

# SENATE, No. 2946

# STATE OF NEW JERSEY

## 214th LEGISLATURE

INTRODUCED JUNE 13, 2011

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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 introduced.

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

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

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

1. The Legislature finds and declares that New Jersey should implement cost-effective measures to reduce emissions of greenhouse gases, and that emissions trading and the auction of allowances [can be] is an

effective mechanism to accomplish that objective.

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

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

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

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

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

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

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

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

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

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

3. a. (1) The department [, by rule or regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall take any measures necessary to sell, exchange, retire, assign, allocate, or auction any or all allowances that are created by, budgeted to, or otherwise obtained by the State

in furtherance of any] shall establish, consistent with the terms of the Memorandum of Understanding signed by New Jersey and other states on December 20, 2005, a greenhouse gas emissions allowance trading program [implemented] to participate in the Regional Greenhouse Gas Initiative in order to reduce or prevent emissions of greenhouse gases. The department shall adopt rules or regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement this greenhouse gas emissions allowance trading program, and shall take into consideration the principles and goals of the New Jersey Energy Master Plan in the rule making process. The department [may exercise this authority in cooperation and coordination] shall cooperate and coordinate with other states or countries that are participating in regional, national or international carbon dioxide emissions trading programs with the same or similar purpose. In [exercising this authority] doing so , the department shall exclude from the requirement to purchase or acquire any allowances under any greenhouse gas emissions trading program any cogeneration facility or combined heat and power facility that is an "on-site generation facility" as that term is defined in section 3 of P.L.1999, c.23 (C.48:3-51) and sells less than 10 percent of its annual gross electrical generation.

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

b. [If the rules or regulations adopted by the department pursuant to subsection a. of this section convey allowances utilizing an auction, then any] Any auction to convey allowances :

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

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

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

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

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

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

c. The department shall review its position with the Regional Greenhouse Gas Initiative, or any subsequent regional auction , on an annual basis, including the amount of allowances that should be included

in a regional auction. This annual review shall include consideration of the environmental and economic impact of the auction, leakage impacts, and the impact on electric generation facilities and ratepayers in the State. The department shall submit a written report of this review to the Governor and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1). The report shall also be posted on the department's website.

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

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

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

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

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

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

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

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

4. This act shall take effect immediately.

## STATEMENT

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 (CO<sub>2</sub>). 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 CO<sub>2</sub> 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.