

Union Calendar No. 24

112TH CONGRESS
1ST SESSION

H. R. 910

[Report No. 112-50]

To amend the Clean Air Act to prohibit the Administrator of the Environmental Protection Agency from promulgating any regulation concerning, taking action relating to, or taking into consideration the emission of a greenhouse gas to address climate change, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 2011

Mr. UPTON (for himself, Mr. PETERSON, Mr. RAHALL, Mr. WHITFIELD, Mr. BOREN, Mr. BARTON of Texas, Mrs. MCMORRIS RODGERS, Mr. WALDEN, Mr. SULLIVAN, and Mr. MCKINLEY) introduced the following bill; which was referred to the Committee on Energy and Commerce

APRIL 1, 2011

Additional sponsors: Mr. SHIMKUS, Mr. HALL, Mr. LUCAS, Mrs. CAPITO, Mr. OLSON, Mr. GUTHRIE, Mr. KINZINGER of Illinois, Mr. POMPEO, Mr. TERRY, Mrs. BONO MACK, Mr. CASSIDY, Mr. SCALISE, Mr. LATTA, Mrs. MYRICK, Mr. BURGESS, Mr. GINGREY of Georgia, Mr. GRIFFITH of Virginia, Mrs. BACHMANN, Mr. BENISHEK, Mr. LANKFORD, Mr. JOHNSON of Ohio, Mr. GIBBS, Mr. HUIZENGA of Michigan, Mr. RIBBLE, Mrs. NOEM, Mr. GARDNER, Mr. SENSENBRENNER, Mr. SAM JOHNSON of Texas, Mrs. SCHMIDT, Mr. WALBERG, Mr. CAMP, Mr. STEARNS, Mr. FLORES, Mrs. BIGGERT, Mr. PALAZZO, Mr. RENACCI, Mr. AUSTRIA, Mrs. LUMMIS, Mr. STIVERS, Mr. ROGERS of Kentucky, Mr. MCCOTTER, Mr. RUNYAN, Mr. ROGERS of Michigan, Mr. HARPER, Mr. MURPHY of Pennsylvania, Mr. BURTON of Indiana, Mr. JORDAN, Mr. NEUGEBAUER, Mr. TIBERI, Mr. REHBERG, Mr. SMITH of Nebraska, Mr. FLEMING, Mr. CANSECO, Mr. KLINE, Mr. MCCLINTOCK, Mr. SESSIONS, Mr. BUCSHON, Mr. LANDRY, Mr. PENCE, Mr. CARTER, Mr. POSEY, Mr. FLAKE, Mr. POE of Texas, Mr. BRADY of Texas, Mr. TURNER, Ms. JENKINS, Mr. SIMPSON, Mr. KELLY, Mr. FARENTHOLD, Mr. TIPTON, Mr. CALVERT, Mr. FLEISCHMANN, Mr. GRAVES of Missouri, Mr. REED, Mr. HURT, Mr. ROONEY, Mr. MEEHAN, Mr. BERG, Mr. YOUNG of Indiana, Mr. GOSAR,

Mr. ROE of Tennessee, Mr. ROKITA, Mr. PITTS, Mr. GARY G. MILLER
of California, Mrs. EMERSON, and Mr. THORNBERRY

APRIL 1, 2011

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on March 3, 2011]

A BILL

To amend the Clean Air Act to prohibit the Administrator
of the Environmental Protection Agency from promul-
gating any regulation concerning, taking action relating
to, or taking into consideration the emission of a green-
house gas to address climate change, and for other pur-
poses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Energy Tax Prevention*
5 *Act of 2011”.*

6 **SEC. 2. NO REGULATION OF EMISSIONS OF GREENHOUSE**
7 **GASES.**

8 *Title III of the Clean Air Act (42 U.S.C. 7601 et seq.)*
9 *is amended by adding at the end the following:*

10 **“SEC. 330. NO REGULATION OF EMISSIONS OF GREEN-**
11 **HOUSE GASES.**

12 *“(a) DEFINITION.—In this section, the term ‘green-*
13 *house gas’ means any of the following:*

14 *“(1) Water vapor.*

15 *“(2) Carbon dioxide.*

16 *“(3) Methane.*

17 *“(4) Nitrous oxide.*

18 *“(5) Sulfur hexafluoride.*

19 *“(6) Hydrofluorocarbons.*

20 *“(7) Perfluorocarbons.*

21 *“(8) Any other substance subject to, or proposed*
22 *to be subject to, regulation, action, or consideration*
23 *under this Act to address climate change.*

24 *“(b) LIMITATION ON AGENCY ACTION.—*

25 *“(1) LIMITATION.—*

1 “(A) *IN GENERAL.*—*The Administrator*
2 *may not, under this Act, promulgate any regula-*
3 *tion concerning, take action relating to, or take*
4 *into consideration the emission of a greenhouse*
5 *gas to address climate change.*

6 “(B) *AIR POLLUTANT DEFINITION.*—*The*
7 *definition of the term ‘air pollutant’ in section*
8 *302(g) does not include a greenhouse gas. Not-*
9 *withstanding the previous sentence, such defini-*
10 *tion may include a greenhouse gas for purposes*
11 *of addressing concerns other than climate change.*

12 “(2) *EXCEPTIONS.*—*Paragraph (1) does not pro-*
13 *hibit the following:*

14 “(A) *Notwithstanding paragraph (4)(B),*
15 *implementation and enforcement of the rule enti-*
16 *tled ‘Light-Duty Vehicle Greenhouse Gas Emis-*
17 *sion Standards and Corporate Average Fuel*
18 *Economy Standards’ (as published at 75 Fed.*
19 *Reg. 25324 (May 7, 2010) and without further*
20 *revision) and finalization, implementation, en-*
21 *forcement, and revision of the proposed rule enti-*
22 *tled ‘Greenhouse Gas Emissions Standards and*
23 *Fuel Efficiency Standards for Medium- and*
24 *Heavy-Duty Engines and Vehicles’ published at*
25 *75 Fed. Reg. 74152 (November 30, 2010).*

1 “(B) *Implementation and enforcement of*
2 *section 211(o).*”

3 “(C) *Statutorily authorized Federal re-*
4 *search, development, and demonstration pro-*
5 *grams addressing climate change.*”

6 “(D) *Implementation and enforcement of*
7 *title VI to the extent such implementation or en-*
8 *forcement only involves one or more class I sub-*
9 *stances or class II substances (as such terms are*
10 *defined in section 601).*”

11 “(E) *Implementation and enforcement of*
12 *section 821 (42 U.S.C. 7651k note) of Public*
13 *Law 101–549 (commonly referred to as the*
14 *‘Clean Air Act Amendments of 1990’).*”

15 “(3) *INAPPLICABILITY OF PROVISIONS.—Nothing*
16 *listed in paragraph (2) shall cause a greenhouse gas*
17 *to be subject to part C of title I (relating to preven-*
18 *tion of significant deterioration of air quality) or*
19 *considered an air pollutant for purposes of title V (re-*
20 *lating to permits).*”

21 “(4) *CERTAIN PRIOR AGENCY ACTIONS.—The fol-*
22 *lowing rules and actions (including any supplement*
23 *or revision to such rules and actions) are repealed*
24 *and shall have no legal effect:*”

1 “(A) ‘Mandatory Reporting of Greenhouse
2 Gases’, published at 74 Fed. Reg. 56260 (October
3 30, 2009).

4 “(B) ‘Endangerment and Cause or Con-
5 tribute Findings for Greenhouse Gases Under
6 Section 202(a) of the Clean Air Act’, published
7 at 74 Fed. Reg. 66496 (December 15, 2009).

8 “(C) ‘Reconsideration of Interpretation of
9 Regulations That Determine Pollutants Covered
10 by Clean Air Act Permitting Programs’, pub-
11 lished at 75 Fed. Reg. 17004 (April 2, 2010) and
12 the memorandum from Stephen L. Johnson, En-
13 vironmental Protection Agency (EPA) Adminis-
14 trator, to EPA Regional Administrators, con-
15 cerning ‘EPA’s Interpretation of Regulations
16 that Determine Pollutants Covered by Federal
17 Prevention of Significant Deterioration (PSD)
18 Permit Program’ (December 18, 2008).

19 “(D) ‘Prevention of Significant Deteriora-
20 tion and Title V Greenhouse Gas Tailoring
21 Rule’, published at 75 Fed. Reg. 31514 (June 3,
22 2010).

23 “(E) ‘Action To Ensure Authority To Issue
24 Permits Under the Prevention of Significant De-
25 terioration Program to Sources of Greenhouse

1 *Gas Emissions: Finding of Substantial Inad-*
2 *equacy and SIP Call*’, published at 75 Fed. Reg.
3 77698 (December 13, 2010).

4 “(F) ‘Action To Ensure Authority To Issue
5 Permits Under the Prevention of Significant De-
6 terioration Program to Sources of Greenhouse
7 Gas Emissions: Finding of Failure To Submit
8 State Implementation Plan Revisions Required
9 for Greenhouse Gases’, published at 75 Fed. Reg.
10 81874 (December 29, 2010).

11 “(G) ‘Action to Ensure Authority To Issue
12 Permits Under the Prevention of Significant De-
13 terioration Program to Sources of Greenhouse
14 Gas Emissions: Federal Implementation Plan’,
15 published at 75 Fed. Reg. 82246 (December 30,
16 2010).

17 “(H) ‘Action to Ensure Authority to Imple-
18 ment Title V Permitting Programs Under the
19 Greenhouse Gas Tailoring Rule’, published at 75
20 Fed. Reg. 82254 (December 30, 2010).

21 “(I) ‘Determinations Concerning Need for
22 Error Correction, Partial Approval and Partial
23 Disapproval, and Federal Implementation Plan
24 Regarding Texas Prevention of Significant Dete-

1 *rioration Program*’, published at 75 *Fed. Reg.*
2 82430 (December 30, 2010).

3 “(J) *Limitation of Approval of Prevention*
4 *of Significant Deterioration Provisions Con-*
5 *cerning Greenhouse Gas Emitting-Sources in*
6 *State Implementation Plans*’, published at 75
7 *Fed. Reg.* 82536 (December 30, 2010).

8 “(K) *Determinations Concerning Need for*
9 *Error Correction, Partial Approval and Partial*
10 *Disapproval, and Federal Implementation Plan*
11 *Regarding Texas Prevention of Significant Dete-*
12 *rioration Program; Proposed Rule*’, published at
13 75 *Fed. Reg.* 82365 (December 30, 2010).

14 “(L) *Except for actions listed in paragraph*
15 *(2), any other Federal action under this Act oc-*
16 *curring before the date of enactment of this sec-*
17 *tion that applies a stationary source permitting*
18 *requirement or an emissions standard for a*
19 *greenhouse gas to address climate change.*

20 “(5) *STATE ACTION.*—

21 “(A) *NO LIMITATION.*—*This section does not*
22 *limit or otherwise affect the authority of a State*
23 *to adopt, amend, enforce, or repeal State laws*
24 *and regulations pertaining to the emission of a*
25 *greenhouse gas.*

1 “(B) *EXCEPTION.*—

2 “(i) *RULE.*—*Notwithstanding subparagraph*
3 *graph (A), any provision described in*
4 *clause (i)—*

5 “(I) *is not federally enforceable;*

6 “(II) *is not deemed to be a part*
7 *of Federal law; and*

8 “(III) *is deemed to be stricken*
9 *from the plan described in clause*
10 *(i)(I) or the program or permit de-*
11 *scribed in clause (i)(II), as applicable.*

12 “(ii) *PROVISION DEFINED.*—*For pur-*
13 *poses of clause (i), the term ‘provision’*
14 *means any provision that—*

15 “(I) *is contained in a State im-*
16 *plementation plan under section 110*
17 *and authorizes or requires a limitation*
18 *on, or imposes a permit requirement*
19 *for, the emission of a greenhouse gas to*
20 *address climate change; or*

21 “(II) *is part of an operating per-*
22 *mit program under title V, or a permit*
23 *issued pursuant to title V, and author-*
24 *izes or requires a limitation on the*

1 *emission of a greenhouse gas to address*
2 *climate change.*

3 “(C) *ACTION BY ADMINISTRATOR.—The Ad-*
4 *ministrator may not approve or make federally*
5 *enforceable any provision described in subpara-*
6 *graph (B)(ii).”.*

7 **SEC. 3. PRESERVING ONE NATIONAL STANDARD FOR AUTO-**
8 **MOBILES.**

9 *Section 209(b) of the Clean Air Act (42 U.S.C. 7543)*
10 *is amended by adding at the end the following:*

11 “(4) *With respect to standards for emissions of green-*
12 *house gases (as defined in section 330) for model year 2017*
13 *or any subsequent model year new motor vehicles and new*
14 *motor vehicle engines—*

15 “(A) *the Administrator may not waive applica-*
16 *tion of subsection (a); and*

17 “(B) *no waiver granted prior to the date of en-*
18 *actment of this paragraph may be construed to waive*
19 *the application of subsection (a).”.*

20 **SEC. 4. SENSE OF CONGRESS.**

21 *It is the sense of the Congress that—*

22 (1) *there is established scientific concern over*
23 *warming of the climate system based upon evidence*
24 *from observations of increases in global average air*

1 *and ocean temperatures, widespread melting of snow*
2 *and ice, and rising global average sea level;*

3 *(2) addressing climate change is an inter-*
4 *national issue, involving complex scientific and eco-*
5 *nomie considerations;*

6 *(3) the United States has a role to play in re-*
7 *solving global climate change matters on an inter-*
8 *national basis; and*

9 *(4) Congress should fulfill that role by developing*
10 *policies that do not adversely affect the American*
11 *economy, energy supplies, and employment.*

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