

[First Reprint]

ASSEMBLY, No. 1212

STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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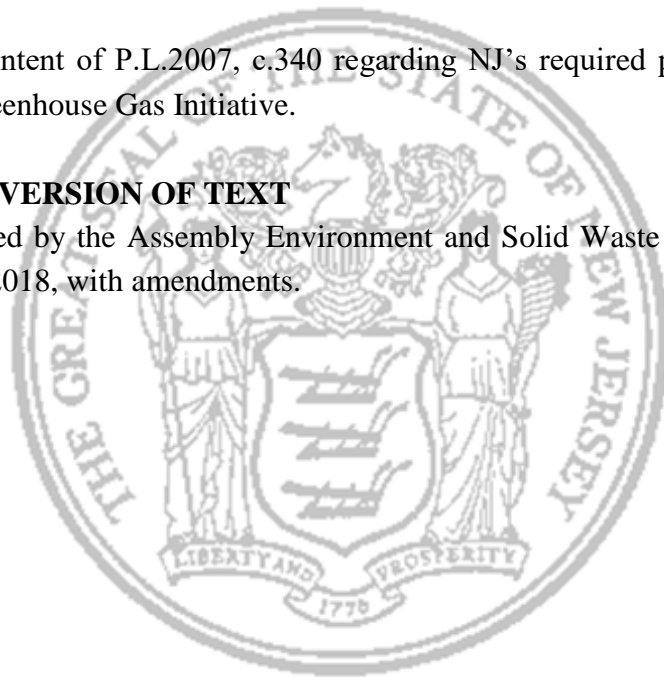
Assemblymen Benson, Conaway, Assemblywoman Jasey, Assemblymen Wimberly, Eustace, Assemblywoman Pinkin, Assemblyman Zwicker, Assemblywoman Murphy, Assemblymen Johnson, Lagana, Houghtaling and Assemblywoman Downey

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Environment and Solid Waste Committee on February 1, 2018, with amendments.



(Sponsorship Updated As Of: 2/16/2018)

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:

6

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AEN committee amendments adopted February 1, 2018.

1 renewable energy resources will provide significant benefits to the
2 citizens of this State.

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

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

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

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

27

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

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

1 cooperate and coordinate with other states or countries that are
2 participating in regional, national or international carbon dioxide
3 emissions trading programs with the same or similar purpose. In
4 **【exercising this authority】** doing so , the department shall exclude
5 from the requirement to purchase or acquire any allowances under
6 any greenhouse gas emissions trading program any cogeneration
7 facility or combined heat and power facility that is an "on-site
8 generation facility" as that term is defined in section 3 of P.L.1999,
9 c.23 (C.48:3-51) and sells less than 10 percent of its annual gross
10 electrical generation.

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

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

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

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

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

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

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

1 (6) may be open to all qualified participants, and all qualified
2 participants may sell or otherwise agree to transfer any or all
3 allowances to any eligible entity.

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

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

15
16 ¹3. Section 8 of P.L.2007, c.340 (C.26:2C-52) is amended to
17 read as follows:

18 8. a. Within one year after the date of enactment of P.L.2007,
19 c.340 (C.26:2C-45 et al.), the department, in consultation with the
20 New Jersey Economic Development Authority and the board, shall
21 adopt, in accordance with the "Administrative Procedure Act,"
22 P.L.1968, c.410 (C.52:14B-1 et seq.), guidelines and a priority
23 ranking system to be used to assist in annually allocating funds to
24 eligible projects or programs pursuant to subsection b. of section 7
25 of P.L.2007, c.340 (C.26:2C-51).

26 b. The guidelines and the priority ranking system developed
27 pursuant to this section for selecting projects or programs to be
28 awarded grants or other forms of financial assistance from the fund
29 shall include but need not be limited to an evaluation of each
30 eligible project or program as to its predicted ability to:

31 (1) result in a net reduction in greenhouse gas emissions in the
32 State or in greenhouse gas emissions from electricity produced out
33 of the State but consumed in the State or net sequestration of
34 carbon;

35 (2) result in significant reductions in greenhouse gases relative
36 to the cost of the project or program and the reduction of impacts on
37 ratepayers attributable to the implementation of P.L.2007, c.340
38 (C.26:2C-45 et al.), and the ability of the project or program to
39 significantly contribute to achievement of the State's 2020 limit and
40 2050 limit established pursuant to the "Global Warming Response
41 Act," P.L.2007, c.112 (C.26:2C-37 et al.), relative to the cost of the
42 project or program;

43 (3) reduce energy use;

44 (4) provide co-benefits to the State, including but not limited to
45 creating job opportunities, reducing other air pollutants, reducing
46 costs to electricity and natural gas consumers, improving local

1 electric system reliability, and contributing to regional initiatives to
2 reduce greenhouse gas emissions; and

3 (5) be directly responsive to the recommendations when
4 submitted by the department to the Legislature pursuant to section 6
5 of the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-
6 42).

7 c. In addition to the criteria set forth in subsection b. of this
8 section, the guidelines and the priority ranking system developed
9 pursuant to this section for selecting projects or programs to be
10 awarded grants or other forms of financial assistance from the fund
11 shall include factors to ensure that grants or other forms of financial
12 assistance from the fund are allocated to projects or programs that
13 will serve communities that are disproportionality impacted by the
14 effects of environmental degradation and climate change, and
15 alleviate the negative effects on human health and the environment
16 resulting therefrom.¹

17 (cf: P.L.2007, c.340, s.8)

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19 ¹**[3.] 4.**¹ Section 11 of P.L.2007, c.340 (C.26:2C-55) is
20 amended to read as follows:

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

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

31 (2) participate in any such corporation, association, or
32 organization, and in any activity in furtherance of the purposes
33 thereof, in any capacity including, but not limited to, as directors or
34 officers.

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

44 c. Nothing in P.L.2007, c.340 (C.26:2C-45 et al.) shall be
45 deemed to constitute a waiver of sovereign immunity. By entering
46 any agreement or arrangement authorized pursuant to this section,
47 neither the commissioner nor the board president, nor their

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1 respective designees, nor the State consents to suit outside of New
2 Jersey or consents to the governance of such suit under any law
3 other than that of New Jersey.

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

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6 ¹**[4.]** 5.¹ This act shall take effect immediately.