

ASSEMBLY, No. 1998

STATE OF NEW JERSEY

215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

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SYNOPSIS

Clarifies intent of P.L.2007, c.340 regarding NJ's required participation in Regional Greenhouse Gas Initiative.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning the reduction of greenhouse gas emissions, and
2 amending P.L.2007, c.340.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. Section 1 of P.L.2007, c.340 (C.26:2C-45) is amended to
8 read as follows:

9 1. The Legislature finds and declares that New Jersey should
10 implement cost-effective measures to reduce emissions of
11 greenhouse gases, and that emissions trading and the auction of
12 allowances **[can be]** is an effective mechanism to accomplish that
13 objective.

14 The Legislature further finds and declares that entering into
15 agreements or arrangements with appropriate representatives of
16 other states **[may further]** furthers the purposes of P.L.2007, c.340
17 (C.26:2C-45 et al.) and the "Global Warming Response Act,"
18 P.L.2007, c.112 (C.26:2C-37 et al.).

19 The Legislature further finds and declares that any carbon
20 dioxide emissions allowance trading program established in the
21 State to reduce emissions of greenhouse gases **[should]** must
22 provide both incentives to reduce emissions at their sources and
23 funding or other consumer benefit incentives to reduce the demand
24 for energy, which in turn would reduce the generation and emission
25 of greenhouse gases.

26 The Legislature further finds and declares that funding consumer
27 benefit purposes will result in reduced costs to New Jersey
28 consumers, decreased energy use, decreased greenhouse gas
29 emissions, and substantial and tangible benefits to the energy-using
30 business sector.

31 The Legislature further finds and declares that efforts to reduce
32 greenhouse gas emissions in New Jersey must include
33 complementary programs to reduce greenhouse gas emissions from
34 electricity generated outside of the State but consumed in New
35 Jersey, and that one measure that may be most effective in doing so
36 is the adoption of a greenhouse gas emissions portfolio standard as
37 authorized pursuant to the "Global Warming Response Act,"
38 P.L.2007, c.112 (C.26:2C-37 et al.) and section 38 of P.L.1999,
39 c.23 (C.48:3-87).

40 The Legislature further finds and declares that energy efficiency
41 and conservation measures and increased use of renewable energy
42 resources must be essential elements of the State's energy future and
43 that greater reliance on energy efficiency, conservation, and
44 renewable energy resources will provide significant benefits to the
45 citizens of this State.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 The Legislature further finds and declares that public utility
2 involvement and competition in the renewable energy, conservation
3 and energy efficiency industries are essential to maximize
4 efficiencies and the use of renewable energy and that the provisions
5 of P.L.2007, c.340 (C.26:2C-45 et al.) **【should】** must be
6 implemented to further competition.

7 The Legislature further finds and declares that any emissions
8 allowance trading program established in the State to reduce
9 emissions of greenhouse gases should transition to any federal
10 program enacted by the federal government that is comparable to
11 the emissions allowance trading program established in New Jersey.

12 The Legislature therefore determines that it is in the public
13 interest to establish a program that **【authorizes】** requires the State
14 to dedicate to consumer benefit purposes up to 100 percent of the
15 revenues derived from the auction or other sale of allowances
16 pursuant to an emissions allowance trading program and to
17 **【authorize】** require the Commissioner of Environmental Protection
18 and the President of the Board of Public Utilities to further the
19 purposes of P.L.2007, c.340 (C.26:2C-45 et al.) and the "Global
20 Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et al.), by
21 participating with other states in the formation and activity of a
22 separate legal entity established for the purpose of furthering the
23 Regional Greenhouse Gas Initiative.

24 (cf: P.L.2007, c.340, s.1)

25

26 2. Section 3 of P.L.2007, c.340 (C.26:2C-47) is amended to
27 read as follows:

28 3. a. (1) The department **【,** by rule or regulation adopted
29 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
30 (C.52:14B-1 et seq.), shall take any measures necessary to sell,
31 exchange, retire, assign, allocate, or auction any or all allowances
32 that are created by, budgeted to, or otherwise obtained by the State
33 in furtherance of any **】** shall establish, consistent with the terms of
34 the Memorandum of Understanding signed by New Jersey and other
35 states on December 20, 2005, a greenhouse gas emissions allowance
36 trading program **【implemented】** to participate in the Regional
37 Greenhouse Gas Initiative in order to reduce or prevent emissions
38 of greenhouse gases. The department shall adopt rules or
39 regulations, pursuant to the "Administrative Procedure Act,"
40 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement this greenhouse
41 gas emissions allowance trading program, and shall take into
42 consideration the principles and goals of the New Jersey Energy
43 Master Plan in the rule making process. The department **【may**
44 **exercise this authority in cooperation and coordination】** shall
45 cooperate and coordinate with other states or countries that are
46 participating in regional, national or international carbon dioxide
47 emissions trading programs with the same or similar purpose. In

1 **【exercising this authority】** doing so , the department shall exclude
2 from the requirement to purchase or acquire any allowances under
3 any greenhouse gas emissions trading program any cogeneration
4 facility or combined heat and power facility that is an "on-site
5 generation facility" as that term is defined in section 3 of P.L.1999,
6 c.23 (C.48:3-51) and sells less than 10 percent of its annual gross
7 electrical generation.

8 (2) Approval and notice by the department of specific
9 procedures and requirements for any auction or other sale of
10 allowances which are formulated by a for-profit or non-profit
11 corporation, association or organization which the department and
12 the board **【are authorized to】** participate in pursuant to section 11
13 of P.L.2007, c.340 (C.26:2C-55) shall not be subject to the
14 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
15 seq.), provided that the specific procedures and requirements are
16 consistent with the process and general requirements outlined in
17 rules and regulations adopted by the department, and the public is
18 afforded an opportunity for review and comment on such specific
19 procedures and requirements.

20 b. **【If the rules or regulations adopted by the department**
21 **pursuant to subsection a. of this section convey allowances utilizing**
22 **an auction, then any】** Any auction to convey allowances :

23 (1) shall be conducted based on the schedule and frequency
24 adopted by the department in consultation with other entities
25 participating in a regional program;

26 (2) shall include the sale of allowances for current and future
27 compliance periods to promote transparency and price stability;

28 (3) shall include auction design elements that minimize
29 allowance price volatility, guard against bidder collusion, and
30 mitigate the potential for market manipulation;

31 (4) shall include provisions to address, and to the extent
32 practicable minimize, the potential for allowance market price
33 volatility during the initial control period of a greenhouse gas
34 emissions allowance trading program;

35 (5) shall include provisions to ensure the continued market
36 availability of allowances to entities regulated under a greenhouse
37 gas emissions allowance trading program, taking into account the
38 outcomes of auctions and monitoring of the allowance market,
39 which may include the adoption of a flexible process that allows for
40 ongoing modification of auction design and procedures in response
41 to allowance market conditions and allowance market monitoring
42 data, provided that the process allows for public comment and
43 input; and

44 (6) may be open to all qualified participants, and all qualified
45 participants may sell or otherwise agree to transfer any or all
46 allowances to any eligible entity.

1 c. The department shall review its position with the Regional
2 Greenhouse Gas Initiative, or any subsequent regional auction , on
3 an annual basis, including the amount of allowances that should be
4 included in a regional auction. This annual review shall include
5 consideration of the environmental and economic impact of the
6 auction, leakage impacts, and the impact on electric generation
7 facilities and ratepayers in the State. The department shall submit a
8 written report of this review to the Governor and to the Legislature
9 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1). The report
10 shall also be posted on the department's website.

11 (cf: P.L.2007, c.340, s.3)

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13 3. Section 11 of P.L.2007, c.340 (C.26:2C-55) is amended to
14 read as follows:

15 11. a. Notwithstanding the provisions of any other law, rule or
16 regulation to the contrary, to further the purposes of P.L.2007,
17 c.340 (C.26:2C-45 et al.) and the "Global Warming Response Act,"
18 P.L.2007, c.112 (C.26:2C-37 et al.), the commissioner and the
19 board president, or their respective designees, **[are authorized to]**
20 shall :

21 (1) enter any agreement or arrangement with the appropriate
22 representatives of other states, including the formation of a for-
23 profit or non-profit corporation, any form of association, or any
24 other form of organization, in this or another state; and

25 (2) participate in any such corporation, association, or
26 organization, and in any activity in furtherance of the purposes
27 thereof, in any capacity including, but not limited to, as directors or
28 officers.

29 b. Any actions that are consistent with, and that further the
30 purposes of, P.L.2007, c.340 (C.26:2C-45 et al.) and the "Global
31 Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et al.) taken
32 by the commissioner or the board president, or any employee of the
33 department or the board authorized to take such actions by the
34 commissioner or the board president, to form such corporation,
35 association or organization, to participate in its activities, or to enter
36 an agreement or arrangement prior to the date of enactment of
37 P.L.2007, c.340 (C.26:2C-45 et al.), are hereby validated.

38 c. Nothing in P.L.2007, c.340 (C.26:2C-45 et al.) shall be
39 deemed to constitute a waiver of sovereign immunity. By entering
40 any agreement or arrangement authorized pursuant to this section,
41 neither the commissioner nor the board president, nor their
42 respective designees, nor the State consents to suit outside of New
43 Jersey or consents to the governance of such suit under any law
44 other than that of New Jersey.

45 (cf: P.L.2007, c.340, s.11)

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47 4. This act shall take effect immediately.

STATEMENT

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This bill clarifies the intent of P.L.2007, c.340 (C.26:2C-45 et al.) and specifically requires the State’s participation in the Regional Greenhouse Gas Initiative (RGGI).

P.L.2007, c.340, commonly referred to as the Regional Greenhouse Gas Initiative or the “RGGI” implementing law, was enacted to further the purposes of the “Global Warming Response Act” (GWRA), P.L.2007, c.112 (C.26:2C-37 et al.). The RGGI implementing law partially implements the policies of the GWRA by creating an emissions auction and trading mechanism to reduce the level of greenhouse gas (GHG) emissions, namely carbon dioxide (CO₂). At the time the GWRA and P.L.2007, c.340 were going through the legislative process, New Jersey’s Department of Environmental Protection (DEP) and Board of Public Utilities (BPU) were already actively engaged in RGGI, as New Jersey was a signatory state on the Memorandum of Understanding (MOU) signed December 20, 2005 by Governor Codey, and as subsequently amended and signed by Governor Corzine on August 31, 2006 and April 20, 2007. In addition, in October 2004, the DEP published in the New Jersey Register proposed rules that would revise several air pollution control rules to redefine carbon dioxide as an air contaminant, and noted in the description of the proposal that the clarification of the status of CO₂ is a regulatory prelude to anticipated future regulatory adoption of a Model Rule proposed through the RGGI, and that the State was participating through RGGI. If the Legislature did not intend for New Jersey to participate in RGGI, the Legislature had ample opportunity at that time to specify that the State should not participate in the regional initiative.

P.L.2007, c.340 clearly recognizes the State’s participation in RGGI by setting forth the parameters to be followed for allowances auctions, and creating the “Global Warming Solutions Fund” (GWSF) and statutorily dedicating all the proceeds received from the sale, exchange or other conveyance of allowances through a greenhouse gas emissions allowance trading program to the fund. If the Legislature did not intend for the State to implement a greenhouse gas emissions allowance trading program and participate in RGGI, it would not have needed to pass the legislation enacted into law as P.L.2007, c.340.