

Short Ballot Title

An initiative prohibiting new regulations regarding nontoxic greenhouse gas emissions, repealing existing orders and nullifying federal law.

Long Ballot Title

An initiative related to greenhouse gas emissions; amending Title 39, Idaho Code, adding a new Chapter 90 to prohibit new regulations regarding nontoxic greenhouse gas emissions, repealing any executive orders to direct the state to reduce nontoxic greenhouse gas emissions and nullifying federal law.

Text of Initiative

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 90, Idaho Code, and to read as follows:

CHAPTER 90 RULES, REGULATIONS, AND POLICIES TARGETING GREENHOUSE GAS EMISSIONS

39-9001. PURPOSE. (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 Idaho. 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 nontoxic greenhouse gas emissions should be undertaken by any public Idaho entity, particularly at taxpayer expense.

(2) These restrictions also apply to any federal law, code, or mandate in the state of Idaho, as it is the clear understanding of the people of Idaho 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 emitted by all animals, yet deleterious at normal concentrations to none, any restrictions on its production are infringements of the natural rights preserved under the ninth amendment of the United States Constitution.

(3) It is also the intent of this act to legislatively repeal any executive orders to direct the state of Idaho to reduce nontoxic greenhouse gases such as Executive Order No. 2007-05 "Establishing a State Policy Regarding the Role of State Government in Reducing Greenhouse Gases" issued by Governor C.L. "Butch" Otter on May 16, 2007.

39-9002. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Greenhouse gas" includes carbon dioxide, water vapor, methane, nitrous oxide,

sulfur hexafluoride, 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, rule, or regulation 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 Idaho.

(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 and at naturally occurring concentrations.

39-9003. PROHIBITIONS — NONTOXIC GREENHOUSE GAS EMISSION REGULATIONS. The state of Idaho, as well as the regulatory agencies, counties, or municipal corporations established by Idaho, 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 nontoxic greenhouse gases;

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

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

(6) Expend any resources under Idaho's disposal, including public funds, to modify nontoxic 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) Sponsoring propaganda campaigns in public schools designed to convince students that nontoxic greenhouse gas emissions are responsible for climate change; and

(d) Implementing any other public education efforts designed to limit nontoxic greenhouse gases.

39-9004. FEDERAL LAWS AND MANDATES ON GREENHOUSE GAS EMISSIONS.

(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 Idaho.

(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 Idaho is null and void and of no force or effect in Idaho.

(3) The state of Idaho may not accept money from the federal government or any other person that would require violating the prohibitions in 39-9003, Idaho Code.

(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 39-9006, Idaho Code is subject to the

penalties and prosecution authorized in 39-9007, Idaho Code.

39-9005. NULLIFICATION OF ANY INDIRECT VIOLATIONS OF THIS ACT. (1) Any legislation, regulation, 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 Idaho. 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 Idaho and no civil or criminal enforcement actions for failure to file such an income tax return could take place in Idaho.

(2) Any violation of this section must involve an enforcement action that is ultimately tied to a direct act specifically targeting one or more nontoxic greenhouse gases as subject to penalties and fine or a tax as enumerated in 39-9003, Idaho Code. For example, taxes correlated to general economic activity, which are only tangentially related to the production of carbon dioxide and are not directly targeted by such taxes, may not be considered a violation of this section.

39-9006. COLOR OF LAW VIOLATIONS. If any individual attempts to compel a person in Idaho 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 39-9007, Idaho Code.

39-9007. PENALTIES. (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 prosecuting 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 Title 18, Idaho Code.

(2) Any individuals involved with violations of 39-9006, Idaho Code, may be prosecuted by the county Prosecuting attorney or the attorney general for extortion as described under subsection (2)(e) of 18-2403, Idaho Code. The individuals involved may also be charged with any other applicable criminal offenses in Title 18, Idaho Code.

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

39-9008. SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

SECTION 2. That Section 39-118C, Idaho Code, be, and the same is hereby amended to read as follows:

39-118C. LEGISLATIVE FINDINGS AND DECLARATION OF PURPOSE. (1) The legislature finds that it is not an obligation of the state of Idaho under title V of the clean air act

to provide for an operating permit program for sources of air pollution within the state. Pursuant to the statement of purpose in 39-9001, Idaho Code, regulation of gaseous emissions is a right reserved to the state of Idaho under the tenth amendment to the United States Constitution, when such regulations do not conflict with other rights of the people secured by the state and federal constitutions.

(2) The purpose of these amendments to the environmental protection and health act is to meet the state's obligation to protect air quality with a cost-effective operating permit program when so authorized by the legislative branch of the state of Idaho.

(3) The legislature intends that the department's regulation under title V of the clean air act shall take advantage of the flexibility authorized by the federal clean air act to establish reasonable and cost-effective requirements when not in conflict with other valid Idaho laws such as Chapter 90, Title 39, Idaho Code. Such requirements shall include, but not be limited to:

- (a) Operating flexibility provisions;
- (b) Provisions allowing off-permit changes;
- (c) Provisions that limit federally enforceable hazardous air pollutant requirements to that group of pollutants listed under section 112 of the federal clean air act (to the extent that the operating permits address hazardous air pollutants);
- (d) Provisions for operating permits to be issued for fixed terms of five (5) years; provided that, in order to facilitate the implementation of the title V operating permit program, the director may issue operating permits with terms of from three (3) to five (5) years during the first three (3) years following environmental protection agency approval of Idaho's title V operating permit program so long as those permits with fixed terms of less than five (5) years are renewed with terms of five (5) years thereafter; and provided further that if the maximum operating permit term under the federal clean air act should be extended beyond five (5) years, the director shall similarly extend the term of operating permits issued under the Idaho program; and provided further, that shorter terms are allowable when mutually agreed upon by the department and the applicant;
- (e) Provisions for adequate, streamlined and reasonable procedures for processing modifications, including establishing criteria to determine insignificant changes that shall not require a permit modification, and establishing classes of modifications based on significance which shall include a minor modification class for which modifications may be processed in group as authorized by 40 CFR 70.7(e)(3) as may be amended; and
- (f) Provisions allowing an existing source to make changes that reduce emissions without applying for a permit to construct or an amendment to an operating permit; provided, however, that an existing source that makes such changes may seek and obtain an operating permit modification if it chooses.

(4) Any provision of the clear air act that conflicts with Chapter 90, Title 39, Idaho Code, is null and void and of no force in the state of Idaho. In the event greenhouse gas emissions become a regulated pollutant subject to certain regulations and requirements, such regulations and requirements with regards to nontoxic greenhouse gas emissions as defined in 39-9002, Idaho, Code shall be null and void in the state of Idaho.

SECTION 3. 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.