

Stricken language would be deleted from and underlined language would be added to present law.
Act 639 of the Regular Session

State of Arkansas
93rd General Assembly
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As Engrossed: S1/26/21 S3/9/21

A Bill

SENATE BILL 65

By: Senator B. Ballinger

By: Representative Beck

For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS LAW REGARDING STATE EMISSION
PLANS FOR FOSSIL-FUEL-FIRED ELECTRIC GENERATING
UNITS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND ARKANSAS LAW REGARDING STATE
EMISSION PLANS FOR FOSSIL-FUEL-FIRED
ELECTRIC GENERATING UNITS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 8-3-201(b)(2), concerning the purpose of the subchapter related to the review of the state emission plans, is amended to read as follows:

(2) The state plan is reviewed through a transparent public process that assesses the full impact of the state plan on rates, reliability, and employment, ~~and manufacturing greenhouse gas leakage.~~

SECTION 2. Arkansas Code § 8-3-205 is amended to read as follows:

8-3-205. Assessing effects of state plan.

(a) Before ~~completing~~ seeking public comment on a proposed state plan for regulating carbon dioxide emissions from covered electric generating units or any permit amendment, rule amendment, or administrative order necessary to implement a state plan for regulating carbon dioxide emissions from covered electric generating units, the Division of Environmental Quality shall prepare a report that takes into account the factors specified in § 8-



4-312 and the Clean Air Act, 42 U.S.C. § 7401 et seq., as applicable.

(b)(1) In addition to the report specified in subsection (a) of this section, the division shall coordinate with the Arkansas Public Service Commission in the preparation of ~~a report~~ both initial and annual reports that ~~assesses~~ assess the effects of the state plan on the electric power sector, including without limitation:

(A) The ability of the state to provide affordable electricity through diversified sources of electricity generation;

(B) The type and amount of electric generating capacity within the state that is likely to withdraw from the state or switch to another fuel;

(C) Stranded investment in electric generating and transmission capacity and other assets and infrastructure;

(D) Potential risks to electric reliability within the state, including without limitation resource adequacy risks, transmission constraints, and natural gas supply and transmission adequacy; and

(E)(i) The amount by which retail electricity and any replacement fuel prices within the state are forecast to increase.

(ii) A rate impact assessment shall consider nonfuel costs, including generation, transmission, distribution, surcharges for renewable energy and energy efficiency, capital investment, upgrades to meet environmental requirements, utility profits, financing costs for new investments, unappreciated capital assets retired prematurely, and other nonfuel costs and surcharges, and the amount of funds contributed from all in-state taxpayers to local, state, and federal subsidies, grants, and credits to fund in-state electric generation sources, electric storage, and energy efficiency.

(2) The division shall further coordinate with the Arkansas Economic Development Commission in the preparation of ~~a report~~ both initial and annual reports that ~~assesses~~ assess the effects of the state plan on the electricity consumers within the state, including without limitation:

(A) Disproportionate impacts of electricity and other replacement energy price increases on middle-income and lower-income households;

(B) Employment within the state, including without limitation direct and indirect employment effects and jobs potentially lost

within affected sectors of the state's economy;

(C) Economic development within the state, including without limitation effects on manufacturing, commercial, and other sectors of the state's economy;

(D) The competitive position of the state in relation to neighboring states and other economic competitors; and

(E) State and local governments, including without limitation potential impacts resulting from changes in tax revenues and higher government outlays for electric service.

(c) The initial reports required by this section shall be included ~~with any petition filed by the division to initiate rulemaking for rules that~~ in the public record for any permit amendment, rule amendment, or administrative order proposed to implement a state plan for regulating carbon dioxide emissions from covered electric generating units.

(d) Beginning one (1) year after the initial compliance date specified in the state plan and each year thereafter, the division, in coordination with the Arkansas Public Service Commission and the Arkansas Economic Development Commission, shall submit the annual reports required under subsection (b) of this section to the Legislative Council.

SECTION 3. Arkansas Code § 8-3-207(a), concerning procedures for approval of the state plan, is amended to read as follows:

(a) ~~Before~~ After the conclusion of the public comment period under § 8-4-317 and before transmitting a state plan to the Governor for submission of the state plan to the United States Environmental Protection Agency, the Division of Environmental Quality shall transmit to the cochairs of the Legislative Council a copy of the state plan and the accompanying ~~report~~ reports developed under § 8-3-205.

SECTION 4. Arkansas Code § 8-3-207(d), concerning procedures for approval of the state plan, is amended to read as follows:

(d) Notwithstanding the provisions of this subchapter, in the absence of legislative approval under subsection (b) of this section, the Governor may direct the submission of a state plan to the United States Environmental Protection Agency if, in his or her judgment:

(1) Sufficient time has passed for the Legislative Council to

consider a state plan submitted by the division for legislative approval;

(2) Further delay would result in the failure to submit a state plan by the relevant deadline for submission; and

(3) Failure to submit a state plan would ~~likely~~ result in the imposition of a federal implementation plan.

SECTION 5. Arkansas Code § 8-3-208 is amended to read as follows:

8-3-208. ~~Feasibility study~~ Rate and reliability safety valve.

(a) If a state plan approved under this subchapter would result in a significant increase in the total electric or natural gas bill annually for any customer class as determined by the Arkansas Public Service Commission, the Division of Environmental Quality shall ~~prepare a feasibility study to determine whether:~~

~~(1) An alternative approach is consistent with the Clean Air Act, 42 U.S.C. § 7401 et seq.; or~~

~~(2) The pursuit of implementing an alternative approach is likely to result in the imposition of a federal plan initiate development of a revised state plan that reduces the financial impacts to any customer class as determined under § 8-3-205 in accordance with the procedures outlined in § 8-4-317.~~

(b) The state plan previously approved by the United States Environmental Protection Agency shall remain in effect while the revised state plan required under subsection (a) of this section is being developed, approved by the Legislative Council, and submitted by the Governor to the United States Environmental Protection Agency and until the revised state plan is approved by the United States Environmental Protection Agency.

SECTION 6. Arkansas Code § 8-3-209 is repealed.

~~8-3-209. Waiver of review and approval procedures for emissions plans.~~

~~(a) The Division of Environmental Quality may seek a waiver of review and approval procedures for emissions plans from the Legislative Council if the division determines that final federal emission guidelines do not require any one (1) or more of the following:~~

~~(1) Shifting generation from electric generating units powered by one fuel type to another fuel type;~~

~~(2) Closing any fossil fuel fired electric generating unit; or~~

~~(3) Imposing a statewide greenhouse gas goal or other statewide greenhouse gas emissions limitation.~~

~~(b) A request to the Legislative Council under subsection (a) of this section shall include an explanation of how the final emission guidelines for the regulation of carbon dioxide emissions from existing fossil fuel-fired electric generating units under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411, do not require any of the factors in subsection (a) of this section.~~

~~(c) The division shall not seek a waiver under subsection (a) of this section until the United States Environmental Protection Agency promulgates emission guidelines for the regulation of carbon dioxide emissions from existing fossil fuel-fired electric generating units under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d).~~

~~(d) An affirmative majority vote of the Legislative Council is required to grant a waiver of review and approval procedures for a state plan.~~

~~(e) If the Legislative Council grants a waiver under this section, then all requirements in §§ 8-3-203 and 8-3-205—8-3-207 are waived.~~

~~(f) If the Legislative Council grants a waiver under this section, the division may submit a state plan to the United States Environmental Protection Agency.~~

/s/B. Ballinger

APPROVED: 4/12/21