILITIES TO MEET STATE OR

1 FEDERAL CLEAN ENERGY REQUIREMENTS, RELIES ON ENERGY EFFICIENCY,
2 OR RELIES ON OTHER LOW-EMITTING RESOURCES;

3 (g) WHETHER THE PROPOSED STATE PLAN PROMOTES COLORADO
4 ECONOMIC DEVELOPMENT;

5 (h) WHETHER THE PROPOSED STATE PLAN IS LIKELY TO HELP
6 PROTECT COLORADO CONSUMERS FROM FUTURE COST INCREASES,
7 INCLUDING COSTS ASSOCIATED WITH REASONABLY FORESEEABLE EMISSION
8 REDUCTION REQUIREMENTS; AND

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

13 **40-3.2-306. Coordinated assessment of impacts of state plan.**

14 ANY COMMISSION DECISION FOLLOWING A PROCEEDING TO EVALUATE THE
15 PROPOSED STATE PLAN MUST BE ACCOMPANIED BY A REPORT, PREPARED
16 BY THE COMMISSION AND THE DEPARTMENT, THAT ASSESSES THE EFFECTS
17 OF THE PROPOSED STATE PLAN RELATIVE TO THE FACTORS SET FORTH IN
18 SECTION 40-3.2-305 AND SUCH OTHER FACTORS AS DETERMINED BY THE
19 COMMISSION AND THE DEPARTMENT.

20 **40-3.2-307. Procedures for approval of proposed state plan by**

21 **general assembly.** (1) NOT LATER THAN FIFTEEN DAYS AFTER THE
22 COMMISSION'S EVALUATION OF A PROPOSED STATE PLAN PURSUANT TO
23 SECTION 40-3.2-304, THE COMMISSION AND THE COLORADO AIR QUALITY
24 CONTROL COMMISSION SHALL JOINTLY TRANSMIT TO EACH CHAMBER OF
25 THE GENERAL ASSEMBLY A COPY OF THE PROPOSED STATE PLAN, THE
26 COMMISSION'S DECISION EVALUATING THE PROPOSED STATE PLAN, AND
27 THE ACCOMPANYING REPORT DEVELOPED IN ACCORDANCE WITH SECTION

1 40-3.2-306.

2 (2) UPON RECEIVING THE PROPOSED STATE PLAN, COMMISSION
3 DECISION, AND ACCOMPANYING REPORT, EACH CHAMBER OF THE GENERAL
4 ASSEMBLY SHALL VOTE ON A JOINT RESOLUTION TO APPROVE SUBMISSION
5 OF THE PROPOSED STATE PLAN TO THE EPA. THE JOINT RESOLUTION SHALL
6 BE DEEMED APPROVED BY THE GENERAL ASSEMBLY IF A MAJORITY OF
7 EACH CHAMBER OF THE GENERAL ASSEMBLY VOTES IN FAVOR OF THE JOINT
8 RESOLUTION APPROVING SUBMISSION OF THE PROPOSED STATE PLAN.

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

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

24 == ==

25 (5) NEITHER THE DEPARTMENT NOR THE COLORADO AIR QUALITY
26 CONTROL COMMISSION SHALL SUBMIT ANY STATE PLAN TO THE EPA IF A
27 JOINT RESOLUTION APPROVING THE STATE PLAN HAS NOT BEEN PASSED BY

1 BOTH CHAMBERS OF THE GENERAL ASSEMBLY IN ACCORDANCE WITH THIS
2 SECTION.

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

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

13 **40-3.2-308. State plan dependent on federal emission**
14 **regulations.** NOTWITHSTANDING APPROVAL BY THE GENERAL ASSEMBLY
15 OF SUBMISSION OF A PROPOSED STATE PLAN TO THE EPA OR APPROVAL OF
16 A FINAL STATE PLAN, FURTHER ACTION BY THE DEPARTMENT AND THE
17 COMMISSION TO IMPLEMENT OR ENFORCE THE FINAL APPROVED STATE
18 PLAN OR ANY FEDERAL PLAN IS DEPENDENT UPON THE FINAL ADOPTION OF
19 THE FEDERAL EMISSION REGULATIONS. IF THE FEDERAL EMISSION
20 REGULATIONS ARE NOT ADOPTED, OR ARE ADOPTED AND SUBSEQUENTLY
21 SUSPENDED OR HELD TO BE CONTRARY TO LAW, THE DEPARTMENT AND
22 THE COMMISSION SHALL SUSPEND OR TERMINATE, AS APPROPRIATE,
23 FURTHER ACTION TO IMPLEMENT OR ENFORCE THE STATE PLAN OR THE
24 FEDERAL PLAN, AND THE STATE PLAN OR FEDERAL PLAN HAS NO FURTHER
25 FORCE OR EFFECT CONSISTENT WITH THE VALIDITY OF THE FEDERAL
26 EMISSION REGULATIONS.

27 **SECTION 2. Appropriation.** For the 2015-16 state fiscal year.

1 \$112,083 is appropriated to the department of public health and
2 environment for use by the air pollution control division. This
3 appropriation consists of \$86,304 from the general fund and \$25,779
4 from the stationary sources control fund created in section 25-7-114.7 (2)
5 (b) (I), C.R.S., and is based on an assumption that the division will
6 require an additional 1.1 FTE. To implement this act, the department may
7 use this appropriation as follows:

8 (a) \$93,058, which consists of \$86,304 General Fund and \$6,754
9 cash funds, for personal services related to stationary sources, which
10 amount is based on an assumption that the division will require an
11 additional 1.1 FTE;

12 (b) \$4,848 cash funds for operating expenses related to stationary
13 sources; and

14 (c) \$14,177 cash funds for the purchase of legal services.

15 (2) For the 2015-16 state fiscal year, \$14,177 is appropriated to
16 the department of law. This appropriation is from reappropriated funds
17 received from the department of public health and environment under
18 paragraph (c) of subsection (1) of this section. To implement this act, the
19 department of law may use this appropriation to provide legal services for
20 the department of public health and environment.

21 (3) For the 2015-16 state fiscal year, \$200,000 is appropriated to
22 the department of regulatory agencies. This appropriation is from the
23 fixed utility fund created in section 40-2-114, C.R.S. To implement this
24 act, the department of regulatory agencies may use this appropriation for
25 personal services.

26 **SECTION 3. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.