

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas *As Engrossed: S2/4/15 S2/9/15 S2/19/15 S2/26/15*

90th General Assembly

# A Bill

Regular Session, 2015

SENATE BILL 183

By: Senators E. Williams, Files, Caldwell, E. Cheatham, A. Clark, Collins-Smith, J. Cooper, Hester, Hickey, Irvin, B. Johnson, B. King, B. Pierce, Rapert, Rice, G. Stubblefield, J. Woods

By: Representatives Ballinger, Baine, Beck, Bell, Bentley, Bragg, Brown, Vines, C. Douglas, D. Douglas, M.J. Gray, M. Gray, Ladyman, Lemons, McElroy, McNair, Ratliff, Richmond, Sullivan, Vaught, Womack, Copeland, Dotson, Gossage, *Sorvillo, Baltz, Branscum, Lundstrum, Talley*

## For An Act To Be Entitled

AN ACT TO CREATE PROCEDURES FOR OVERSIGHT OF FOSSIL-FUEL-FIRED ELECTRIC GENERATING UNITS; TO REQUIRE THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY TO PERFORM STUDIES RELATED TO A STATE PLAN TO REGULATE CARBON DIOXIDE EMISSIONS; TO CREATE PROCEDURES FOR APPROVAL OF THE STATE PLAN BY THE LEGISLATIVE COUNCIL; AND FOR OTHER PURPOSES.

## Subtitle

TO CREATE PROCEDURES FOR OVERSIGHT OF FOSSIL-FUEL-FIRED ELECTRIC GENERATING UNITS; TO REGULATE CARBON DIOXIDE EMISSIONS; AND TO CREATE PROCEDURES FOR APPROVAL OF THE STATE PLAN BY THE LEGISLATIVE COUNCIL.

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

SECTION 1. Arkansas Code Title 8, Chapter 3, is amended to add an additional subchapter to read as follows:

Subchapter 2 – State Emission Plans – Procedures – Approval

8-3-201. Findings – Purpose.



(a) The General Assembly finds that:

(1) The United States Environmental Protection Agency has proposed emission guidelines for the regulation of carbon dioxide emissions from existing fossil-fuel-fired electric generating units under Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411;

(2) The proposed guidelines will have a major impact on the economy of Arkansas by regulating how electricity is produced, transmitted, distributed, and consumed within the state;

(3) The United States Environmental Protection Agency requires states to take the lead role in the regulation of existing fossil-fuel-fired electric generating units under Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411, by developing state plans for the establishment and implementation of performance standards for reducing carbon dioxide emissions from fossil-fuel-fired electric generating units;

(4) The role of the United States Environmental Protection Agency is limited to establishing federal emission guidelines that assist the states in the development of their state plans to regulate carbon dioxide emissions from existing fossil-fuel-fired electric generating units and, in establishing federal emission guidelines, the United States Environmental Protection Agency must defer to the states regarding methods for regulating fossil-fuel-fired electric generating units within their jurisdictions; and

(5) This subchapter expresses the intent of the General Assembly to exercise the powers of the General Assembly under Arkansas Constitution, Article 5, § 42 to:

(A) Review and approve state agency rules;

(B) Ensure rules become effective only after review and approval by the legislative committee charged with review of the rules; and

(C) Review rules during the interim or a regular, special, or fiscal session of the General Assembly.

(b) The purpose of this subchapter is to ensure that:

(1) Before the submission of a state plan to the United States Environmental Protection Agency, the regulations of the Arkansas Pollution Control and Ecology Commission that implement the state plan are reviewed and approved by the General Assembly through the Legislative Council consistent with Arkansas Constitution, Article 5, § 42 and any laws promulgated pursuant to Arkansas Constitution, Article 5, § 42; and

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

(c) This subchapter does not create a private right of action for enforcement purposes.

8-3-202. Definitions.

As used in this subchapter:

(1) “Covered electric generating unit” means an existing fossil-fuel-fired electric generating unit within the state that is subject to regulation under federal emission guidelines;

(2) “Federal emission guidelines” means a final rule, regulation, guideline, or other requirement that the United States Environmental Protection Agency may adopt for regulating carbon dioxide emissions from covered electric generating units under Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411; and

(3) “State plan” means a plan to establish and enforce carbon dioxide emission control measures that the Arkansas Department of Environmental Quality may adopt to implement the obligations of the state under the federal emission guidelines.

8-3-203. State plan preferred – State plan dependent on federal emission guidelines.

(a)(1) This subchapter does not require the Arkansas Department of Environmental Quality to develop a state plan to regulate carbon dioxide emissions from existing fossil-fuel-fired electric generating units under Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411.

(2) However, submission of a state plan is the preferred method of compliance with federal emission guidelines.

(b)(1) Notwithstanding approval by the Legislative Council of submission of a state plan to the United States Environmental Protection Agency or submission by the Governor of a state plan under § 8-3-207, further action by a state agency to implement or enforce a final, approved state plan is dependent upon the final adoption of the federal emission guidelines.

(2) If the federal emission guidelines are not adopted or are adopted and subsequently suspended or held to be contrary to law, a state

agency shall suspend or terminate, as appropriate, further action to implement or enforce the state plan.

8-3-204. Appeal of state plan – Adjudicatory process.

(a) If the Arkansas Department of Environmental Quality proposes to finalize a state plan submittal for review and approval by the United States Environmental Protection Agency, the department shall comply with the procedural requirements for notice and public comment specified in § 8-4-317.

(b)(1) Only a person or an organization that submits comments on the record during the public comment period has standing to appeal the final decision of the department to the Arkansas Pollution Control and Ecology Commission upon written application made within thirty (30) days after the service of notice made under § 8-4-317(b)(2)(A).

(2) An appeal under subdivision (b)(1) of this section shall be processed as a permit appeal under § 8-4-205.

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

(a) Before preparing a petition to initiate rulemaking for the development of regulations implementing a state plan for regulating carbon dioxide emissions from covered electric generating units, the Arkansas Department 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 Arkansas Department of Environmental Quality shall coordinate with the Arkansas Public Service Commission in the preparation of a report that assesses 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 instate electric generation sources, electric storage, and energy efficiency;

(2) The department shall further coordinate with the Arkansas Economic Development Commission, in the preparation of a report that assesses 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 reports required by this section shall be included with any petition filed by the department to initiate rulemaking for regulations that implement a state plan for regulating carbon dioxide emissions from covered electric generating units.

8-3-206. Submission of state plan.

(a) The Arkansas Department of Environmental Quality shall not submit a state plan to the United States Environmental Protection Agency under § 8-3-207 if the state plan:

(1) Results in a significant rate increase annually for any rate class of the total delivered electricity cost per kilowatt hour or of the total natural gas cost per thousand cubic feet; or

(2) Results in unreasonable reliability risks.

(b) The department shall not submit a state plan to the United States Environmental Protection Agency until:

(1) The Legislative Council has approved the state plan under § 8-3-207(b); or

(2) The Governor directs the submission of a state plan under § 8-3-207(d).

8-3-207. Procedures for approval of state plan.

(a) Not later than fifteen (15) days after adopting a state plan, the Arkansas Department of Environmental Quality shall transmit to the cochair of the Legislative Council a copy of the state plan and the accompanying report developed under § 8-3-205.

(b)(1) Upon receiving the state plan and the accompanying report transmitted under subsection (a) of this section and after sufficient time has been provided to assess the state plan and the accompanying report, the Legislative Council shall vote on approval of the state plan.

(2) An affirmative majority vote of the Legislative Council is required for approval of the state plan.

(c) If the Legislative Council fails to approve a state plan under subsection (b) of this section, the department may submit a revised version of the state plan, with an accompanying revised report, to the cochair of the Legislative Council for approval under this section.

(d) Notwithstanding the provisions of this subchapter, in the absence of legislative approval under § 8-3-207(b), 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 department 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 result in the imposition of a federal implementation plan.

(e) This subchapter does not eliminate the requirement of legislative approval of rules and regulations promulgated to implement or enforce the state plan subsequently to gubernatorial action under subsection (d) of this section.

8-3-208. 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, the Arkansas Department of Environmental Quality shall reopen the proceeding under § 8-3-204 and, after the opportunity for a hearing, revise the state plan to satisfy § 8-3-206(a)(1) and transmit the revised state plan to the cochair of the Legislative Council for approval under § 8-3-207.

(b)(1) Each year the Arkansas Department of Environmental Quality shall evaluate the impact of electricity rate increases on the energy-intensive-trade-exposed manufacturers and the resulting greenhouse gas leakage.

(2) If increased electric rates are found to be contributing to increased manufacturing greenhouse gas leakage, the department shall reopen the proceeding under § 8-3-204 and, after the opportunity for a hearing, revise the state plan to avoid manufacturing greenhouse gas leakage and transmit the revised state plan to the cochair of the Legislative Council for approval under § 8-3-207.

*/s/E. Williams*