

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-1122.01 Thomas Morris x4218

SENATE BILL 16-157

SENATE SPONSORSHIP

Cooke and Sonnenberg,

HOUSE SPONSORSHIP

Dore,

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 CONCERNING MANAGEMENT OF THE PROCESS OF RESPONDING TO THE
102 FEDERAL ENVIRONMENTAL PROTECTION AGENCY'S RULES FOR
103 THE REGULATION OF CARBON DIOXIDE EMISSIONS FROM
104 ELECTRIC GENERATING UNITS IN A MANNER THAT MAXIMIZES
105 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

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.

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.

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

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

4 **25-7-140. Clean power plan - state plan - legislative**
5 **declaration - definitions.** (1) **Legislative declaration.** THE GENERAL
6 ASSEMBLY HEREBY:

7 (a) FINDS THAT:

8 (I) THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
9 HAS ADOPTED RULES UNDER SECTION 111(d) OF THE FEDERAL ACT THAT
10 DIRECT STATES TO REGULATE CARBON DIOXIDE EMISSIONS FROM EXISTING
11 FOSSIL-FUEL-FIRED ELECTRIC GENERATING UNITS; AND

12 (II) ON FEBRUARY 9, 2016, BASED ON A FINDING THAT
13 IRREPARABLE HARM WOULD RESULT IF A STAY WAS NOT GRANTED, THE
14 SUPREME COURT OF THE UNITED STATES GRANTED A STAY OF EPA'S
15 111(d) RULE THROUGH THE COMPLETION OF PROCEEDINGS IN BOTH THE
16 UNITED STATES COURT OF APPEALS FOR THE D.C. CIRCUIT AND THE
17 SUPREME COURT OF THE UNITED STATES;

1 (b) DETERMINES THAT:

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

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

15 (c) DECLARES THAT:

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

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

26 (2) **Effect of stay.** THE COMMISSION AND THE DIVISION SHALL
27 SUSPEND ALL ACTIVITIES RELATING TO IMPLEMENTING THE FEDERAL

1 EMISSION REGULATIONS UNTIL THE UNITED STATES SUPREME COURT'S
2 STAY HAS BEEN LIFTED AND A NEW DEADLINE FOR THE SUBMISSION OF
3 STATE PLANS HAS BEEN ESTABLISHED.

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

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

8 (b) "FEDERAL EMISSION REGULATIONS", ALSO KNOWN AS THE
9 CLEAN POWER PLAN, MEANS ANY FINAL RULES, REGULATIONS, GUIDELINES,
10 OR OTHER REQUIREMENTS THAT THE EPA MAY ADOPT FOR REGULATING
11 CARBON DIOXIDE EMISSIONS FROM COVERED ELECTRIC GENERATING UNITS
12 UNDER SECTION 111(d) OF THE FEDERAL ACT, INCLUDING SPECIFICALLY 40
13 CFR PART 60 SUBPART TTTT.

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

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

22 **25-7-133. Legislative review and approval of state**
23 **implementation plans and rules - legislative declaration.**

24 (1) (a) Notwithstanding any other provision of law but subject to
25 subsection (7) of this section, by January 15 of each year the commission
26 shall certify in a report to the chairperson of the legislative council in
27 summary form any additions or changes to elements of the state

1 implementation plan adopted during the prior year that are to be
2 submitted to the administrator for purposes of federal enforceability. ~~Such~~
3 THE report shall be written in plain, nontechnical language using words
4 with common and everyday meaning that are understandable to the
5 average reader. Copies of ~~such~~ THE report shall be available to the public
6 and shall be made available to each member of the general assembly. ~~The~~
7 ~~provisions of~~ This section shall DOES not apply to control measures and
8 strategies that have been adopted and implemented by the enacting
9 jurisdiction of a local unit of government if ~~such~~ THE measures and
10 strategies do not result in mandatory direct costs upon any entity other
11 than the enacting jurisdiction.

12 (b) FOR PURPOSES OF THIS SECTION, "STATE IMPLEMENTATION
13 PLAN" INCLUDES A STATE PLAN AS THAT TERM IS DEFINED IN SECTION
14 25-7-140 (3) (c).

15 **SECTION 3. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.