

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

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

# A Bill

SENATE BILL 644

By: Senator B. Ballinger  
By: Representative Gonzales

## For An Act To Be Entitled

AN ACT TO AMEND THE LAW REGARDING STATE EMISSION PLANS FOR FOSSIL FUEL-FIRED ELECTRIC GENERATING UNITS; TO AUTHORIZE A WAIVER OF LEGISLATIVE REVIEW AND APPROVAL OF STATE EMISSION PLANS; AND FOR OTHER PURPOSES.

## Subtitle

TO AMEND THE LAW REGARDING STATE EMISSION PLANS FOR FOSSIL FUEL-FIRED ELECTRIC GENERATING UNITS; AND TO AUTHORIZE A WAIVER OF LEGISLATIVE REVIEW AND APPROVAL OF STATE EMISSION PLANS.

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

SECTION 1. DO NOT CODIFY. Legislative purpose.

The purpose of this act is to:

(1) Create a means to waive procedures for legislative review and approval of state plans when final emission guidelines are promulgated by the United States Environmental Protection Agency under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), for electric generating units when those emission guidelines are determined to not require any one (1) or more of the following:

(A) Shifting electricity generation from one (1) fuel type to another;

(B) Closing any fossil fuel-fired electric generating



unit; or

(C) Imposing statewide greenhouse gas goals or other statewide greenhouse gas emission limitations; and

(2) Revise the requirements under § 8-3-201 et seq. pertaining to a state plan to ensure consistency with the Clean Air Act and to avoid the imposition of a federal plan.

SECTION 2. Arkansas Code § 8-3-205(a), as amended by Acts 2019, No. 315 and concerning assessment of the effects of a state plan for regulating carbon dioxide emissions from covered electric generating units, is amended to read as follows:

(a) ~~Before preparing a petition to initiate rulemaking for the development of rules implementing~~ completing 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.

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

(a) ~~Not later than fifteen (15) days after adopting a state plan~~ Before transmitting a state plan to the Governor for submission of the state plan to the United States Environmental Protection Agency, the Arkansas Department of Environmental Quality shall transmit to the cochairs of the Legislative Council a copy of the state plan and the accompanying report 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 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 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. 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 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 cochairs of the Legislative Council for approval under § 8-3-207~~ prepare a feasibility study to determine whether:

(1) An alternative approach is consistent with the Clean Air Act; or

(2) The pursuit of implementing an alternative approach is likely to result in the imposition of a federal plan.

~~(b)(1) Each year the department 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 cochairs of the Legislative Council for approval under § 8-3-207.~~

SECTION 6. Arkansas Code Title 8, Chapter 3, Subchapter 2, is amended to add an additional section to read as follows:

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

(a) The Arkansas Department of Environmental Quality may seek a waiver of review and approval procedures for emissions plans from the Legislative Council if the department 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 (1) 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 department 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 department may submit a state plan to the United States Environmental Protection Agency.

SECTION 7. DO NOT CODIFY. TEMPORARY LANGUAGE. If legislation concerning the transformation of the Arkansas Department of Environmental Quality is enacted during this Regular Session of the General Assembly, the Arkansas Code Revisor and the Arkansas Code Revision Commission shall correct the references to the Arkansas Department of Environmental Quality consistent with those laws.