

REFERENCE TITLE: greenhouse emissions; legislative authority

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SCR 1050

Introduced by
Senators Allen S, Gould, Gray C: Huppenthal, Melvin, Pearce R, Verschoor

A CONCURRENT RESOLUTION

ENACTING AND ORDERING THE SUBMISSION TO THE PEOPLE OF A MEASURE RELATING TO
LEGISLATIVE AUTHORITY TO REGULATE GREENHOUSE GASES AND OTHER EMISSIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the Senate of the State of Arizona, the House of
2 Representatives concurring:

3 1. Under the power of the referendum, as vested in the Legislature,
4 the following measure, relating to legislative authority to regulate
5 greenhouse gases and other emissions, is enacted to become valid as a law if
6 approved by the voters and on proclamation of the Governor:

7 AN ACT

8 AMENDING TITLE 41, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING
9 ARTICLE 14; RELATING TO THE LEGISLATURE.

10 Be it enacted by the Legislature of the State of Arizona:

11 Section 1. Title 41, chapter 7, Arizona Revised Statutes,
12 is amended by adding article 14, to read:

13 ARTICLE 14. LEGISLATIVE AUTHORITY

14 41-1294. Authority over greenhouse gases

15 NOTWITHSTANDING ANY FEDERAL LAW OR REGULATION, THIS STATE,
16 THROUGH THE LEGISLATURE, HAS EXCLUSIVE AUTHORITY TO REGULATE
17 ANTHROPOGENIC EMISSIONS OF CARBON DIOXIDE AND OTHER GREENHOUSE
18 GASES AND SUBSTANCES PRODUCED BY MECHANICAL OR CHEMICAL
19 PROCESSES, INCLUDING AGRICULTURAL OPERATIONS AND WASTE
20 OPERATIONS.

21 Sec. 2. Short title

22 This act may be cited as the "Freedom to Breathe Act".

23 Sec. 3. Declarations of authority

24 The legislature of this state declares that the authority
25 for this act is the following:

26 1. The Tenth Amendment to the United States Constitution
27 guarantees and reserves to the states and their people all
28 powers not granted to the federal government elsewhere in the
29 Constitution as they were understood at the time that the
30 amendment was ratified on December 15, 1791, subject only to
31 modification by duly ratified subsequent amendments to the
32 United States Constitution. The guaranty of those powers is a
33 matter of compact between the state and people of Arizona and
34 the United States as of the time that Arizona was admitted to
35 statehood on February 14, 1912.

36 2. As a matter of compact between the state and people of
37 Arizona and the United States as of the time that Arizona was
38 admitted to statehood, the Tenth Amendment to the United States
39 Constitution guarantees to the state and people of Arizona that
40 Congress and the federal government will not exercise any
41 purported power under article I, section 8 of the United States
42 Constitution (the "Enumerated Powers") except in accordance with
43 its meaning and understanding at the time the United States
44 Constitution was ratified on June 21, 1788, subject only to

1 modification by duly ratified subsequent amendments to the
2 United States Constitution.

3 3. At the time the United States Constitution was
4 ratified on June 21, 1788, the Enumerated Powers were meant and
5 understood not to grant Congress general police powers or the
6 power to regulate the purely internal affairs of the states or
7 their people. This meaning and understanding of the Enumerated
8 Powers, as it pertains to regulation of anthropogenic carbon
9 dioxide or other greenhouse substances produced by biological,
10 mechanical or chemical processes, including refuse and
11 agricultural operations, has never been modified by any duly
12 ratified amendment to the United States Constitution.
13 Accordingly, the foregoing meaning and understanding of the
14 Enumerated Powers is a matter of compact between the state and
15 people of Arizona and the United States as of the time that
16 Arizona was admitted to statehood on February 14, 1912.

17 4. At the time the United States Constitution was
18 ratified on June 21, 1788, the Enumerated Powers were not meant
19 or understood to authorize Congress to regulate wholly
20 intrastate manufacturing or noneconomic activities. This
21 understanding of the Enumerated Powers, as it pertains to the
22 regulation of anthropogenic carbon dioxide or other greenhouse
23 substances produced by biological, mechanical or chemical
24 processes, including refuse and agricultural operations, has
25 never been modified by any duly ratified amendment to the United
26 States Constitution. Accordingly, the foregoing understanding
27 of the Enumerated Powers is a matter of compact between the
28 state and people of Arizona and the United States as of the time
29 that Arizona was admitted to statehood on February 14, 1912.

30 5. At the time the United States Constitution was
31 ratified on June 21, 1788, the Enumerated Powers were not meant
32 or understood to authorize Congress to prohibit any aspect of
33 interstate trade except as necessary and proper to prevent state
34 law from engaging in local protectionism and otherwise solely to
35 ensure that interstate trade occurs smoothly and efficiently
36 among the states. This understanding of the Enumerated Powers,
37 as it pertains to the regulation of anthropogenic carbon dioxide
38 or other greenhouse substances produced by biological,
39 mechanical or chemical processes, including refuse and
40 agricultural operations, has never been modified by any duly
41 ratified amendment to the United States Constitution.
42 Accordingly, the foregoing understanding of the Enumerated
43 Powers is a matter of compact between the state and people of
44 Arizona and the United States as of the time that Arizona was
45 admitted to statehood on February 14, 1912.

1 6. Congress has not expressly preempted state regulation
2 of intrastate commerce pertaining to the regulation of
3 anthropogenic carbon dioxide or other greenhouse substances
4 produced by biological, mechanical or chemical processes,
5 including refuse and agricultural operations.

6 7. The regulation of intrastate commerce, manufacturing
7 and noneconomic activities, as it pertains to intrastate
8 anthropogenic carbon dioxide or other greenhouse substances
9 produced by biological, mechanical or chemical processes,
10 including refuse and agricultural operations, is excluded from
11 the meaning and understanding of the Enumerated Powers at the
12 time the United States Constitution was ratified on June 21,
13 1788, and it is vested in the states under the Tenth Amendment
14 to the United States Constitution.

15 8. Under the Tenth Amendment, the people and state of
16 Arizona retain their exclusive power to regulate wholly
17 intrastate commerce, manufacturing or noneconomic activities, as
18 it pertains to intrastate anthropogenic carbon dioxide or other
19 greenhouse substances produced by biological, mechanical or
20 chemical processes, including refuse and agricultural
21 operations, subject only to the Fourteenth Amendment's guaranty
22 that the people and state of Arizona shall exercise such
23 sovereign power in accordance with each citizen's lawful
24 privileges or immunities, and in compliance with the
25 requirements of due process and equal protection of the law.

26 9. Article II, sections 2 and 33, Constitution of
27 Arizona, secure to Arizona citizens, and prohibits unreasonable
28 government interference with, their natural rights to life,
29 liberty and property as entailed by the traditional Anglo-
30 American conception of ordered liberty; including, but not
31 limited to, their rights as they were understood and secured by
32 the law in the state of Arizona at the time the Arizona
33 Constitution was adopted. This Constitutional protection is
34 unchanged from the Arizona Constitution as it was adopted. The
35 guaranty of this right is a matter of compact between the state
36 and people of Arizona and the United States as of the time that
37 Arizona was admitted to statehood on February 14, 1912.

38 10. The Ninth Amendment to the United States Constitution
39 secures individual rights not specified in the Constitution and
40 reserves to the people of Arizona as against the federal
41 government their natural rights to life, liberty and property as
42 entailed by the traditional Anglo-American conception of ordered
43 liberty, including, but not limited to, their rights as they
44 were understood and secured by the common law at the time that
45 the amendment was ratified on December 15, 1791, as well as

1 their rights as they were understood and secured by the law in
2 the state of Arizona at the time the Arizona Constitution was
3 adopted. The guaranty of those rights is a matter of compact
4 between the state and people of Arizona and the United States as
5 of the time that Arizona was admitted to statehood on February
6 14, 1912.

7 11. To the extent that article II, sections 2 and 33,
8 Constitution of Arizona, secures to Arizona citizens a more
9 expansive right to emit intrastate anthropogenic carbon dioxide
10 or other greenhouse substances produced by biological,
11 mechanical or chemical processes, including refuse and
12 agricultural operations, than does the Ninth Amendment to the
13 United States Constitution, the Tenth Amendment to the United
14 States Constitution secures and reserves to the people of
15 Arizona as against the federal government that right as it was
16 understood and secured by the law in the state of Arizona at the
17 time the Arizona Constitution was adopted. The guaranty of this
18 right is a matter of compact between the state and people of
19 Arizona and the United States as of the time that Arizona was
20 admitted to statehood on February 14, 1912.

21 Sec. 4. Declaration of exclusive sovereign authority and
22 sanctions

23 A. The harmless emission of anthropogenic carbon dioxide
24 or other greenhouse substances produced by biological,
25 mechanical or chemical processes, including refuse and
26 agricultural operations, is a necessary incident of the
27 Constitutional rights of Arizonans under the Ninth Amendment to
28 the United States Constitution, as well as article II, sections
29 2 and 33, Constitution of Arizona.

30 B. The intrastate emission of anthropogenic carbon
31 dioxide or other greenhouse substances produced by biological,
32 mechanical or chemical processes, including refuse and
33 agricultural operations, is not subject to federal law or
34 federal regulation, under the Enumerated Powers of the federal
35 government. Accordingly, to the extent that such emissions can
36 be regulated consistent with the principles of free republican
37 government, such power is reserved to the State of Arizona or
38 the people under the Tenth Amendment to the United States
39 Constitution.

40 C. Any effort by any governmental official to enforce
41 within the borders of the state of Arizona federal laws or
42 federal regulations purporting to restrict intrastate emissions
43 of anthropogenic carbon dioxide or other greenhouse substances
44 is herewith declared a violation of civil rights and unlawful
45 under Arizona state law.

1 Sec. 5. Rule of construction and severability
2 Any court responsible for construing this act must adopt a
3 construction of each provision that:
4 1. Confines the power of Congress to regulate under the
5 Enumerated Powers, as it pertains to the intrastate emission of
6 anthropogenic carbon dioxide or other greenhouse substances
7 produced by biological, mechanical or chemical processes,
8 including refuse and agricultural operations, to the least
9 expansive interpretation permitted under binding precedent.
10 2. Secures the authority of the state of Arizona to
11 exclusively regulate intrastate manufacturing, commerce and
12 noneconomic activities, as it pertains to the emission of
13 anthropogenic carbon dioxide or other greenhouse substances
14 produced by biological, mechanical or chemical processes,
15 including refuse and agricultural operations, under the Tenth
16 Amendment to the United States Constitution to the greatest
17 extent permitted under binding precedent.
18 3. Protects the constitutional rights of Arizonans under
19 the Ninth Amendment to the United States Constitution, as well
20 as article II, sections 2 and 33, Constitution of Arizona, as
21 they pertain to the intrastate emission of anthropogenic carbon
22 dioxide or other greenhouse substances produced by biological,
23 mechanical or chemical processes, including refuse and
24 agricultural operations, from regulation or restraint by the
25 federal government to the greatest extent permitted under
26 binding precedent.
27 4. If any portion of this act is held to be unlawful or
28 unconstitutional under any present or future law or court
29 decision, that provision will be fully severable. This act
30 shall then be construed and enforced as if the unlawful or
31 unconstitutional provision had never comprised a part of it, and
32 the remaining provisions of this act will remain in full force
33 and effect and will not be affected by any such unlawful or
34 unconstitutional provision or by its severance from this act.
35 2. The Secretary of State shall submit this proposition to the voters
36 at the next general election as provided by article IV, part 1, section 1,
37 Constitution of Arizona.