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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE RESOLUTION

No. 1088 Session of  
2020

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INTRODUCED BY STRUZZI, SNYDER, METCALFE, OBERLANDER, BARRAR,  
CAUSER, DAVANZO, DUNBAR, DUSH, ECKER, GABLER, GLEIM, HEFFLEY,  
KAUFFMAN, KEEFER, KORTZ, MACKENZIE, MOUL, PICKETT, READSHAW,  
REESE, ROWE, RYAN, SAINATO, SANKEY, SAYLOR, SCHMITT AND  
ZIMMERMAN, NOVEMBER 16, 2020

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REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
NOVEMBER 16, 2020

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A RESOLUTION

1 Urging Pennsylvania's Independent Regulatory Review Commission  
2 to reject the proposed carbon dioxide budget trading program  
3 regulation as part of the Regional Greenhouse Gas Initiative.

4 WHEREAS, On October 3, 2019, Governor Wolf directed the  
5 Department of Environmental Protection (DEP) by Executive Order  
6 2019-17 to develop regulations that would facilitate  
7 Pennsylvania's entry into or partnership with the Regional  
8 Greenhouse Gas Initiative (RGGI); and

9 WHEREAS, In coordination with RGGI, Inc., the private,  
10 nonprofit administrator of RGGI, and member states Connecticut,  
11 Delaware, Maine, Maryland, Massachusetts, New Hampshire, New  
12 Jersey, New York, Rhode Island and Vermont, DEP submitted a  
13 proposed carbon dioxide trading program regulation to, and  
14 received approval from, the Environmental Quality Board (EQB) on  
15 September 15, 2020, which is subject to public comment and  
16 review by the Independent Regulatory Review Commission (IRRC);

1 and

2 WHEREAS, RGGI is a multistate program in which each state  
3 regulates carbon dioxide emissions from electric generation  
4 plants by imposing a cap and then a tax on those emissions,  
5 intended to reduce in-state carbon dioxide emissions and  
6 generate revenues to fund various non-fossil-fuel-related  
7 projects; and

8 WHEREAS, Under the act of January 8, 1959 (P.L.2119, No.787),  
9 known as the Pennsylvania Air Pollution Control Act, there is no  
10 reference to carbon dioxide under the definition of "air  
11 pollution," let alone express statutory authorization to  
12 regulate, cap and tax carbon dioxide emissions, and in contrast  
13 to the Federal definition of "air pollutant," the Air Pollution  
14 Control Act definition also requires an air pollutant to be  
15 "inimical to public health. . .injurious to humans. . .or which  
16 unreasonably interferes with the enjoyment of life or property,"  
17 unlike carbon dioxide which is necessary to sustain life; and

18 WHEREAS, According to DEP and data from the International  
19 Panel on Climate Change (IPCC), carbon dioxide emissions from  
20 all Pennsylvania energy production sources, not just from  
21 electric plants, represent approximately 0.19% of global carbon  
22 dioxide emissions, and according to DEP models, any carbon  
23 dioxide reductions in Pennsylvania would be offset by increased  
24 carbon dioxide emissions from neighboring, non-RGGI states, like  
25 West Virginia and Ohio, and thus fail to meet the Air Pollution  
26 Control Act mandate that the RGGI regulation must also  
27 meaningfully "prevent, control, reduce, and abate" climate  
28 change; and

29 WHEREAS, There is no Federal court, Federal agency or  
30 Commonwealth mandate that the Commonwealth cap and tax carbon

1 dioxide emissions; and

2 WHEREAS, Under Pennsylvania Supreme Court precedent, "the  
3 power of taxation, in all forms and of whatever nature lies  
4 solely in the General Assembly" and a regulatory fee is  
5 "intended to cover the cost of administering a regulatory  
6 scheme"; and

7 WHEREAS, The RGGI revenue generating mechanism, which  
8 according to DEP will generate \$2.4 billion in revenue over 10  
9 years, is a tax because only a small portion will be used to pay  
10 the administrative expenses of the RGGI regulatory scheme; and

11 WHEREAS, Consistent with the Constitution of Pennsylvania and  
12 Supreme Court precedent, the Air Pollution Control Act mandates  
13 that the EQB may only establish "fees sufficient to cover the  
14 indirect and direct costs of administering" the act and the  
15 Federal Clean Air Act, however DEP intends to utilize RGGI  
16 revenues beyond that purpose; and

17 WHEREAS, The Constitution of Pennsylvania precludes the  
18 General Assembly from delegating taxing power to an unelected  
19 board or commission, such as the EQB, by declaring "[t]he  
20 General Assembly shall not delegate to any special commission,  
21 private corporation or association, any power. . .to levy taxes  
22 or perform any municipal function whatever"; and

23 WHEREAS, The \$2.4 billion RGGI tax will be imposed on all  
24 coal and natural gas electric generation plants in Pennsylvania,  
25 and according to DEP's modeling will eliminate over 87% of  
26 existing Pennsylvania coal generation by 2022 and impair the  
27 future competitiveness of all natural gas plants; and

28 WHEREAS, RGGI represents the single, most significant energy  
29 generation restructurings in the history of Pennsylvania, and  
30 the forced early retirement of coal and natural gas plants will

1 lead to the loss of thousands of direct and indirect jobs  
2 supporting the electric generation industry; and

3 WHEREAS, If all coal plants and many natural gas plants  
4 within Pennsylvania are forced to close as a result of the RGGI  
5 fee, Pennsylvania electric customers will be at risk for  
6 significant price spikes and potentially rolling brownouts as  
7 have occurred in other states that have moved away from fossil  
8 fuel electricity before ensuring that nonfossil fuel electricity  
9 was available to meet consumer demand; and

10 WHEREAS, Every state within RGGI has enacted legislation that  
11 specifically governs entry into the initiative or otherwise  
12 expressly authorizes the regulation of carbon dioxide, and  
13 nearly all of those state statutes appropriate RGGI revenues to  
14 assist low-income families with direct bill pay assistance,  
15 which DEP acknowledged cannot occur under its proposed  
16 rulemaking; therefore be it

17 RESOLVED, That the House of Representatives urge  
18 Pennsylvania's Independent Regulatory Review Commission to  
19 reject the proposed carbon dioxide budget trading program  
20 regulation as contrary to State statute and the Constitution of  
21 Pennsylvania; and be it further

22 RESOLVED, That the House of Representatives deem this  
23 resolution to serve as its official public comment for the  
24 proposed carbon dioxide budget trading program regulation; and  
25 be it further

26 RESOLVED, That the House of Representatives has and will  
27 continue to consider statutory energy policy reforms that make  
28 sense for Pennsylvania workers, consumers and employers; and be  
29 it further

30 RESOLVED, That a copy of this resolution be transmitted to

- 1 the Governor, the Department of Environmental Protection, the
- 2 IRRC and the EQB.