

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2004**

5 (By Delegates J. Nelson, Howell, Statler, Walters, Foster, Zatezalo,
6 B. White, Moffatt, Stansbury, Gearheart and Butler)
7

8 [Passed February 19, 2015; in effect from passage.]
9

10 AN ACT to amend and reenact §22-5-20 of the Code of West Virginia, 1931, as amended, relating
11 to the development of a state plan under Section 111(d) of the Clean Air Act; setting forth
12 legislative findings; prohibiting submission of a state plan without authority; requiring the
13 Department of Environmental Protection to study the feasibility of a state plan; requiring the
14 Department of Environmental Protection to submit a report to the Legislature determining
15 whether a state plan is feasible; allowing for the development of a proposed state plan;
16 requiring the state plan to be on a unit-specific basis; allowing for the plan to be on either a
17 rate-based or meter-based standard; allowing for legislative review and consideration prior
18 to submission of a state plan to the Environmental Protection Agency; and creating
19 exceptions to the legal effect of the state plan.

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

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

23 **§22-5-20. Development of a state plan relating to carbon dioxide emissions from existing fossil**

1 **fuel-fired electric generating units.**

2 (a) *Legislative Findings-*

3 (1) The United States Environmental Protection Agency has proposed a Federal Rule
4 pursuant to Section 111(d) of the Clean 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 30, 2015, and will require each
7 state to submit a state plan pursuant to Section 111(d) that sets forth laws, policies and regulations
8 that will be enacted by the State to meet the federal guidelines in the Rule.

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

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

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

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

19 (b) *Submission of a State Plan-* Absent specific legislative enactment granting such powers
20 or rulemaking authority, the Department of Environmental Protection or any other agency or officer
21 of state government is not authorized to submit to the Environmental Protection Agency a state plan
22 under this section, or otherwise pursuant to Section 111(d) of the Clean Air Act: *Provided, however,*

1 the Department of Environmental Protection, in consultation with the Department of Environmental
2 Protection Advisory Council and other necessary and appropriate agencies and entities, may develop
3 a proposed state plan in accordance with this section.

4 *(c) Development of a Proposed State Plan-* (1) The Department of Environmental Protection
5 shall, no later than one hundred eighty days after a rule is finalized by the Environmental Protection
6 Agency that requires the state to submit a state plan under Section 111(d) of the Clean Air Act, 42
7 U.S.C. § 7411(d), submit to the Legislature a report regarding the feasibility of the state's compliance
8 with the Section 111(d) Rule. The report must include a comprehensive analysis of the effect of the
9 Section 111(d) Rule on the state, including, but not limited to, the need for legislative or other
10 changes to state law, and the factors referenced in subsection (g) of this section. The report must
11 make at least two feasibility determinations: (i) Whether the creation of a state plan is feasible based
12 on the comprehensive analysis; and (ii) whether the creation of a state plan is feasible before the
13 deadline to submit a state plan to Environmental Protection Agency under the Section 111(d) Rule,
14 assuming no extensions of time are granted by Environmental Protection Agency. If the department
15 determines that a state plan is or is not feasible under clause (i) of this subsection, the report must
16 explain why. If the department determines that a state plan is not feasible under clause (ii) of this
17 subsection, it shall explain how long it requires to create a state plan and then endeavor to submit
18 such a state plan to the Legislature as soon as practicable. Such state plan shall be on a unit-specific
19 performance basis and shall be based upon either a rate-based model or a meter-based model.

20 (2) If the department determines that the creation of a state plan is feasible, it shall develop
21 and submit the proposed state plan to the Legislature sitting in Regular Session, or in an extraordinary
22 session convened for the purpose of consideration of the state plan, in sufficient time to allow for the

1 consideration of the state plan prior to the deadline for submission to the Environmental Protection
2 Agency.

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

5 (d) If the department proposes a state plan to the Legislature in accordance with subsection
6 (c) of this section, the department shall propose separate standards of performance for carbon dioxide
7 emissions from existing coal-fired electric generating units in accordance with subsection (e) of this
8 section and from existing natural gas-fired electric generating units in accordance with subsection (f)
9 of this section. The standards of performance developed and proposed under any state plan to comply
10 with Section 111 of the Clean Air Act should allow for greater flexibility and take into consideration
11 the additional factors set forth in subsection (g) of this section as a part of any state plan to achieve
12 targeted reductions in greenhouse gas emissions which are equivalent or comparable to the goals and
13 marks established by federal guidelines.

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

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

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

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

4 (f) **Standards of performance for existing natural gas-fired electric generating units.**

5 – Except as provided in subsection (g) of this section, the standard of performance proposed for
6 existing gas-fired electric generating units under subsection (c) of this section, may be based upon:

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

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

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

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

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

3 (2) Nonair quality health and environmental impacts;

4 (3) Projected energy requirements;

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

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

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

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

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

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

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

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

19 (h) **Legislative consideration of proposed state plan under Section 111(d) of the Clean**
20 **Air Act.-** (1) If the department submits a proposed state plan to the Legislature under this section, the
21 Legislature may by act, including presentment to the Governor, (i) authorize the department to submit
22 the proposed state plan to the Environmental Protection Agency, (ii) authorize the department to

1 submit the state plan with amendment, or (iii) not grant such rulemaking or other authority to the
2 department for submission and implementation of the state plan.

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

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

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

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

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

17 (j) *Effective date.* -- All provisions of this section are effective immediately upon passage.