

BILL ANALYSIS

Senate Research Center
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S.C.R. 27
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recently the Environmental Protection Agency (EPA) proposed a new rule, the Clean Power Plan, to be implemented under Section 111(d) of the Clean Air Act. The EPA has admitted that this rule will not measurably affect any degree of climate change; however, this rule will have a major impact on the economy of each state and significant consequences for how electricity is generated, transmitted, distributed, and used in each state.

The Clean Air Act does not authorize the EPA to require states to regulate beyond the individual physical sources of emissions. Section 111(d) of the Clean Air Act expressly limits the EPA to articulating guidelines for the states' formulation of performance standards for existing sources and that authority has never been expanded. The proposed rule would effectively amount to a federal takeover of the entire system of electric power in the United States and significantly impede if not destroy constitutional constraints on federal powers and the rule of law.

S.C.R. 27 is recognition by the legislature that State of Texas refuses to recognize the attempt by the EPA to enlarge its authority or conscript authority rightfully belonging to the states. Additionally, S.C.R. 27 urges the United States (U.S.) Congress to take immediate action, pursuing all legal avenues, to effect the withdrawal of the proposed rule under Section 111(d).

A reliable and affordable electricity supply is vital to the overall well-being of this nation's citizens and to the economic growth and prosperity of each state. Under protections of the 10th Amendment to the U.S. Constitution, any regulation necessary to ensure a reliable and affordable supply of electricity for citizens is the sole authority of each state, and federal agencies have a legal obligation to respect and preserve this sovereign state function.

On June 25, 2013, the president issued a memorandum to the administrator of the U.S. Environmental Protection Agency directing the EPA to develop guidelines to control greenhouse gas emissions from existing fossil fuel-fired power plants under Section 111(d) of the Clean Air Act and to seek input from states. On June 2, 2014, the EPA issued proposed guidelines requiring states to limit carbon dioxide emissions from existing fossil fuel-fired power plants, and the Section 111(d) rule was published for comment in the Federal Register on June 16, 2014.

The proposed rule is based on the EPA assessment of each state's ability to improve the efficiency of coal-fired electric generating units, to retire, de-rate, or operate differently coal-fired electric generating units, to substantially increase the generation of electricity from natural gas, to significantly increase reliance on renewable energy sources, and to substantially reduce the use of electricity by consumers, all in a plan and on a schedule that is not achievable or workable.

The EPA has admitted that this proposed rule will not measurably affect any degree of climate change, but it will have a major impact on the economy of each state and significant consequences for how electricity is generated, transmitted, distributed, and used in each state.

The Clean Air Act does not authorize the EPA to require states to regulate beyond the individual physical sources of emissions to include forced retirement or de-rating of coal-fired electricity generating units, the reliance on generation of electricity from natural gas, the reliance on renewable energy sources, or the energy efficiency or demand management of end users, each of these being exclusively within the police powers of the state. Section 111(d) of the Clean Air Act

expressly limits the EPA to articulating guidelines for the states' formulation of performance standards for existing sources and that authority has never been expanded, but the proposed rule would effectively amount to a federal takeover of the entire system of electric power in the United States and significantly impede if not destroy constitutional constraints on federal powers and the rule of law.

The Texas governor, attorney general, Public Utility Commission of Texas, and Texas Commission on Environmental Quality have sent comments to the EPA expressing opposition to implementation of the Section 111(d) rule, and it is appropriate for the legislature to also express its sentiment.

RESOLVED

That the 84th Legislature of the State of Texas hereby refuse to recognize the attempt by the EPA to enlarge its authority or conscript authority from the states, unless and until the United States Congress enacts legislation to the contrary.

That the 84th Texas Legislature respectfully urge Congress to take immediate action utilizing all available legal avenues to effect the withdrawal of the proposed Section 111(d) rule.

That the 84th Texas Legislature direct state agencies to take appropriate steps to resist the implementation of the Section 111(d) rule to protect the state's sovereignty and police powers authorities in light of the federalism imbedded in the language and structure of the Clean Air Act and to prevent federal commandeering of state police powers resources.

That the 84th Texas Legislature authorize state agencies, including the Texas Commission on Environmental Quality and the Public Utility Commission of Texas, to examine the implications of preparing plans as may be directed by the Section 111(d) rule, but direct the agencies not to prepare, draft, submit, or execute a state plan under the rule, take any action that assists in the implementation of a state or federal plan, or acknowledge the legality of the Section 111(d) rule unless or until the rule has been fully and finally resolved on judicial review.

That the Texas secretary of state forward official copies of this resolution to the president of the United States, to the president of the Senate and speaker of the House of Representatives of the United States Congress, and to all the members of the Texas delegation to Congress with the request that this resolution be entered in the Congressional Record as a memorial to the Congress of the United States of America.

That the Texas secretary of state forward official copies of this resolution to the administrator of the EPA, to the commissioners and the executive director of the Texas Commission on Environmental Quality, and to the commissioners and executive director of the Public Utility Commission of Texas as an expression of the sentiment of the Texas Legislature.