

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

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

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, Womack,*

9 *Copeland, Dotson, Gossage*

10

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## For An Act To Be Entitled

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AN ACT TO CREATE PROCEDURES FOR OVERSIGHT OF FOSSIL-

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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

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CARBON DIOXIDE EMISSIONS; TO CREATE PROCEDURES FOR

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APPROVAL OF THE STATE PLAN BY THE LEGISLATIVE

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COUNCIL; AND FOR OTHER PURPOSES.

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## Subtitle

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TO CREATE PROCEDURES FOR OVERSIGHT OF

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FOSSIL-FUEL-FIRED ELECTRIC GENERATING

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UNITS; TO REGULATE CARBON DIOXIDE

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EMISSIONS; AND TO CREATE PROCEDURES FOR

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APPROVAL OF THE STATE PLAN BY THE

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LEGISLATIVE COUNCIL.

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

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32 SECTION 1. Arkansas Code Title 8, Chapter 3, is amended to add

33 an additional subchapter to read as follows:

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Subchapter 2 – State Emission Plans – Procedures – Approval

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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, and manufacturing greenhouse gas leakage.

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

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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.

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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.

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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 that submits comments on the record during the  
10 public comment period has standing to appeal the final decision of the  
11 department to the Arkansas Pollution Control and Ecology Commission upon  
12 written application made within thirty (30) days after the service of notice  
13 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.

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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;

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

15 (A) Disproportionate impacts of electricity and other  
16 replacement energy price increases on middle-income and lower-income  
17 households;

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

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

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

26 (E) State and local governments, including without  
27 limitation potential impacts resulting from changes in tax revenues.

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

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33 8-3-206. Submission of state plan.

34 (a) The Arkansas Department of Environmental Quality shall not submit  
35 a state plan to the United States Environmental Protection Agency under § 8-  
36 3-207 if the state plan:

1           (1) Results in a rate increase annually for any rate class of  
2 two percent (2%) of the total delivered electricity cost per kilowatt hour or  
3 two percent (2%) of the total natural gas cost per thousand cubic feet; or

4           (2) Results in unreasonable reliability risks.

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

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

9           (2) The Governor directs the submission of a state plan under §  
10 8-3-207(d).

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12           8-3-207. Procedures for approval of state plan.

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

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

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

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

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

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

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

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

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

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

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

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

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25 /s/E. Williams  
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