

ARKANSAS SENATE
90th General Assembly - Regular Session, 2015
Amendment Form

Subtitle of Senate Bill No. 183

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.

Amendment No. 3 to Senate Bill No. 183

Amend Senate Bill No. 183 as engrossed, S2/9/15 (version: 02/09/2015 9:14:15 AM):

Add Senators Caldwell, E. Cheatham, A. Clark, Collins-Smith, J. Cooper, Hester, Hickey, Irvin, B. Johnson, B. King, B. Pierce, Rapert, Rice, G. Stubblefield, J. Woods as cosponsors of the bill

AND

Add 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 as cosponsors of the bill

Page 2, delete lines 18 through 34 and substitute the following:

"(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, and manufacturing greenhouse gas leakage.

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



enforcement purposes."

AND

Page 3, delete lines 15 through 36

AND

Page 4, delete lines 1 through 36

AND

Page 5, delete lines 1 through 36

AND

Page 6, delete lines 1 and 2 and substitute the following:

"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 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;

(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.

(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."

AND

Page 6, delete lines 12 through 14 and substitute the following:

"(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)."

AND

Page 6, delete line 30 and substitute the following:

"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."

AND

Page 6, line 34, delete "two percent (2%) increase" and substitute "significant increase"

AND

Page 7, delete lines 4 through 13 and substitute the following:

"(b)(1) Each year the Arkansas Department of Environmental Quality"

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator E. Williams

MGF/RJW - 02-19-2015 11:25:06

MGF113

Secretary