State Responses to Kyoto Climate Change Protocol

Summary

An Act prohibiting the proposal or promulgation of state regulations intended to reduce emissions of greenhouse gases, prior to ratification of the Kyoto climate change protocol by the United States Senate and enactment of implementing legislation by the United States Congress.

Model Legislation

Section 1. {Short Title} This act may be referred to as the Kyoto Protocol Act of 1998.

Section 2. {Findings and Purposes} The [House/Senate] of [State] hereby finds that:

(a) The United States is a signatory to the 1992 United Nations Framework Convention on Global Climate Change ("FCCC");

(b) A protocol to expand the scope of the FCCC was negotiated in December 1997 in Kyoto, Japan ("Kyoto Protocol"), requiring the United States to reduce emissions of greenhouse gases such as carbon dioxide and methane by seven percent from 1990 emission levels during the period 2008 to 2012, with similar reduction obligations for other major industrial nations;

(c) Developing nations, including China, India, Mexico, Indonesia, and Brazil, are exempt from greenhouse gas emission limitation requirements in the FCCC;

(d) Developing nations refused in the Kyoto negotiations to accept any new commitments for greenhouse gas emission limitations through the Kyoto Protocol or other agreements;

(e) With respect to new commitments under the FCCC, President William Clinton pledged on October 22, 1997, that "The United States will not assume binding obligations unless key developing nations meaningfully participate in this effort";

(f) On July 25, 1997, the United States Senate Resolution No. 98 by a vote of 95-0, expressing the Sense of the Senate that, inter alia, "the United States should not be a signatory to any protocol to or other agreement regarding, the Framework Convention on Climate Change...which would require the advice and consent of the Senate to ratification, and which would mandate new commitments to mitigate greenhouse gas emissions for the Developed Country Parties, unless the protocol or other agreement also mandates specific scheduled commitments within the same compliance period to mitigate greenhouse gas emissions for Developing country Parties;"

(g) The Kyoto Protocol fails to meet the tests established for acceptance of new climate
change commitments by President Clinton and by U.S. Senate Resolution No. 98;

(h) Achieving the emission reductions proposed by the Kyoto Protocol would require more than a 35 percent reduction in projected United States carbon dioxide and other greenhouse gas emissions during the period 2008 to 2012;

(i) Developing countries exempt from emission limitations under the Kyoto Protocol are expected to increase their rates of fossil fuels use over the next two decades, and to surpass the United States and other industrialized countries in total emissions of greenhouse gases;

(j) Increased emissions of greenhouse gases by developing countries would offset any potential environmental benefits associated with emissions reductions achieved by the United States and by other industrial nations;

(k) Economic impact studies by the U.S. Government estimate that legally binding requirements for the reduction of U.S. greenhouse gases to 1990 emission levels would result in the loss of more than 900,000 jobs in the United States, sharply increased energy prices, reduced family incomes and wages, and severe losses of output in energy-intensive industries such as aluminum, steel, rubber, chemicals, and utilities;

(l) The failure to provide for commitments by developing countries in the Kyoto Protocol creates an unfair competitive imbalance between industrial and developing nations, potentially leading to the transfer of jobs and industrial development from the United States to developing countries;

(m) Federal implementation of the Kyoto Protocol, if ratified by the United States Senate, would entail new Congressional legislation whose form and requirements cannot be predicted at this time, but could include national energy taxes or emission control allocation and trading schemes that would preempt state-special programs intended to reduce emissions of greenhouse gases;

(n) Piecemeal or other uncoordinated state regulatory initiatives intended to reduce emissions of greenhouse gases may be inconsistent with subsequent Congressional determinations concerning the Kyoto Protocol, and with related Federal legislation implementing the Kyoto Protocol;

(o) Individual state responses to the Kyoto Protocol, including the development of new regulatory programs intended to reduce greenhouse emissions, are premature prior to Senate ratification of that Protocol, in its current or amended form, and Congressional enactment of related implementing legislation;

Section 3. {Restrictions on State Regulations Related to Greenhouse Gas Emissions}

(a) Effective immediately, the [Secretary/Administrator/Director] of the [State Department/Agency of Environmental Protection or any appropriate agency] shall not propose or promulgate any new regulations intended in whole or in part to reduce emissions of greenhouse gases, as such gases and emissions are defined by the Kyoto Protocol, from the residential, commercial, industrial, electric utility, transportation, agriculture, energy, or mining sectors;

(b) In the absence of a resolution or other act of the [House/Senate of ____] approving same, the [Secretary/Administrator/Director] of the [State Department/Agency of Environmental Protection or other appropriate agency] shall not submit to the U.S. Environmental Protection Agency or to any other agency of the Federal Government any legally enforceable commitments related to the reduction of greenhouse gases, as such gases are defined by the Kyoto Protocol;

(c) Nothing in this section shall be construed to limit or to impede state or private participation in any on-going voluntary initiatives to reduce emissions of greenhouse gases, including, but not limited to, the U.S. Environmental Protection Agency's Green Lights program, the U.S. Department of Energy's Climate Challenge program, and similar
State and Federal initiatives relying on voluntary participation;

(d) This Act shall remain in effect until repealed by an Act of the Legislature of the
[State/Commonwealth] of [State], or until ratification of the Kyoto Protocol by the United
States Senate and enactment of Federal legislation implementing the Kyoto Protocol.

Adopted by the Natural Resources Task Force at the March 20, 1998 Task Force Meeting.
Approved by full the ALEC Board of Directors April, 1998.