

114TH CONGRESS
1ST SESSION

H. CON. RES. 97

Expressing the sense of Congress that the President should submit to the Senate for advice and consent the climate change agreement proposed for adoption at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, to be held in Paris, France from November 30 to December 11, 2015.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2015

Mr. KELLY of Pennsylvania (for himself, Mr. FLORES, Mr. SESSIONS, Mr. DUNCAN of South Carolina, Mr. GOSAR, Mr. SMITH of Texas, Mr. RIBBLE, Mr. ROE of Tennessee, Mr. MURPHY of Pennsylvania, Mr. ROUZER, Mr. CULBERSON, Mr. FLEMING, Mr. WILSON of South Carolina, Mr. JONES, Mr. DESJARLAIS, Mr. PITTS, Mrs. BLACKBURN, Mr. LAMALFA, Mr. LAMBORN, Mr. YODER, Mr. WALBERG, Mr. PITTENGER, Mr. CRAMER, Mr. WOODALL, Mr. FRANKS of Arizona, Mr. GIBBS, Mr. WEBER of Texas, Mr. SAM JOHNSON of Texas, Mr. PALMER, Mr. ZINKE, Mr. SALMON, Mr. POSEY, Mr. RATCLIFFE, Mr. FARENTHOLD, Mr. LONG, Mr. MILLER of Florida, Mr. SCHWEIKERT, Mr. BRIDENSTINE, Mr. WILLIAMS, Mr. LUETKEMEYER, Mr. GROTHMAN, Mr. RENACCI, Mr. HENSARLING, Mr. GUTHRIE, Mr. MEADOWS, and Mr. BABIN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Affairs

CONCURRENT RESOLUTION

Expressing the sense of Congress that the President should submit to the Senate for advice and consent the climate change agreement proposed for adoption at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate

Change, to be held in Paris, France from November 30 to December 11, 2015.

Whereas the United States is party to the United Nations Framework Convention on Climate Change, with annexes, done at New York, May 9, 1992, and entered into force March 21, 1994 (in this resolution referred to as the “Convention”);

Whereas the Convention requires the United States to “adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases”, but does not require the United States to commit to specific targets or timetables for emissions reductions;

Whereas, during the Convention’s advice and consent process in the Committee on Foreign Relations of the Senate (in this resolution referred to as the “Foreign Relations Committee”) a question arose whether future protocols made pursuant to the Convention “containing targets and timetables” for emissions reductions should be submitted to the Senate for advice and consent;

Whereas in response to the written question submitted by the Foreign Relations Committee, “Would a protocol containing targets and timetables be submitted to the Senate?”, the Executive Branch stated, “If such a protocol were negotiated and adopted, and the United States wished to become a party, we would expect such a protocol to be submitted to the Senate.”;

Whereas the Foreign Relations Committee, chaired by Senator Claiborne Pell, issued Executive Report 102–55 regarding the Convention, in which it noted “that a decision by the Conference of the Parties to adopt targets

and timetables would have to be submitted to the Senate for its advice and consent before the United States could deposit its instruments of ratification for such an agreement”;

Whereas Executive Report 102–55 further noted “that a decision by the executive branch to reinterpret the Convention to apply legally binding targets and timetables for reducing emissions of greenhouse gases to the United States would alter the ‘shared understanding’ of the Convention between the Senate and the executive branch and would therefore require the Senate’s advice and consent”;

Whereas, under that “shared understanding” of the Convention that future agreements made pursuant to the Convention containing targets and timetables for emissions reductions would be submitted to the Senate, the Senate gave its consent to ratification of the Convention on October 7, 1992;

Whereas, in December 2011, at the seventeenth session of the Conference of the Parties (COP–17) in Durban, South Africa, the Ad Hoc Working Group on the Durban Platform for Enhanced Action was established, inter alia, “to develop a protocol, another legal instrument or an agreed outcome with legal force” under the Convention to be completed no later than 2015 and adopted at the twenty-first session of the Conference of the Parties (COP–21);

Whereas, subsequent to COP–17, representatives of President Barack Obama, including the Special Envoy for Climate Change, have made public statements indicating that the United States intends to finalize a climate change agreement at COP–21 that contains targets and timetables for emissions reductions;

Whereas the Executive Branch has made it clear through its public statements that it intends to negotiate a climate change agreement at COP–21 that contains legally binding provisions as well as nonbinding provisions—including targets and timetables for emissions reductions—attached as an addendum or schedule to the legally binding agreement;

Whereas the French Minister of Foreign Affairs, Laurent Fabius, who will host COP–21, has stated, “We must find a formula which is valuable for everybody and valuable for the U.S. without going to the Congress.”;

Whereas the Department of State developed guidelines known as the Circular 175 Procedure (C–175) to facilitate “the application of orderly and uniform measures to the negotiation, conclusion, reporting, publication, and registration of U.S. treaties and international agreements”;

Whereas C–175, *inter alia*, set forth eight factors for determining “whether any international agreement should be brought into force as a treaty or as an international agreement other than a treaty”;

Whereas the Executive Branch must give “due consideration” to the eight factors outlined in C–175, and “the utmost care is to be exercised to avoid any invasion or compromise of the constitutional powers of the President, the Senate, and the Congress as a whole”;

Whereas the eight factors are as follows: (1) the extent to which the agreement involves commitments or risks affecting the Nation as a whole; (2) whether the agreement is intended to affect State laws; (3) whether the agreement can be given effect without the enactment of subsequent legislation by the Congress; (4) past United States

practice as to similar agreements; (5) the preference of the Congress as to a particular type of agreement; (6) the degree of formality desired for an agreement; (7) the proposed duration of the agreement, the need for prompt conclusion of an agreement, and the desirability of concluding a routine or short-term agreement; and (8) the general international practice as to similar agreements;

Whereas COP–21 will be held in Paris, France, from November 30 to December 11, 2015;

Whereas, at COP–21, the United States will be expected, inter alia, to commit billions of dollars in taxpayer money to fund the Green Climate Fund and other financial mechanisms to fund mitigation and adaptation projects in developing countries;

Whereas the climate change agreement proposed for adoption at COP–21, either in the form contemplated by the President or in its current draft form released on October 5, 2015, by the Ad Hoc Working Group on the Durban Platform, reflects the characteristics of a treaty as set forth in C–175, and does not reflect the characteristics of an international agreement other than a treaty; and

Whereas, pursuant to commitments made by the Executive Branch to the Senate during the advice and consent process for the Convention, the Executive Branch stated that any protocol containing targets and timetables would be submitted to the Senate: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
 2 *concurring), That it is the sense of Congress that—*

3 (1) the statements made by the Executive
 4 Branch to the Senate during Senate consideration of

1 the Convention and set forth in Executive Report
2 102–55 remain valid and in force and, accordingly,
3 any agreement adopted at COP–21 containing tar-
4 gets and timetables, whether deemed “legally bind-
5 ing” or not, must be submitted to the Senate for ad-
6 vice and consent pursuant to Article II, section 2 of
7 the Constitution;

8 (2) any agreement or decision made at COP–21
9 that contains targets and timetables—whether they
10 are contained within a legally binding instrument or
11 attached as a nonbinding schedule or addendum to
12 a legally binding instrument—shall be considered by
13 the Congress to be an agreement “containing targets
14 and timetables”;

15 (3) a decision made by the Executive Branch at
16 COP–21 or any other venue to apply targets and
17 timetables for reducing emissions of greenhouse
18 gases to the United States would alter the “shared
19 understanding” of the Convention between the Exec-
20 utive Branch and the Senate and would therefore re-
21 quire the Senate’s advice and consent;

22 (4) the Department of State developed the
23 “Circular 175 Procedure” to determine how inter-
24 national agreements would be negotiated, and the
25 eight factors contained in the Procedure strongly

1 support the conclusion that any agreement made
2 under the Convention that contains targets and
3 timetables for reducing emissions of greenhouse
4 gases must be submitted to the Senate for advice
5 and consent;

6 (5) until all commitments on emissions targets
7 and timetables made at COP-21 are submitted to
8 the Senate for advice and consent and subsequently
9 ratified by the Executive Branch, such commitments
10 shall have no effect on the interpretation of the laws
11 and international obligations of the United States;
12 and

13 (6) Congress should refuse to consider any
14 budget resolutions and appropriations language that
15 include funding for the Green Climate Fund or any
16 affiliated body or financing mechanism unless and
17 until all agreements on emissions targets and time-
18 tables reached at COP-21 are submitted to the Sen-
19 ate for advice and consent.

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