

[Second Reprint]

ASSEMBLY, No. 1212

STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 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

As amended by the Senate on February 26, 2018.

(Sponsorship Updated As Of: 12/17/2019)

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.

²Senate floor amendments adopted February 26, 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 ²**【formation and】**² activity of a
24 separate legal entity established for the purpose of ²**【furthering】**
25 administering² the 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 ²**【,** consistent with the terms
36 of the Memorandum of Understanding signed by New Jersey and
37 other states on December 20, 2005,】² a greenhouse gas emissions
38 allowance trading program **【implemented】** ²consistent with the
39 RGGI Model Rule and associated guidance documents, in order² to
40 participate in the Regional Greenhouse Gas Initiative ²**【in order to**
41 **reduce】** for the purposes of reducing² or ²**【prevent】** preventing²
42 emissions of greenhouse gases. The department shall adopt rules
43 ²**【or】** and² regulations, pursuant to the "Administrative Procedure
44 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement this
45 greenhouse gas emissions allowance trading program, and shall take
46 into consideration the principles and goals of the New Jersey

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

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

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

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

31 (2) ²**【shall include the sale of allowances for current and future**
32 **compliance periods to promote transparency and price stability;**

33 (3)² **】** shall include auction design elements that minimize
34 allowance price volatility, guard against bidder collusion, and
35 mitigate the potential for market manipulation;

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

40 (5)² **】** (3)² shall include provisions to ensure the continued market
41 availability of allowances to entities regulated under a greenhouse
42 gas emissions allowance trading program, taking into account the
43 outcomes of auctions and monitoring of the allowance market,
44 which may include the adoption of a flexible process that allows for
45 ongoing modification of auction design and procedures in response
46 to allowance market conditions and allowance market monitoring

1 data, provided that the process allows for public comment and
2 input; and

3 ²[(6)] (4)² may be open to all qualified participants, and all
4 qualified participants may sell or otherwise agree to transfer any or
5 all allowances to any eligible entity.

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

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

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

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

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

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

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

45 (3) reduce energy use;

46 (4) provide co-benefits to the State, including but not limited to
47 creating job opportunities, reducing other air pollutants, reducing

1 costs to electricity and natural gas consumers, improving local
2 electric system reliability, and contributing to regional initiatives to
3 reduce greenhouse gas emissions; and

4 (5) be directly responsive to the recommendations when
5 submitted by the department to the Legislature pursuant to section 6
6 of the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-
7 42).

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

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

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

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

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

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

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

45 c. Nothing in P.L.2007, c.340 (C.26:2C-45 et al.) shall be
46 deemed to constitute a waiver of sovereign immunity. By entering
47 any agreement or arrangement authorized pursuant to this section,

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1 neither the commissioner nor the board president, nor their
2 respective designees, nor the State consents to suit outside of New
3 Jersey or consents to the governance of such suit under any law
4 other than that of New Jersey.

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

6

7 **1** **4.** **5.**¹ This act shall take effect immediately.