

**SENATE CONCURRENT
RESOLUTION No. 125**

**STATE OF NEW JERSEY
216th LEGISLATURE**

INTRODUCED JULY 31, 2014

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator PETER J. BARNES, III

District 18 (Middlesex)

Co-Sponsored by:

Senators Gordon and Greenstein

SYNOPSIS

Determines that proposed DEP rules and regulations repealing rules and regulations concerning State participation in greenhouse gas cap and trade programs are inconsistent with legislative intent.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/24/2014)

1 **A CONCURRENT RESOLUTION** concerning legislative review of
2 Department of Environmental Protection regulations pursuant to
3 Article V, Section IV, paragraph 6 of the Constitution of the
4 State of New Jersey.

5
6 **WHEREAS**, Article V, Section IV, paragraph 6 of the Constitution of
7 the State of New Jersey provides that the Legislature may review
8 any rule or regulation adopted or proposed by an administrative
9 agency to determine if the rule or regulation is consistent with the
10 intent of the Legislature as expressed in the language of the statute
11 which the rule or regulation is intended to implement and, upon a
12 finding that the rule or regulation is not consistent with legislative
13 intent, may transmit the finding to the Governor and the head of the
14 agency; and

15 **WHEREAS**, On July 7, 2014, the Department of Environmental
16 Protection (DEP) proposed for public comment in the New Jersey
17 Register new rules and regulations to repeal existing rules and
18 regulations codified at N.J.A.C.7:27C, N.J.A.C.7:27-22, and
19 N.J.A.C.7:27A in an effort to formally eliminate the regulatory
20 scheme governing New Jersey's participation in a greenhouse gas
21 cap and trade program; and

22 **WHEREAS**, The summary of the proposal attempts to justify the repeal
23 of these regulations by citing a recent Appellate Division decision
24 which determined that the Governor had the authority to withdraw
25 from participation in the Regional Greenhouse Gas Initiative
26 (RGGI) without legislative involvement; and

27 **WHEREAS**, The summary of the proposal does not accurately portray
28 the legislative intent of P.L.2007, c.340 (C.26:2C-45 et seq.), which
29 authorized the DEP to promulgate N.J.A.C.7:27C, and related
30 provisions in N.J.A.C.7:27-22 and N.J.A.C.7:27A, which govern
31 the State's participation in a greenhouse gas cap and trade program;
32 and

33 **WHEREAS**, At the time N.J.A.C.7:27C and the related provisions in
34 N.J.A.C.7:27-22 and N.J.A.C.7:27A were adopted by the DEP, the
35 particular greenhouse gas cap and trade program in which the State
36 was participating was RGGI; and

37 **WHEREAS**, The legislative intent of P.L.2007, c.340, in part, was to
38 direct the DEP to establish rules and regulations to govern the
39 State's potential participation in a greenhouse gas cap and trade
40 program. It was not the intent of P.L.2007, c.340 to authorize the
41 DEP to repeal those rules and regulations, once established, based
42 upon the State no longer actively participating in RGGI, or any
43 other specific greenhouse gas cap and trade program; and

44 **WHEREAS**, Specifically, the repeal of the rules, as proposed by the
45 DEP in the New Jersey Register on July 7, 2014, would contradict
46 the legislative intent of section 3 of P.L.2007, c.340 (C.26:2C-47).
47 That section of law mandates that the DEP, by rule or regulation,
48 "take any measures necessary" to govern the State's participation in

1 a greenhouse gas cap and trade program. Section 3 of P.L.2007,
 2 c.340 authorized, but did not require, the DEP to exercise this
 3 authority in cooperation and coordination with other states or
 4 countries that are participating in regional, national, or international
 5 carbon dioxide emissions trading programs, necessarily implying
 6 that the DEP's affirmative statutory duty to promulgate such rules
 7 and regulations was not contingent upon the State's participation in
 8 a regional, national, or international program such as RGGI.
 9 Accordingly, section 3 of P.L.2007, c.340 did not explicitly or
 10 implicitly authorize the DEP to repeal these rules and regulations
 11 upon the State's withdrawal from RGGI. Contrary to the position
 12 taken in the summary of the proposal, the DEP remains obligated to
 13 maintain rules and regulations pursuant to the legislative intent of
 14 section 3 of P.L.2007, c.340; now, therefore,

15
 16 **BE IT RESOLVED** *by the Senate of the State of New Jersey (the*
 17 *General Assembly concurring):*

18
 19 1. The Legislature declares that the rules and regulations
 20 proposed in the New Jersey Register on July 7, 2014 by the
 21 Department of Environmental Protection repealing the existing
 22 regulatory scheme concerning the State of New Jersey's
 23 participation in a greenhouse gas cap and trade program are not
 24 consistent with the intent of the Legislature as expressed through
 25 the enactment of P.L.2007, c.340 (C.26:2C-45 et seq.).

26
 27 2. Copies of this resolution, as filed with the Secretary of State,
 28 shall be transmitted by the Secretary of the Senate to the Governor
 29 and the Commissioner of Environmental Protection in accordance
 30 with the requirements of Article V, Section IV, paragraph 6 of the
 31 Constitution of the State of New Jersey.

32
 33 3. Pursuant to Article V, Section IV, paragraph 6 of the
 34 Constitution of the State of New Jersey, the Commissioner of
 35 Environmental Protection (DEP) shall have 30 days following
 36 transmittal of this concurrent resolution to amend or withdraw the
 37 proposed rules and regulations or the Legislature may, by passage
 38 of another concurrent resolution, exercise its authority under the
 39 Constitution to invalidate the rules and regulations in whole or in
 40 part, or prohibit the proposed rules and regulations, in whole or in
 41 part, from taking effect.

42
 43

44 STATEMENT

45
 46 This concurrent resolution declares that the Legislature has
 47 determined that the rules and regulations proposed in the New
 48 Jersey Register on July 7, 2014 by the Department of

1 Environmental Protection repealing the regulatory scheme
2 concerning the Regional Greenhouse Gas Initiative (RGGI) are not
3 consistent with the intent of the Legislature as expressed through
4 the enactment of P.L.2007, c.340 (C.26:2C-45 et seq.). The repeal
5 of the rules, as proposed by the DEP on July 7, 2014, would
6 contradict the legislative intent of section 3 of P.L.2007, c.340
7 (C.26:2C-47) specifically. This provision affirmatively mandated
8 that the DEP promulgate rules and regulations to govern the State's
9 participation in a greenhouse gas cap and trade program. Section 3
10 of P.L.2007, c.340 authorized, but did not require, the DEP to
11 exercise this authority in cooperation and coordination with other
12 states or countries that are participating in regional, national, or
13 international carbon dioxide emissions trading programs. This
14 affirmative statutory duty to promulgate such rules and regulations
15 was not contingent upon the State's participation in a regional,
16 national, or international program such as RGGI. Accordingly,
17 section 3 of P.L.2007, c.340 did not explicitly or implicitly authorize
18 the DEP to repeal these rules and regulations upon the State's
19 withdraw from RGGI. Contrary to the position taken in the
20 summary of the proposal, the DEP remains obliged to establish
21 rules and regulations pursuant to the legislative intent of section 3
22 of P.L.2007, c.340.

23 The Commissioner of Environmental Protection will have 30
24 days following transmittal of this concurrent resolution to amend or
25 withdraw the proposed rules and regulations or the Legislature may,
26 by passage of another concurrent resolution, exercise its authority
27 under the Constitution to invalidate the rules and regulations in
28 whole or in part, or prohibit the proposed rules and regulations, in
29 whole or in part, from taking effect.