

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

2 90th General Assembly

A Bill

3 Regular Session, 2015

SENATE BILL 183

4
5 By: Senators E. Williams, Files, Caldwell, E. Cheatham, A. Clark, Collins-Smith, J. Cooper, Hester,
6 Hickey, Irvin, B. Johnson, B. King, B. Pierce, Rapert, Rice, G. Stubblefield, J. Woods

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

For An Act To Be Entitled

10
11
12 AN ACT TO CREATE PROCEDURES FOR OVERSIGHT OF FOSSIL-
13 FUEL-FIRED ELECTRIC GENERATING UNITS; TO REQUIRE THE
14 ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY TO
15 PERFORM STUDIES RELATED TO A STATE PLAN TO REGULATE
16 CARBON DIOXIDE EMISSIONS; TO CREATE PROCEDURES FOR
17 APPROVAL OF THE STATE PLAN BY THE LEGISLATIVE
18 COUNCIL; AND FOR OTHER PURPOSES.

Subtitle

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

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29
30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

31
32 SECTION 1. Arkansas Code Title 8, Chapter 3, is amended to add
33 an additional subchapter to read as follows:

34 Subchapter 2 – State Emission Plans – Procedures – Approval

35
36 8-3-201. Findings – Purpose.



1 (a) The General Assembly finds that:

2 (1) The United States Environmental Protection Agency has
3 proposed emission guidelines for the regulation of carbon dioxide emissions
4 from existing fossil-fuel-fired electric generating units under Section
5 111(d) of the Clean Air Act, 42 U.S.C. § 7411;

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

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

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

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

25 (A) Review and approve state agency rules;

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

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

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

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

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

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

6
7 8-3-202. Definitions.

8 As used in this subchapter:

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

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

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

21
22 8-3-203. State plan preferred – State plan dependent on federal
23 emission guidelines.

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

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

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

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

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

3
4 8-3-204. Appeal of state plan – Adjudicatory process.

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

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

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

16
17 8-3-205. Assessing impacts of state plan.

18 (a) Before preparing a petition to initiate rulemaking for the
19 development of regulations implementing a state plan for regulating carbon
20 dioxide emissions from covered electric generating units, the Arkansas
21 Department of Environmental Quality shall prepare a report that takes into
22 account the factors specified in § 8-4-312 and the Clean Air Act, 42 U.S.C. §
23 7401 et seq., as applicable.

24 (b)(1) In addition to the report specified in subsection (a) of this
25 section, the Arkansas Department of Environmental Quality shall coordinate
26 with the Arkansas Public Service Commission in the preparation of a report
27 that assesses the effects of the state plan on the electric power sector,
28 including without limitation:

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

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

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

36 (D) Potential risks to electric reliability within the

1 state, including without limitation, resource adequacy risks, transmission
2 constraints, and natural gas supply and transmission adequacy; and

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

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

14 (2) The department shall further coordinate with the Arkansas
15 Economic Development Commission, in the preparation of a report that assesses
16 the effects of the state plan on the electricity consumers within the state,
17 including without limitation:

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

21 (B) Employment within the state, including without
22 limitation direct and indirect employment effects and jobs potentially lost
23 within affected sectors of the state's economy;

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

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

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

32 (c) The reports required by this section shall be included with any
33 petition filed by the department to initiate rulemaking for regulations that
34 implement a state plan for regulating carbon dioxide emissions from covered
35 electric generating units.

36

1 8-3-206. Submission of state plan.

2 (a) The Arkansas Department of Environmental Quality shall not submit
3 a state plan to the United States Environmental Protection Agency under § 8-
4 3-207 if the state plan:

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

8 (2) Results in unreasonable reliability risks.

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

11 (1) The Legislative Council has approved the state plan under §
12 8-3-207(b); or

13 (2) The Governor directs the submission of a state plan under §
14 8-3-207(d).

15
16 8-3-207. Procedures for approval of state plan.

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

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

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

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

31 (d) Notwithstanding the provisions of this subchapter, in the absence
32 of legislative approval under § 8-3-207(b), the Governor may direct the
33 submission of a state plan to the United States Environmental Protection
34 Agency if, in his or her judgment:

35 (1) Sufficient time has passed for the Legislative Council to
36 consider a state plan submitted by the department for legislative approval;

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

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

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

9
10 8-3-208. Rate and reliability safety valve.

11 (a) If a state plan approved under this subchapter would result in a
12 significant increase in the total electric or natural gas bill annually for
13 any customer class, the Arkansas Department of Environmental Quality shall
14 reopen the proceeding under § 8-3-204 and, after the opportunity for a
15 hearing, revise the state plan to satisfy § 8-3-206(a)(1) and transmit the
16 revised state plan to the cochair of the Legislative Council for approval
17 under § 8-3-207.

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

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

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29 /s/E. Williams
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