

Introduced Version

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(By Delegates J. Nelson, Howell, Statler, Walters, Foster,  
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[Introduced January 14, 2015; referred to the  
Committee on Energy then the Judiciary.]

A BILL to amend and reenact §22-5-20 of the Code of West Virginia, 1931, as amended, relating to the development of a state plan under Section 111(d) of the Clean Air Act; requiring the Department of Environmental Protection to study the feasibility of a state plan; requiring the Department of Environmental Protection to submit a report to the Legislature determining whether a state plan is feasible, and, if so, recommending a proposed state plan to the Legislature; and requiring approval of the Legislature before any state plan is submitted to the United States Environmental Protection Agency.

*Be it enacted by the Legislature of West Virginia:*

That §22-5-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. AIR POLLUTION CONTROL.****§22-5-20. Regulating carbon dioxide emissions from existing fossil fuel-fired electric generating units.**

(a) The Department of Environmental Protection shall, no later than one hundred eighty days after a rule is finalized by the United States Environmental Protection Agency that requires the state to submit a state plan under Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), submit to the Legislature a report regarding the feasibility of the state's compliance with the Section 111(d) Rule. The report must include a comprehensive analysis of the effect of the Section 111(d) Rule on the state, including, but not limited to, the need for legislative or other changes to state law, and the factors referenced in subsection (e) of this section. The report must make at least two feasibility determinations: (1) Whether the creation of a state plan is feasible based on the comprehensive analysis; and (2) whether the creation of a state plan is feasible within the time period extending no later than the first day of the last regular session of the Legislature that occurs before the deadline to submit a state plan to Environmental Protection Agency under the Section 111(d) Rule, assuming no extensions of time are granted by Environmental Protection Agency. If the department determines that a state plan is or is not feasible under clause (1) of this subsection, the report must explain why. If the department determines that a state plan is not feasible under clause (2) of this subsection, it shall explain how long it requires to create a state plan and then endeavor to submit such a state plan to the Legislature as soon as practicable. If the department determines that the creation of a state plan is feasible under both clauses (1) and (2) of this subsection, it shall submit the proposed state plan to the Legislature within the time period contemplated by clause (2) of this subsection. In any event, the department shall publish the report and any proposed state plan on its website.

(b) If the department proposes a state plan to the Legislature in accordance with subsection (a) of this section, it, in consultation with the Department of Environmental Protection Advisory Council, shall establish propose separate

standards of performance for carbon dioxide emissions from existing coal-fired electric generating units in accordance with subsection ~~(b)~~ (c) of this section and from existing natural gas-fired electric generating units in accordance with subsection ~~(e)~~ (d) of this section. The standards of performance developed and proposed under any state plan to comply with Section 111 of the Clean Air Act should allow for greater flexibility and take into consideration the additional factors set forth in subsection ~~(d)~~ (e) of this section as a part of any state plan to achieve targeted reductions in greenhouse gas emissions which are equivalent or comparable to the goals and marks established by federal guidelines.

~~(b)~~ (c) Standards of performance for existing coal-fired electric generating units. -- Except as provided under subsection ~~(d)~~ (e) of this section, the standard of performance ~~established~~ proposed for existing coal-fired electric generating units under subsection (a) of this section shall be based upon:

(1) The best system of emission reduction which, taking into account the cost of achieving the reduction and any nonair quality health and environmental impact and energy requirements, has been adequately demonstrated for coal-fired electric generating units that are subject to the standard of performance;

(2) Reductions in emissions of carbon dioxide that can reasonably be achieved through measures undertaken at each coal-fired electric generating unit; and

(3) Efficiency and other measures that can be undertaken at each coal-fired electric generating unit to reduce carbon dioxide emissions from the unit without switching from coal to other fuels or limiting the economic utilization of the unit. ~~and~~

~~(4) Additional regulatory mechanisms that provide flexibility in complying with the standards, including: (A) Emissions trading with credited reduction for any unit that was in operation January 1, 2011, or thereafter, and fleet wide averaging; (B) other alternative implementation measures that are determined to further the interests of West Virginia and its citizens including state programs such as clean energy programs that mandate reduced energy consumption resulting in avoided emissions, emission reductions, or a reduction in the state's carbon dioxide intensity whereby the state shall credit equally based on the output to the generators located in the state that are subject to carbon dioxide performance standard rules under Section 111(d) of the Clean Air Act.~~

~~(e)~~ (d) Standards of performance for existing natural gas-fired electric generating units. -- Except as provided in subsection ~~(d)~~ (e) of this section, the standard of performance ~~established~~ proposed for existing gas-fired electric generating units under subsection ~~(a)~~ (b) of this section, shall be based upon:

(1) The best system of emission reduction which, taking into account the cost of achieving the reduction and any nonair quality health and environmental impact and energy requirements, has been adequately demonstrated for natural gas-fired electric generating units that are subject to the standard of performance;

(2) Reductions in emissions of carbon dioxide that can reasonably be achieved through measures at each natural gas-fired electric generating unit; and

(3) Efficiency and other measures that can be undertaken at the unit to reduce carbon dioxide emissions from the unit without switching from natural gas to other lower-carbon fuels or limiting the economic utilization of the unit.

~~(d)~~ (e) Flexibility in establishing standards of performance. -- In developing a flexible state plan to achieve targeted reductions in greenhouse gas emissions, the department of ~~Environmental Protection~~ shall endeavor to establish an achievable standard of performance for any existing fossil fuel-fired electric generating unit, and examine whether less stringent performance standards or longer compliance schedules may be implemented or adopted for existing fossil fuel-fired electric generating units in comparison to the performance standards established for new, modified or reconstructed generating units, based on the following:

(1) Consumer impacts, including any disproportionate impacts of energy price increases on lower income populations;

(2) Nonair quality health and environmental impacts;

(3) Projected energy requirements;

- (4) Market-based considerations in achieving performance standards;
- (5) The costs of achieving emission reductions due to factors such as plant age, location or basic process design;
- (6) Physical difficulties with or any apparent inability to feasibly implement certain emission reduction measures;
- (7) The absolute cost of applying the performance standard to the unit;
- (8) The expected remaining useful life of the unit;
- (9) The impacts of closing the unit, including economic consequences such as expected job losses, if the unit is unable to comply with the performance standard;
- (10) Impacts on the reliability of the system; and
- (11) Any other factors specific to the unit that make application of a modified or less stringent standard or a longer compliance schedule more reasonable.

~~(e) (f) State plan requirement~~ Legislative approval required for any state plan proposed under Section 111(d) of the Clean Air Act. -- The department of Environmental Protection shall propose or or any other agency or officer of state government, may not submit to the U. S. Environmental Protection Agency a state plan which includes achievable performance standards for existing sources, and a combination of additional measures designed to meet the U. S. Environmental Protection Agency's guidelines, consistent with the considerations, goals and parameters set forth in this section. under this section, or otherwise pursuant to Section 111(d) of the Clean Air Act, without the express approval of the majority of both houses of the Legislature.

(g) Effective date. All provisions of this section are effective immediately upon passage.

NOTE: The purpose of this bill is to provide a procedure for the development of a state plan under section 111(d) of the Clean Air Act. It requires the Department of Environmental Protection to study the feasibility of a state plan and to submit a report to the Legislature determining whether a state plan is feasible, and, if so, recommending a proposed state plan to the Legislature. It also requires the approval of the Legislature before a state plan is submitted to the United States Environmental Protection Agency.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.