Initiative Measure No. 1065

FILED
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SECRETARY OF STATE
STATE OF WASHINGTON

AN ACT Relating to preventing government entities from attempting to intentionally modify or regulate in any manner nontoxic greenhouse gas emissions in the state of Washington; amending RCW 70.235.010; adding new sections to chapter 70.235 RCW; repealing RCW 70.235.005, 70.235.020, 70.235.030, 70.235.040, 70.235.050, 70.235.060, 70.235.070, and 70.235.900; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. (1) It is the intent of the people that any state or regional program to implement a cap and trade system or any other program to address nontoxic greenhouse gas emissions be null and void in the state of Washington. There exists no hard scientific evidence that greenhouse gases are responsible for global warming and there is much data to suggest that such warming trends would be a net benefit to society. It is the intent of the people that absolutely no public policy designed to modify greenhouse gas emissions should be undertaken by any public Washington entity, particularly at taxpayer expense.

(2) These restrictions also apply to any federal law, code, or mandate in the state of Washington, as it is the clear understanding of the people of Washington that the emission of carbon dioxide is not "commerce" as understood by the nation's founders in adopting Article I, section 8 of the United States Constitution and that there is no enumerated power that should be interpreted to give the federal government the right to tax and regulate carbon dioxide. The tenth amendment of the United States Constitution thus takes such matters out of the jurisdiction of the federal government. Moreover, given that carbon dioxide is a product excreted by all animals, yet deleterious to none, any restrictions on its production are infringements of the God-given rights covered under the ninth amendment of the United States Constitution.

Sec. 2. RCW 70.235.010 and 2008 c 14 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

((~~(1) "Carbon dioxide equivalents" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.~~

~~(2) "Climate advisory team" means the stakeholder group formed in response to executive order 07-02.~~

~~(3) "Climate impacts group" means the University of Washington's climate impacts group.~~

~~(4) "Department" means the department of ecology.~~

~~(5) "Direct emissions" means emissions of greenhouse gases from sources of emissions, including stationary combustion sources, mobile combustion emissions, process emissions, and fugitive emissions.~~

~~(6) "Director" means the director of the department.~~

~~(7) "Greenhouse gas" and "greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.~~

~~(8) "Indirect emissions" means emissions of greenhouse gases associated with the purchase of electricity, heating, cooling, or steam.~~

~~(9) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of the state.~~

~~(10) "Program" means the department's climate change program.~~

~~(11) "Total emissions of greenhouse gases" means all direct emissions and all indirect emissions.~~

~~(12) "Western climate initiative" means the collaboration of states, Canadian provinces, Mexican states, and tribes to design a multisector market-based mechanism as directed under the western regional climate action initiative signed by the governor on February 22, 2007.~~))

(1) "Greenhouse gas" includes carbon dioxide, water vapor, methane, nitrous oxide, sulfur hexaflouride, hydrofluorocarbon, or perfluorocarbon.

(2) "Nontoxic greenhouse gas" includes carbon dioxide, water vapor, and any other greenhouse gas that is not classified as a "toxic greenhouse gas" under this section.

(3) "Penalties or fines" means any civil or criminal penalty or fine, tax, salary, wage withholding, surcharge, or any named fee with a similar effect that is established by law or rule by a government-established, created, or controlled agency that is used to punish or discourage the exercise of rights protected under this chapter.

(4) "Person" includes an individual, corporation, association, public or private corporation, city or other municipality, county, state agency, or the state of Washington.

(5) "Toxic greenhouse gas" means any greenhouse gas that multiple confirmatory scientific studies have proven beyond a reasonable doubt is directly toxic to life under normal circumstances.

NEW SECTION. Sec. 3. The state of Washington, as well as the regulatory agencies, counties, or municipal corporations established by Washington, may not:

(1) Specifically tax or set penalties or fines tied to the production of nontoxic greenhouse gases;

(2) Limit the production of nontoxic greenhouse gases;

(3) Adopt or enforce a state or regional program to regulate the emission of greenhouse gases;

(4) Adopt regulatory disincentives specifically designed to modify greenhouse gas emissions;

(5) Adopt any public policy specifically designed to modify greenhouse gas emissions; or

(6) Expend any resources under Washington's disposal, including public funds, to modify greenhouse gas emissions indirectly through public education efforts. Prohibited activities include:

(a) Advertising that carbon dioxide and other nontoxic greenhouse gases need to be reduced;

(b) Advertising that nontoxic greenhouse gases are harmful to individuals or the environment;

(c) Sponsor propaganda campaigns in public schools designed to convince students that greenhouse gas emissions are responsible for climate change; and

(d) Any other public education efforts designed to limit greenhouse gases.

NEW SECTION. Sec. 4. (1) Any federal law, code, or mandate that is contrary to the provisions of this chapter is null and void and of no force or effect in Washington.

(2) Any federal law designed to tax or set penalties or fines tied to the production of nontoxic greenhouse gases emitted in the state of Washington is null and void and of no force or effect in Washington.

(3) The state of Washington may not accept money from the federal government or any other person that would require violating the prohibitions in section 3 of this act.

(4) Any federal employee or agent of the federal government who actively attempts to enforce laws repealed by this act or commits a violation of section 6 of this act is subject to the penalties and prosecution authorized in section 7 of this act.

NEW SECTION. Sec. 5. (1) Any legislation, code, or administrative action whose enforcement or threatened enforcement might have the indirect effect of violating the prohibitions of this chapter is null and void and of no force or effect in Washington. For example, if there existed a requirement for an individual or business to file income tax returns and the effect of filing those tax returns according to the instructions given under penalty of perjury would have the same economic effect of penalties or fines for nontoxic greenhouse gas emissions, that requirement of filing would be null and void in the state of Washington and no civil or criminal enforcement actions for failure to file such an income tax return could take place in Washington.

(2) Any violation of this section must involve an indirect act that is ultimately tied to a direct act specifically targeting one or more nontoxic gases as subject to penalties and fine or a tax as enumerated in section 3. For example, taxes or fines correlated to general economic activity, which are only tangentially

related to the production of carbon dioxide and are not directly targeted by such legislation, may not be considered a violation of this section.

NEW SECTION. Sec. 6. If any individual attempts to compel a person in Washington into surrendering a right or property guaranteed by this chapter by directly or indirectly threatening such a person with the enforcement of a law or code that is nullified by this act, the individual or individuals attempting to compel are subject to penalties under section 7 of this act.

NEW SECTION. Sec. 7. (1) An arrest, search, or seizure or attempted arrest or seizure in violation of this chapter is unlawful, and individuals involved may be prosecuted by a county attorney or the attorney general for kidnapping if an arrest or attempted arrest occurred, for trespass if a search or attempted search occurred, for theft if a seizure or attempted seizure occurred, and for any applicable homicide offense if loss of life occurred. The individuals involved may also be charged with any other applicable criminal offenses in Titles 9 and 9A RCW.

(2) Any individuals involved with violations of section 6 of this act may be prosecuted by the county attorney or the attorney general for extortion as described under RCW 9A.56.110 through 9A.56.130. The individuals involved may also be charged with any other applicable criminal offenses in Titles 9 and 9A RCW.

(3) Victims of crimes prosecutable under this section are entitled to independently pursue concomitant civil action against the perpetrators of these crimes.

NEW SECTION. Sec. 8. The following acts or parts of acts are each repealed:

(1) RCW 70.235.005 (Findings--Intent) and 2008 c 14 s 1;

(2) RCW 70.235.020 (Greenhouse gas emissions reductions--Reporting requirements) and 2008 c 14 s 3;

(3) RCW 70.235.030 (Development of a design for a regional multisector market-based system to limit and reduce emissions of greenhouse gas--Information required to be submitted to the legislature) and 2008 c 14 s 4;

(4) RCW 70.235.040 (Consultation with climate impacts group at the University of Washington--Report to the legislature) and 2008 c 14 s 7;

(5) RCW 70.235.050 (Greenhouse gas emission limits for state agencies--Timeline--Reports--Strategy--Point of accountability employee for energy and climate change initiatives) and 2009 c 519 s 2;

(6) RCW 70.235.060 (Emissions calculator for estimating aggregate emissions--Reports) and 2009 c 519 s 5;

(7) RCW 70.235.070 (Distribution of funds for infrastructure and capital development projects--Prerequisites) and 2009 c 519 s 9; and

(8) RCW 70.235.900 (Scope of chapter 14, Laws of 2008) and 2008 c 14s11.

NEW SECTION. Sec. 9. If any provision of this act or its application to any

person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 10. Sections 1 and 3 through 7 of this act are each added to chapter 70.235 RCW.

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