

7 WHEREAS, the 10th Amendment to the Constitution of the United States guarantees and reserves to
8 the states and their people all powers not granted to the federal government and the guaranty of those powers
9 is a matter of compact between the state and people of Montana; and

10 WHEREAS, at the time the Constitution of the United States was ratified in 1788, Article I, section 8, of
11 the Constitution of the United States was meant and understood not to grant Congress general police powers
12 or the power to regulate the internal affairs of the states or their people, and these internal affairs include the
13 regulation of greenhouse gases produced by biological, mechanical, or chemical processes, including refuse and
14 agricultural operations; and

WHEREAS, Article I, section 8, of the Constitution of the United States was not meant or understood to authorize Congress to regulate wholly intrastate manufacturing, and this intrastate manufacturing includes the regulation of greenhouse gases; and

18 WHEREAS, Article I, section 8, of the Constitution of the United States was not meant to authorize
19 Congress to prohibit any aspect of interstate trade except as necessary and proper to prevent state protectionism
20 and to ensure that interstate trade occurs smoothly and efficiently among states, and this understanding, as it
21 pertains to the regulation of greenhouse gases, has never been modified by an amendment to the Constitution
22 of the United States; and

23 WHEREAS, the regulation of intrastate commerce, as it pertains to intrastate greenhouse gas emissions,
24 is excluded from the meaning and understanding of Article I, section 8, of the Constitution of the United States;
25 and

26 WHEREAS, Congress has not expressly preempted state regulation of intrastate manufacturing,
27 commerce, or trade pertaining to the regulation of greenhouse gases; and

28 WHEREAS, under the 10th Amendment, the people and state of Montana retain their exclusive power
29 to regulate intrastate commerce as it pertains to greenhouse gas emissions; and

30 WHEREAS, the Constitution of the State of Montana declares that the people of this state have the sole

1 and exclusive right to govern themselves as a free, sovereign, and independent state and that the people of this
2 state shall exercise and enjoy every power, jurisdiction, and right pertaining to that right.

3

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5

6 **NEW SECTION.** **Section 1. Definitions.** As used in [sections 1 through 3], unless the context requires
7 otherwise, the following definitions apply:

8 (1) "Greenhouse gases" includes the following gases:

9 (a) carbon dioxide;

10 (b) methane;

11 (c) nitrous oxide;

12 (d) hydrofluorocarbons;

13 (e) perfluorocarbons;

14 (f) sulfur hexafluoride; and

15 (g) other gases or substances incorporated into regional or federal greenhouse gas regulatory programs.

16 (2) "Greenhouse gas emission limit" means an authorization to a specific source or category of sources
17 during a specified year to emit up to a certain level of greenhouse gases expressed in tons of carbon dioxide
18 equivalents.

19 (3) "Greenhouse gas emission source" or "source" means a person who generates greenhouse gas
20 emissions at a level significant enough to impact statewide greenhouse gas emissions or who generates
21 greenhouse gas that when combined with other similar sources generates greenhouse gas emissions at a level
22 significant enough to impact statewide greenhouse gas emissions.

23 (4) "Greenhouse gas regulatory program" means any arrangement under which a greenhouse gas
24 emission source is required to account for or report greenhouse gas emissions. It includes greenhouse gas
25 emission limits and market-based compliance mechanisms.

26 (5) "Market-based compliance mechanism" means either one or both of the following:

27 (a) a system of market-based declining annual aggregate emission limits for sources or categories of
28 sources that emit greenhouse gases; or

29 (b) a greenhouse gas emission exchange, banking, credit, or other transaction that results in the same
30 greenhouse gas emission reduction over the same time period as would occur because of direct compliance with

1 a greenhouse gas emission limit or emission reduction measure.

2

3 **NEW SECTION. Section 2. Legislative finding -- direction to state agencies not to administer**
4 **federal greenhouse gas regulatory programs.** (1) The legislature finds that the enactment by the U.S. congress
5 or by the federal environmental protection agency of any federal greenhouse gas regulatory program in the form
6 of law or rule violates the 10th amendment of the Constitution of the United States and Montana retains its
7 exclusive power to regulate intrastate commerce as it pertains to greenhouse gas emissions.

8 (2) Notwithstanding the provisions of Title 2, chapter 1, part 4, an agency of this state, as defined in
9 2-18-101, may not implement or enforce in any way any federal regulation, rule, or policy implementing a federal
10 greenhouse gas regulatory program.

11 (3) In addition to the provisions in subsection (2), the prohibition under this section includes participation
12 by a state official or state employee on a board, a study commission, or a related entity of the national association
13 assigned to recommend provisions to implement any federal greenhouse gas regulatory program.

14 (4) This section does not interfere with:

15 (a) voluntary actions taken by individuals to reduce greenhouse gas emissions;

16 (b) the state requirement to report motor vehicle emissions as provided in Title 61, chapter 11, part 5;

17 or

18 (c) the public service commission's approval of an electricity supply resource as provided in 69-8-421.

19

20 **NEW SECTION. Section 3. Codification instruction.** [Sections 1 through 3] are intended to be codified
21 as an integral part of Title 75, chapter 2, and the provisions of Title 75, chapter 2, apply to [sections 1 through 3].

22

23 **NEW SECTION. Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable
24 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
25 remains in effect in all valid applications that are severable from the invalid applications.

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27 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

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