

By: Hancock

S.C.R. No. 27

CONCURRENT RESOLUTION

1 WHEREAS, A reliable and affordable electricity supply is
2 vital to the overall well-being of this nation's citizens and to the
3 economic growth and prosperity of each state; and

4 WHEREAS, Under protections of the 10th Amendment to the U.S.
5 Constitution, any regulation necessary to ensure a reliable and
6 affordable supply of electricity for citizens is the sole authority
7 of each state, and federal agencies have a legal obligation to
8 respect and preserve this sovereign state function; and

9 WHEREAS, On June 25, 2013, the president issued a memorandum
10 to the administrator of the U.S. Environmental Protection Agency
11 directing the EPA to develop guidelines to control greenhouse gas
12 emissions from existing fossil fuel-fired power plants under
13 Section 111(d) of the Clean Air Act and to seek input from states;
14 and

15 WHEREAS, On June 2, 2014, the EPA issued proposed guidelines
16 requiring states to limit carbon dioxide emissions from existing
17 fossil fuel-fired power plants, and the Section 111(d) rule was
18 published for comment in the Federal Register on June 16, 2014; and

19 WHEREAS, The proposed rule is based on the EPA assessment of
20 each state's ability to improve the efficiency of coal-fired
21 electric generating units, to retire, de-rate, or operate
22 differently coal-fired electric generating units, to substantially
23 increase the generation of electricity from natural gas, to
24 significantly increase reliance on renewable energy sources, and to

1 substantially reduce the use of electricity by consumers, all in a
2 plan and on a schedule that is not achievable or workable; and

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

8 WHEREAS, The Clean Air Act does not authorize the EPA to
9 require states to regulate beyond the individual physical sources
10 of emissions to include forced retirement or de-rating of
11 coal-fired electricity generating units, the reliance on
12 generation of electricity from natural gas, the reliance on
13 renewable energy sources, or the energy efficiency or demand
14 management of end users, each of these being exclusively within the
15 police powers of the state; and

16 WHEREAS, Section 111(d) of the Clean Air Act expressly limits
17 the EPA to articulating guidelines for the states' formulation of
18 performance standards for existing sources and that authority has
19 never been expanded, but the proposed rule would effectively amount
20 to a federal takeover of the entire system of electric power in the
21 United States and significantly impede if not destroy
22 constitutional constraints on federal powers and the rule of law;
23 and

24 WHEREAS, The Texas governor, attorney general, Public
25 Utility Commission of Texas, and Texas Commission on Environmental
26 Quality have sent comments to the Environmental Protection Agency
27 expressing opposition to implementation of the Section 111(d) rule,

1 and it is appropriate for the legislature to also express its
2 sentiment; now, therefore, be it

3 RESOLVED, That the 84th Legislature of the State of Texas
4 hereby refuse to recognize the attempt by the Environmental
5 Protection Agency to enlarge its authority or conscript authority
6 from the states, unless and until the United States Congress enacts
7 legislation to the contrary; and, be it further

8 RESOLVED, That the 84th Texas Legislature respectfully urge
9 Congress to take immediate action utilizing all available legal
10 avenues to effect the withdrawal of the proposed Section 111(d)
11 rule; and, be it further

12 RESOLVED, That the 84th Texas Legislature direct state
13 agencies to take appropriate steps to resist the implementation of
14 the Section 111(d) rule to protect the state's sovereignty and
15 police powers authorities in light of the federalism imbedded in
16 the language and structure of the Clean Air Act and to prevent
17 federal commandeering of state police powers resources; and, be it
18 further

19 RESOLVED, That the 84th Texas Legislature authorize state
20 agencies, including the Texas Commission on Environmental Quality
21 and the Public Utility Commission of Texas, to examine the
22 implications of preparing plans as may be directed by the Section
23 111(d) rule, but direct the agencies not to prepare, draft, submit,
24 or execute a state plan under the rule, take any action that assists
25 in the implementation of a state or federal plan, or acknowledge the
26 legality of the Section 111(d) rule unless or until the rule has
27 been fully and finally resolved on judicial review; and, be it

1 further

2 RESOLVED, That the Texas secretary of state forward official
3 copies of this resolution to the president of the United States, to
4 the president of the Senate and speaker of the House of
5 Representatives of the United States Congress, and to all the
6 members of the Texas delegation to Congress with the request that
7 this resolution be entered in the Congressional Record as a
8 memorial to the Congress of the United States of America; and, be it
9 further

10 RESOLVED, That the Texas secretary of state forward official
11 copies of this resolution to the administrator of the Environmental
12 Protection Agency, to the commissioners and the executive director
13 of the Texas Commission on Environmental Quality, and to the
14 commissioners and executive director of the Public Utility
15 Commission of Texas as an expression of the sentiment of the Texas
16 Legislature.