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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2015

HB 2004



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2004

(By Delegate(s) J. Nelson, Howell, Statler,
Walters, Foster, Zatezalo, B. White, Moffatt, Stansbury,
Gearheart and Butler)



Passed February 19, 2015

In effect from passage.

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H. B. 2004

(BY DELEGATE(S) J. NELSON, HOWELL, STATLER,
WALTERS, FOSTER, ZATEZALO, B. WHITE,
MOFFATT, STANSBURY, GEARHEART AND BUTLER)

[Passed February 19, 2015; in effect from passage]

AN ACT 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; setting forth legislative findings; prohibiting submission of a state plan without authority; 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; allowing for the development of a proposed state plan; requiring the state plan to be on a unit-specific basis; allowing for the plan to be on either a rate-based or meter-based standard; allowing for legislative review and

consideration prior to submission of a state plan to the Environmental Protection Agency; and creating exceptions to the legal effect of the state plan.

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:

§22-5-20. Development of a state plan relating to carbon dioxide emissions from existing fossil fuel-fired electric generating units.

1 (a) *Legislative Findings-*

2 (1) The United States Environmental Protection Agency has
3 proposed a Federal Rule pursuant to Section 111(d) of the Clean
4 Air Act, 42 U.S.C. § 7411(d), to regulate carbon dioxide
5 emissions from electric generating units.

6 (2) The Rule is expected to go into effect on or about June
7 30, 2015, and will require each state to submit a state plan
8 pursuant to Section 111(d) that sets forth laws, policies and
9 regulations that will be enacted by the State to meet the federal
10 guidelines in the Rule.

11 (3) The creation of this state plan necessitates establishment
12 and creation of law affecting the economy and energy policy of
13 this State.

14 (4) The Environmental Protection Agency has stated that any
15 state plan it ultimately approves shall become enforceable
16 federal law upon that State.

17 (5) The State disputes the jurisdiction and purported binding
18 nature asserted by the Environmental Protection Agency through
19 this Rule, and reserves to itself those rights and responsibilities
20 properly reserved to the State of West Virginia.

21 (6) Given the economic impact and potentially legally
22 binding nature of the submission of a State Plan, there is a
23 compelling state interest to require appropriate legislative review
24 and passage of law prior to submission, if any, of a state plan
25 pursuant to Section 111(d) of the Clean Air Act.

26 (b) *Submission of a State Plan*- Absent specific legislative
27 enactment granting such powers or rulemaking authority, the
28 Department of Environmental Protection or any other agency or
29 officer of state government is not authorized to submit to the
30 Environmental Protection Agency a state plan under this section,
31 or otherwise pursuant to Section 111(d) of the Clean Air Act:
32 *Provided, however*, the Department of Environmental Protection,
33 in consultation with the Department of Environmental Protection
34 Advisory Council and other necessary and appropriate agencies
35 and entities, may develop a proposed state plan in accordance
36 with this section.

37 (c) *Development of a Proposed State Plan*- (1) The
38 Department of Environmental Protection shall, no later than one
39 hundred eighty days after a rule is finalized by the
40 Environmental Protection Agency that requires the state to
41 submit a state plan under Section 111(d) of the Clean Air Act, 42
42 U.S.C. § 7411(d), submit to the Legislature a report regarding
43 the feasibility of the state's compliance with the Section 111(d)
44 Rule. The report must include a comprehensive analysis of the
45 effect of the Section 111(d) Rule on the state, including, but not
46 limited to, the need for legislative or other changes to state law,
47 and the factors referenced in subsection (g) of this section. The
48 report must make at least two feasibility determinations: (i)
49 Whether the creation of a state plan is feasible based on the
50 comprehensive analysis; and (ii) whether the creation of a state
51 plan is feasible before the deadline to submit a state plan to
52 Environmental Protection Agency under the Section 111(d)
53 Rule, assuming no extensions of time are granted by

54 Environmental Protection Agency. If the department determines
55 that a state plan is or is not feasible under clause (I) of this
56 subsection, the report must explain why. If the department
57 determines that a state plan is not feasible under clause (ii) of
58 this subsection, it shall explain how long it requires to create a
59 state plan and then endeavor to submit such a state plan to the
60 Legislature as soon as practicable. Such state plan shall be on a
61 unit-specific performance basis and shall be based upon either a
62 rate-based model or a meter-based model.

63 (2) If the department determines that the creation of a state
64 plan is feasible, it shall develop and submit the proposed state
65 plan to the Legislature sitting in Regular Session, or in an
66 extraordinary session convened for the purpose of consideration
67 of the state plan, in sufficient time to allow for the consideration
68 of the state plan prior to the deadline for submission to the
69 Environmental Protection Agency.

70 (3) In addition to submitting the proposed state plan to the
71 Legislature, the department shall publish the report and any
72 proposed state plan on its website.

73 (a) If the department proposes a state plan to the Legislature
74 in accordance with subsection (c) of this section, the department
75 shall propose separate standards of performance for carbon
76 dioxide emissions from existing coal-fired electric generating
77 units in accordance with subsection (e) of this section and from
78 existing natural gas-fired electric generating units in accordance
79 with subsection (f) of this section. The standards of performance
80 developed and proposed under any state plan to comply with
81 Section 111 of the Clean Air Act should allow for greater
82 flexibility and take into consideration the additional factors set
83 forth in subsection (g) of this section as a part of any state plan
84 to achieve targeted reductions in greenhouse gas emissions
85 which are equivalent or comparable to the goals and marks
86 established by federal guidelines.

87 **(e) Standards of performance for existing coal-fired**
88 **electric generating units.** – Except as provided under
89 subsection (g) of this section, the standard of performance
90 proposed for existing coal-fired electric generating units under
91 subsection (c) of this section may be based upon:

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

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

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

105 **(f) Standards of performance for existing natural**
106 **gas-fired electric generating units.** – Except as provided in
107 subsection (g) of this section, the standard of performance
108 proposed for existing gas-fired electric generating units under
109 subsection (c) of this section, may be based upon:

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

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

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

123 (g) **Flexibility in establishing standards of per-**
124 **formance.** – In developing a flexible state plan to achieve
125 targeted reductions in greenhouse gas emissions, the department
126 shall endeavor to establish an achievable standard of
127 performance for any existing fossil fuel-fired electric generating
128 unit, and examine whether less stringent performance standards
129 or longer compliance schedules may be implemented or adopted
130 for existing fossil fuel-fired electric generating units in
131 comparison to the performance standards established for new,
132 modified or reconstructed generating units, based on the
133 following:

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

136 (2) Nonair quality health and environmental impacts;

137 (3) Projected energy requirements;

138 (4) Market-based considerations in achieving performance
139 standards;

140 (5) The costs of achieving emission reductions due to factors
141 such as plant age, location or basic process design;

142 (6) Physical difficulties with or any apparent inability to
143 feasibly implement certain emission reduction measures;

144 (7) The absolute cost of applying the performance standard
145 to the unit;

146 (8) The expected remaining useful life of the unit;

147 (9) The impacts of closing the unit, including economic
148 consequences such as expected job losses at the unit and
149 throughout the state in fossil fuel production areas including
150 areas of coal production and natural gas production and the
151 associated losses to the economy of those areas and the state, if
152 the unit is unable to comply with the performance standard;

153 (10) Impacts on the reliability of the system; and

154 (11) Any other factors specific to the unit that make
155 application of a modified or less stringent standard or a longer
156 compliance schedule more reasonable.

157 (h) **Legislative consideration of proposed state plan under**
158 **Section 111(d) of the Clean Air Act.** – (1) If the department
159 submits a proposed state plan to the Legislature under this
160 section, the Legislature may by act, including presentment to the
161 Governor, (i) authorize the department to submit the proposed
162 state plan to the Environmental Protection Agency, (ii) authorize
163 the department to submit the state plan with amendment, or (iii)
164 not grant such rulemaking or other authority to the department
165 for submission and implementation of the state plan.

166 (2) If the Legislature fails to enact or approve all or part of
167 the proposed state plan, the department may propose a new or
168 modified state plan to the Legislature in accordance with the
169 requirements of this section.

170 (3) If the Environmental Protection Agency does not
171 approve the state plan, in whole or in part, the department shall
172 as soon as practicable propose a modified state plan to the
173 Legislature in accordance with the requirements of this section.

174 (I) **Legal effect.** – Any obligation created by this section and
175 any state plan submitted to the Environmental Protection Act
176 pursuant to this section shall have no legal effect if:

177 (1) the Environmental Protection Agency fails to issue, or
178 withdraws, its federal rules or guidelines for reducing carbon
179 dioxide emissions from existing fossil fuel-fired electrical
180 generating units under 42 U.S.C. §7411(d); or,

181 (2) a court of competent jurisdiction invalidates the
182 Environmental Protection Agency's federal rules or guidelines
183 issued to regulate emissions of carbon dioxide from existing
184 fossil fuel-fired electrical generating units under 42 U.S.C.
185 §7411(d).

186 (j) *Effective date.* — All provisions of this section are
187 effective immediately upon passage.


That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

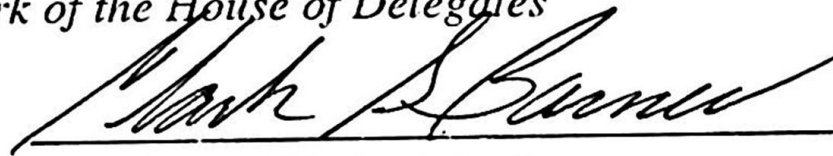

Chairman, House Committee

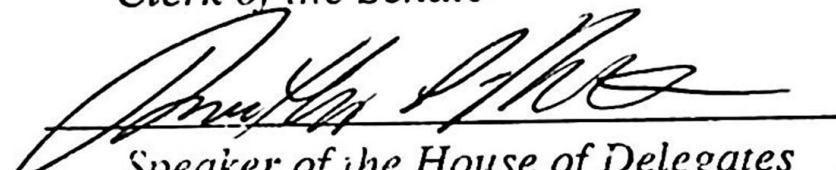

Chairman, Senate Committee

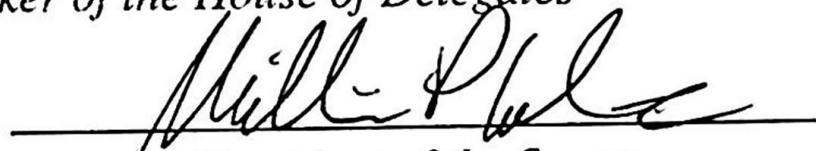
Originating in the House.

In effect from passage.


Clerk of the House of Delegates


Clerk of the Senate


Speaker of the House of Delegates


President of the Senate

The within is approved this the 3rd
day of March, 2015.


Governor

PRESENTED TO THE GOVERNOR

FEB 25 2015

Time 4:50 pm