

House Bill 3188: Prohibition of Texas Implementation of GHG Regulatory Programs *Before the House Select Committee on State Sovereignty*

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On behalf of the Texas Public Policy Foundation, I express strong support for Representative Larsen's HB 3188 to prohibit the Texas state government from implementation of any greenhouse gas (GHG) regulatory program. This prohibition is warranted and is extremely valuable to Texas on a number of levels. The bill offers a strategic means of preserving the vigor of the Texas economy and solvency of the state.

HB 3188 articulates a clear and comprehensive prohibition on Texas' implementation of GHG regulatory programs. Importantly, the bill defines a GHG regulatory program to include: 1) GHG reporting requirements—also known as GHG inventories; 2) "Market-based compliance mechanisms" such as a cap and trading system utilizing "emission exchange," offsets, banking, and credits; and 3) Conventional regulatory program such as EPA now attempts through the existing Clean Air Act.

If passed, HB 3188 bolsters the state's noble challenge to EPA's unlawful GHG regulatory initiative. The several Texas legal challenges to EPA's six-part GHG rulemaking argue that EPA's rules violate the Clean Air Act, and the Administrative Procedures Act as well the U.S. and Texas constitutions. A clear statutory prohibition on state GHG regulation is an important addition to this list. If enacted as black-letter state law, HB 3188's explicit prohibition would contribute to the state's lawsuits and reinforce the state's refusal to acquiesce to EPA's unlawful dictates.

Importantly, HB 3188 also would trump a brief section in existing state law that provides TCEQ vague, general authority to address GHG. These provisions were enacted years ago, long before the prospect of comprehensive GHG regulation, as reflected in the 1,500 page Waxman/Markey bill in the U.S. Congress, had seen the light of day. HB 3188 would constructively nullify these existing provisions.

HB 3188 wisely includes a prohibition on programs for GHG reporting requirements to create GHG inventories. These inventories are often considered non-regulatory, without sig-

nificant costs and thus benign. The reporting requirements in GHG inventories, however, can involve huge costs. And the resulting inventories can be misused to trigger regulation. A trade association representing computer chip-makers recently commented to EPA that compliance with EPA's current GHG reporting requirements would cost over \$80 million for chip manufacturers.

Texas is the only state in the country to refuse—resolutely—to implement EPA's legally rogue regulation of GHG. Over 20 states join Texas in legally challenging EPA's GHG rules, but those other states, however reluctantly, have begun regulation under the federal GHG rules effective January 2, 2011. Some voices in Texas, including among regulated entities, urge Texas to proceed under EPA's new rules until the time that a court—or the U.S. Congress—overrules EPA. These voices claim TCEQ could implement the rules more pragmatically and efficiently for Texas businesses than the typically heavy-handed EPA who lack the hands-on knowledge of Texas industries that the state agency has.

In agreement with HB 3188, I support the state's position to refuse to regulate GHG under the state's permitting authority. To proceed under EPA's rules would be to bow to federal authority without the constraints of the rule of law and in violation of the U.S. and Texas constitutions.

As HB 3188 implies, Texas is not a branch of the federal government. If EPA asserts unlawful regulatory authority over GHG, let EPA implement these requirements. Of course, the Texas economy and the Texas environment is healthier under state implementation of federal laws like the Clean Air Act. The exceptional circumstances created by EPA over the last two years, however, warrant exceptional responses. HB 3188 appropriately responds to EPA's unprecedented overreach outside the bounds of law.

Through HB 3188, Texas would avoid huge expenditures by state government. Consider that in the Tailoring Rule, EPA acknowledged that regulating GHG under existing law (with-

out tailoring) would increase the number of a single category of air permits from roughly 12,000 to over 6 million at an administrative cost to EPA of \$29 billion. Texas does not need to spend exorbitant amounts of its citizens' money to pay for the administrative costs of issuing GHG permits.

And HB 3188 allows Texas and TCEQ to concentrate on genuine pollutants that can impact human health and ecology and not the harmless compound-carbon dioxide (component of the air we breathe, CO₂ has none of the characteristics of what the Clean Air Act legally considers pollutants. The CAA requires regulating pollutants that at ambient levels and with certain exposures can pose a threat to human health. EPA found that CO₂ endangered human health because of the remote speculation that CO₂ as globally accumulated in the upper atmosphere might—in 40 years—so warm the climate that human health was harmed.

At ambient levels, CO₂ presents no adverse impact on human health. The ambient concentration of CO₂ is approximately 320 parts per million (ppm). The Occupational, Safety and Health Administration (OSHA) set the health-effects level for CO₂ at 5,000 ppm.

HB 3188 also prevents Texas from moving down a perilous economic path. EPA's phase I GHG rules, now in effect, cover only large sources of GHG and initially with relatively modest requirements. The IPCC science on which EPA justified regulation of GHG, however, concludes that CO₂ must be reduced 80-85 percent by 2050 "to avert dangerous influence on the climate." Reduction of CO₂ to those levels is equivalent to CO₂ levels in the last decade of the 19th century.

Without health effects, without viable alternatives to the fossil fuels providing 80-85 percent of our energy, without commercial emission control technology to reduce CO₂ and without empirical scientific data demonstrating that man-made GHG cause dangerous warming, GHG regulatory programs are incoherent and without legal justification.

After the last legislative session's many bills to force Texas into GHG regulation well before EPA's ghg rules, HB 3188 offers an insightful, intelligent, strong, and refreshing change. ★

