

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

SENATE BILL 644

5 By: Senator B. Ballinger  
6 By: Representative Gonzales  
7

## For An Act To Be Entitled

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

17 TO AMEND THE LAW REGARDING STATE EMISSION  
18 PLANS FOR FOSSIL FUEL-FIRED ELECTRIC  
19 GENERATING UNITS; AND TO AUTHORIZE A  
20 WAIVER OF LEGISLATIVE REVIEW AND APPROVAL  
21 OF STATE EMISSION PLANS.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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26 SECTION 1. DO NOT CODIFY. Legislative purpose.

27 The purpose of this act is to:

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

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

36 (B) Closing any fossil fuel-fired electric generating



1 unit; or

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

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

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 8 SECTION 2. Arkansas Code § 8-3-205(a), as amended by Acts 2019, No.  
 9 315 and concerning assessment of the effects of a state plan for regulating  
 10 carbon dioxide emissions from covered electric generating units, is amended  
 11 to read as follows:

12 (a) ~~Before preparing a petition to initiate rulemaking for the~~  
 13 ~~development of rules implementing~~ completing a state plan for regulating  
 14 carbon dioxide emissions from covered electric generating units, the Arkansas  
 15 Department of Environmental Quality shall prepare a report that takes into  
 16 account the factors specified in § 8-4-312 and the Clean Air Act, 42 U.S.C. §  
 17 7401 et seq., as applicable.

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

21 (a) ~~Not later than fifteen (15) days after adopting a state plan~~  
 22 Before transmitting a state plan to the Governor for submission of the state  
 23 plan to the United States Environmental Protection Agency, the Arkansas  
 24 Department of Environmental Quality shall transmit to the cochairs of the  
 25 Legislative Council a copy of the state plan and the accompanying report  
 26 developed under § 8-3-205.

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

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

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

36 (2) Further delay would result in the failure to submit a state

1 plan by the relevant deadline for submission; and

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

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

6 8-3-208. Rate and reliability safety valve.

7 ~~(a) If a state plan approved under this subchapter would result in a~~  
8 ~~significant increase in the total electric or natural gas bill annually for~~  
9 ~~any customer class as determined by the Arkansas Public Service Commission,~~  
10 ~~the Arkansas Department of Environmental Quality shall reopen the proceeding~~  
11 ~~under § 8-3-204 and, after the opportunity for a hearing, revise the state~~  
12 ~~plan to satisfy § 8-3-206(a)(1) and transmit the revised state plan to the~~  
13 ~~cochairs of the Legislative Council for approval under § 8-3-207~~ prepare a  
14 feasibility study to determine whether:

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

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

19 ~~(b)(1) Each year the department shall evaluate the impact of~~  
20 ~~electricity rate increases on the energy intensive trade-exposed~~  
21 ~~manufacturers and the resulting greenhouse gas 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 cochairs of the Legislative Council~~  
27 ~~for approval under § 8-3-207.~~

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

31 8-3-209. Waiver of review and approval procedures for emissions plans.

32 (a) The Arkansas Department of Environmental Quality may seek a waiver  
33 of review and approval procedures for emissions plans from the Legislative  
34 Council if the department determines that final federal emission guidelines  
35 do not require any one (1) or more of the following:

36 (1) Shifting generation from electric generating units powered

1 by one (1) fuel type to another fuel type;

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

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

5 (b) A request to the Legislative Council under subsection (a) of this  
6 section shall include an explanation of how the final emission guidelines for  
7 the regulation of carbon dioxide emissions from existing fossil fuel-fired  
8 electric generating units under § 111(d) of the Clean Air Act, 42 U.S.C. §  
9 7411, do not require any of the factors in subsection (a) of this section.

10 (c) The department shall not seek a waiver under subsection (a) of  
11 this section until the United States Environmental Protection Agency  
12 promulgates emission guidelines for the regulation of carbon dioxide  
13 emissions from existing fossil fuel-fired electric generating units under §  
14 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d).

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

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

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

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

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