

CHAPTER 340

AN ACT concerning the reduction of greenhouse gas emissions, supplementing Title 26 of the Revised Statutes, and amending and supplementing P.L.1999, c.23.

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

C.26:2C-45 Findings, declarations relative to reduction of greenhouse gas emissions.

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 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 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 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 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 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 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.

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C.26:2C-46 Definitions relative to reduction of greenhouse gas emissions.

2. As used in sections 1 through 11 and sections 14 and 15 of P.L.2007, c.340 (C.26:2C-45 et seq.):

“Allowance” means a limited authorization, as defined by the department, to emit up to one ton of carbon dioxide or its equivalent.

“Board” means the Board of Public Utilities.

“Compliance entity” means an owner or operator of an electric generating unit, with a nameplate capacity equal to or greater than 25 megawatts of electrical output, in New Jersey that is required to obtain allowances in order to operate an electric generating unit that holds an operating permit from the department issued pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.), whether that unit is in operation or in development. “Compliance entity” shall not include 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.

“Consumer benefit” means any action or measure to: promote energy efficiency; directly mitigate electricity ratepayer impacts; develop and deliver renewable or non-carbon-emitting energy technologies; stimulate or reward investment in the development of innovative carbon emissions abatement technologies with significant carbon emissions reduction potential; fund programs that promote measurable electricity end-use energy efficiency in the commercial, institutional, and industrial sectors; or fund the administration of greenhouse gas emissions allowance trading and consumer benefit programs.

“Department” means the Department of Environmental Protection.

“Dispatch agreement facility” means a facility that is a compliance entity that is a cogeneration facility or has a heat rate below 8,100 BTU per kilowatt-hour, and has entered into a power agreement: (1) with a duration of more than 15 years from its effective date; (2) that provides that the entity’s counterpart to the agreement controls the electric dispatch of the facility; (3) which was executed prior to January 1, 2002; and (4) which does not allow for the entity to pass the cost of allowances on to the counterpart to the agreement.

“Global Warming Solutions Fund” or “fund” means the “Global Warming Solutions Fund” established pursuant to section 6 of P.L.2007, c.340 (C.26:2C-50).

“Greenhouse gas” means the same as the term is defined in section 3 of P.L.2007, c.112 (C.26:2C-39).

“Qualified participant” means a compliance entity or other entity that meets financial assurance and any other requirements to participate in an auction, as determined by the department in consultation with other entities participating in a regional, national or international program.

“Regional Greenhouse Gas Initiative” means the cooperative effort to reduce carbon dioxide emissions entered into by the governors of seven states through a Memorandum of Understanding signed on December 20, 2005, as amended.

C.26:2C-47 Actions of department relative to allowances; report to Governor, Legislature.

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 greenhouse gas emissions allowance trading program implemented to reduce or prevent emissions of greenhouse gases. The department 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 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, 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 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 auction:

(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 any 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.

C.26:2C-48 Certified dispatch agreement facility eligible to purchase allowances, price.

4. A dispatch agreement facility that has been certified pursuant to section 5 of P.L.2007, c.340 (C.26:2C-49) shall be eligible to purchase allowances at the price of \$2 per allowance, pursuant to subsection a. of this section.

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a. At least once each year, the department shall notify the owners and operators of dispatch agreement facilities of the opportunity to purchase allowances at the price of \$2 per allowance. Any offer by the department to sell allowances shall be for the quantity of allowances equal to the average annual carbon dioxide emissions for the dispatch agreement facility for the prior three-year period as determined by the department.

b. Within 30 days after receiving the notice required pursuant to subsection a. of this section, an owner or operator of a dispatch agreement facility shall notify the department whether it will accept the offer to purchase allowances and specify the quantity of allowances to be purchased up to the quantity determined pursuant to subsection a. of this section.

c. For any allowances not purchased by an owner or operator of a dispatch agreement facility pursuant to subsections a. and b. of this section, an owner or operator of a dispatch agreement facility shall purchase such allowances in accordance with the rules and regulations adopted by the department pursuant to section 3 of P.L.2007, c.340 (C.26:2C-47).

d. Any allowances purchased from the department pursuant to subsections a. and b. of this section and that are unused by a dispatch agreement facility for compliance at the end of a compliance period shall be assigned thereafter to the department.

e. The opportunity to purchase allowances pursuant to this section shall be limited to dispatch agreement facilities with power agreements that were executed prior to January 1, 2002, and the offer to purchase allowances shall expire upon termination or expiration of such agreement or when the services under a new contract become effective, whichever occurs earlier.

C.26:2C-49 Certification that dispatch agreement facility qualifies for purchase of allowances.

5. a. The owner or operator of a dispatch agreement facility may certify to the department that the dispatch agreement facility qualifies to purchase allowances pursuant to section 4 of P.L.2007, c.340 (C.26:2C-48).

b. The certification submitted to the department pursuant to subsection a. of this section shall be through a sworn affidavit with supporting documentation from an independent entity that attests to the facility's adherence to the definition of dispatch agreement facility as set forth in section 2 of P.L.2007, c.340 (C.26:2C-46). The affidavit shall be signed by both an official representative of the independent entity and by the chief financial officer or their equivalent of the owner or operator of the dispatch agreement facility. If there are any material changes to the sworn affidavit or supporting documentation filed with the department, the independent entity and representative of the owner or operator of the dispatch agreement facility shall resubmit an affidavit pursuant to this section within 30 days after the change occurs.

c. The certification shall be received by the department at least 30 days prior to the department making a notification, pursuant to subsection a. of section 4 of P.L.2007, c.340 (C.26:2C-48), of an offer to sell allowances to dispatch agreement facilities in order for the dispatch agreement facility to be deemed eligible to participate in the sale.

d. The owner or operator of a dispatch agreement facility claiming certification pursuant to this section shall provide on site, upon the request of the department, any information the department requires to determine the validity and extent of the certification.

e. Any signatory to the sworn affidavit in subsection b. of this section who knowingly gives or causes to be given any false or misleading information or who knowingly makes any false or misleading statement in complying with the provisions of this section shall be subject to a civil penalty of not more than \$500,000 for each offense and shall not be eligible

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to be certified as a dispatch agreement facility. Civil penalties imposed pursuant to this section shall be collected in a civil action by a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, the court may assess against the violator the amount of any economic benefit accruing to the violator from the violation of the provisions of this section.

f. All penalties collected pursuant to this section shall be deposited in the "Global Warming Solutions Fund," established pursuant to section 6 of P.L.2007, c.340 (C.26:2C-50), and kept separate from other receipts deposited therein, and appropriated for the purposes of that fund.

C.26:2C-50 "Global Warming Solutions Fund."

6. There is established in the Department of the Treasury a special, nonlapsing fund to be known as the "Global Warming Solutions Fund." The fund shall be administered by the State Treasurer and shall be credited with:

- a. moneys received as a result of any sale, exchange or other conveyance of allowances through a greenhouse gas emissions allowance trading program;
- b. such moneys as are appropriated by the Legislature; and
- c. any return on investment of moneys deposited in the fund.

C.26:2C-51 Coordination in administration of programs; use of moneys.

7. a. The agencies administering programs established pursuant to this section shall maximize coordination in the administration of the programs to avoid overlap between the uses of the fund prescribed in this section.

b. Moneys in the fund, after appropriation annually for payment of administrative costs authorized pursuant to subsection c. of this section, shall be annually appropriated and used for the following purposes:

(1) Sixty percent shall be allocated to the New Jersey Economic Development Authority to provide grants and other forms of financial assistance to commercial, institutional, and industrial entities to support end-use energy efficiency projects and new, efficient electric generation facilities that are state of the art, as determined by the department, including but not limited to energy efficiency and renewable energy applications, to develop combined heat and power production and other high efficiency electric generation facilities, and to stimulate or reward investment in the development of innovative carbon emissions abatement technologies with significant carbon emissions reduction or avoidance potential. The authority, in consultation with the board and the department, shall determine: (a) the appropriate level of grants or other forms of financial assistance to be awarded to individual commercial, institutional, and industrial sectors and to individual projects within each of these sectors; (b) the evaluation criteria for selecting projects to be awarded grants or other forms of financial assistance, which criteria shall include the ability of the project to result in a measurable reduction of the emission of greenhouse gases or a measurable reduction in energy demand, provided, however, that neither the development of a new combined heat and power production facility, nor an increase in the electrical and thermal output of an existing combined heat and power production facility, shall be subject to the requirement to demonstrate such a measurable reduction; and (c) the process by which grants or other forms of financial assistance can be applied for and awarded including, if applicable, the payment terms and conditions for authority investments in certain projects with commercial viability;

(2) Twenty percent shall be allocated to the board to support programs that are designed to reduce electricity demand or costs to electricity customers in the low-income and

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moderate-income residential sector with a focus on urban areas, including efforts to address heat island effect and reduce impacts on ratepayers attributable to the implementation of P.L.2007, c.340 (C.26:2C-45 et al.). For the purposes of this paragraph, the board, in consultation with the authority and the department, shall determine the types of programs to be supported and the mechanism by which to quantify benefits to ensure that the supported programs result in a measurable reduction in energy demand;

(3) Ten percent shall be allocated to the department to support programs designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gas emissions, including but not limited to technical assistance to local governments, and the awarding of grants and other forms of assistance to local governments to conduct and implement energy efficiency, renewable energy, and distributed energy programs and land use planning where the grant or assistance results in a measurable reduction of the emission of greenhouse gases or a measurable reduction in energy demand. For the purpose of conducting any program pursuant to this paragraph, the department, in consultation with the authority and the board, shall determine: (a) the appropriate level of grants or other forms of financial assistance to be awarded to local governments; (b) the evaluation criteria for selecting projects to be awarded grants or other forms of financial assistance; (c) the process by which grants or other forms of financial assistance can be applied for and awarded; and (d) a mechanism by which to quantify benefits; and

(4) Ten percent shall be allocated to the department to support programs that enhance the stewardship and restoration of the State's forests and tidal marshes that provide important opportunities to sequester or reduce greenhouse gases.

c. (1) The department may use up to four percent of the total amount in the fund each year to pay for administrative costs justifiable and approved in the annual budget process, incurred by the department in administering the provisions of P.L.2007, c.340 (C.26:2C-45 et al.) and in administering programs to reduce the emissions of greenhouse gases including any obligations that may arise under subsection a. of section 11 of P.L.2007, c.340 (C.26:2C-55).

(2) The board may use up to two percent of the total amount in the fund each year to pay for administrative costs justifiable and approved in the annual budget process, incurred by the board in administering the provisions of P.L.2007, c.340 (C.26:2C-45 et al.) and in administering programs to reduce the emissions of greenhouse gases including any obligations that may arise under subsection a. of section 11 of P.L.2007, c.340 (C.26:2C-55).

(3) The New Jersey Economic Development Authority may use up to two percent of the total amount in the fund each year to pay for administrative costs justifiable and approved in the annual budget process, incurred by the authority in administering the provisions of P.L.2007, c.340 (C.26:2C-45 et al.) and in administering programs to reduce the emissions of greenhouse gases.

d. The State Comptroller shall conduct or supervise independent audit and fiscal oversight functions of the fund and its uses.

C.26:2C-52 Guidelines, priority ranking system for allocation of funds.

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

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

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

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

(3) reduce energy use;

(4) provide co-benefits to the State, including but not limited to creating job opportunities, reducing other air pollutants, reducing costs to electricity and natural gas consumers, improving local electric system reliability, and contributing to regional initiatives to reduce greenhouse gas emissions; and

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

C.26:2C-53 Annual appropriation of moneys in fund.

9. a. The annual appropriations act for each State fiscal year shall, without other conditions, limitations or restrictions, appropriate the moneys in the Global Warming Solutions Fund for the purposes set forth in subsections b. and c. of section 7 of P.L.2007, c.340 (C.26:2C-51).

b. If the provisions of subsection a. of this section are not met on the effective date of an annual appropriations act for the State fiscal year, or if an amendment or supplement to an annual appropriations act for the State fiscal year should violate the requirements of subsection a. of this section, the Director of the Division of Budget and Accounting in the Department of the Treasury shall, not later than five days after the enactment of the annual appropriations act, or an amendment or supplement thereto, that violates any of the requirements of subsection a. of this section, certify to the Commissioner of Environmental Protection that the requirements of subsection a. of this section have not been met.

c. Sections 1 through 8 of P.L.2007, c.340 (C.26:2C-45 through C.26:2C-52) shall be without effect on and after the 10th day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of this section.

C.26:2C-54 Interim decision as to comparability of national program; rules, regulations; final decision; disposition of allowances.

10. a. Within three months after the enactment of federal law providing for implementation of a national emissions allowance trading program, the Commissioner of Environmental Protection shall render an interim decision as to whether the national program is substantially comparable to the greenhouse gas emissions allowance trading program in which the State is participating at that time. If the commissioner determines that the national program is substantially comparable to the existing greenhouse gas emissions allowance

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trading program being implemented in the State, then the department shall take such anticipatory administrative action in advance of the adoption of rules and regulations providing for implementation of a national emissions allowance trading program in order to minimize any delay in the State's participation in the national program.

b. Within three months after the adoption of rules and regulations providing for implementation of a national emissions allowance trading program, the Commissioner of Environmental Protection shall render a final decision as to whether the national program is substantially comparable to the greenhouse gas emissions allowance trading program in which the State is participating at that time. If the commissioner determines that the national program is substantially comparable to the existing greenhouse gas emissions allowance trading program being implemented in the State, the department shall thereafter sell, exchange, retire or otherwise convey allowances only as part of the State's participation in the national program.

c. The commissioner shall notify, in writing, the Governor and the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1) of the decisions made pursuant to this section.

d. The determination of the comparability of the programs, pursuant to subsections a. and b. of this section, shall be based upon the projected percent reductions of greenhouse gas emissions from electric generating facilities serving customers in the State under the greenhouse gas emissions allowance trading program being implemented in the State at the time as compared to the projected percent reductions of greenhouse gas emissions from electric generating facilities serving customers in the State under the national program and may consider the value of allowances or allowance auction proceeds directed to the State or other entity to benefit New Jersey energy consumers. Reductions anticipated through the implementation of other State regulated carbon reduction initiatives, including but not limited to a renewable energy portfolio standard or any energy efficiency portfolio standard adopted pursuant to section 38 of P.L.1999, c.23 (C.48:3-87), shall not be considered in determining the comparability of the programs.

C.26:2C-55 Authority of commissioner, board president.

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:

(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

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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.

12. Section 38 of P.L.1999, c.23 (C.48:3-87) is amended to read as follows:

C.48:3-87 Environmental disclosure requirements; standards; rules; terms defined.

38. a. The board shall require an electric power supplier or basic generation service provider to disclose on a customer's bill or on customer contracts or marketing materials, a uniform, common set of information about the environmental characteristics of the energy purchased by the customer, including, but not limited to:

(1) Its fuel mix, including categories for oil, gas, nuclear, coal, solar, hydroelectric, wind and biomass, or a regional average determined by the board;

(2) Its emissions, in pounds per megawatt hour, of sulfur dioxide, carbon dioxide, oxides of nitrogen, and any other pollutant that the board may determine to pose an environmental or health hazard, or an emissions default to be determined by the board; and

(3) Any discrete emission reduction retired pursuant to rules and regulations adopted pursuant to P.L.1995, c.188.

b. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, in consultation with the Department of Environmental Protection, after notice and opportunity for public comment and public hearing, interim standards to implement this disclosure requirement, including, but not limited to:

(1) A methodology for disclosure of emissions based on output pounds per megawatt hour;

(2) Benchmarks for all suppliers and basic generation service providers to use in disclosing emissions that will enable consumers to perform a meaningful comparison with a supplier's or basic generation service provider's emission levels; and

(3) A uniform emissions disclosure format that is graphic in nature and easily understandable by consumers. The board shall periodically review the disclosure requirements to determine if revisions to the environmental disclosure system as implemented are necessary.

Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

c. (1) The board may adopt, in consultation with the Department of Environmental Protection, after notice and opportunity for public comment, an emissions portfolio standard applicable to all electric power suppliers and basic generation service providers, upon a finding that:

(a) The standard is necessary as part of a plan to enable the State to meet federal Clean Air Act or State ambient air quality standards; and

(b) Actions at the regional or federal level cannot reasonably be expected to achieve the compliance with the federal standards.

(2) By July 1, 2009, the board shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a greenhouse gas emissions portfolio standard to mitigate leakage or another regulatory mechanism to mitigate leakage applicable to all electric power suppliers and basic generation service providers that provide electricity to

customers within the State. The greenhouse gas emissions portfolio standard or any other regulatory mechanism to mitigate leakage shall:

(a) Allow a transition period, either before or after the effective date of the regulation to mitigate leakage, for a basic generation service provider or electric power supplier to either meet the emissions portfolio standard or other regulatory mechanism to mitigate leakage, or to transfer any customer to a basic generation service provider or electric power supplier that meets the emissions portfolio standard or other regulatory mechanism to mitigate leakage. If the transition period allowed pursuant to this subparagraph occurs after the implementation of an emissions portfolio standard or other regulatory mechanism to mitigate leakage, the transition period shall be no longer than three years; and

(b) Exempt the provision of basic generation service pursuant to a basic generation service purchase and sale agreement effective prior to the date of the regulation.

Unless the Attorney General or the Attorney General's designee determines that a greenhouse gas emissions portfolio standard would unconstitutionally burden interstate commerce or would be preempted by federal law, the adoption by the board of an electric energy efficiency portfolio standard pursuant to subsection g. of this section, a gas energy efficiency portfolio standard pursuant to subsection h. of this section, or any other enhanced energy efficiency policies to mitigate leakage shall not be considered sufficient to fulfill the requirement of this subsection for the adoption of a greenhouse gas emissions portfolio standard or any other regulatory mechanism to mitigate leakage.

d. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, interim renewable energy portfolio standards that shall require:

(1) that two and one-half percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider be from Class I or Class II renewable energy sources; and

(2) beginning on January 1, 2001, that one-half of one percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider be from Class I renewable energy sources. The board shall increase the required percentage for Class I renewable energy sources so that by January 1, 2006, one percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider shall be from Class I renewable energy sources and shall additionally increase the required percentage for Class I renewable energy sources by one-half of one percent each year until January 1, 2012, when four percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider shall be from Class I renewable energy sources.

An electric power supplier or basic generation service provider may satisfy the requirements of this subsection by participating in a renewable energy trading program approved by the board in consultation with the Department of Environmental Protection.

Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

e. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing:

(1) net metering standards for electric power suppliers and basic generation service providers. The standards shall require electric power suppliers and basic generation service providers to offer net metering at non-discriminatory rates to industrial, large commercial, residential and small commercial customers, as those customers are classified or defined by the board, that generate electricity, on the customer's side of the meter, using a Class I renewable energy source, for the net amount of electricity supplied by the electric power supplier or basic generation service provider over an annualized period. If the amount of electricity generated by the customer-generator plus any kilowatt hour credits held over from the previous billing periods, exceeds the electricity supplied by the electric power supplier or basic generation service provider, then the electric power supplier or basic generation service provider, as the case may be, shall credit the customer-generator for the excess kilowatt hours until the end of the annualized period at which point the customer-generator will be compensated for any remaining credits or, if the customer-generator chooses, credit the customer-generator on a real-time basis, at the electric power supplier's or basic generation service provider's avoided cost of wholesale power or the PJM power pool's real-time locational marginal pricing rate, adjusted for losses, for the respective zone in the PJM electric power pool. Alternatively, the customer-generator may execute a bilateral agreement with an electric power supplier or basic generation service provider for the sale and purchase of the customer-generator's excess generation. The customer-generator may be credited on a real-time basis, so long as the customer-generator follows applicable rules prescribed by the PJM electric power pool for its capacity requirements for the net amount of electricity supplied by the electric power supplier or basic generation service provider. The board may authorize an electric power supplier or basic generation service provider to cease offering net metering whenever the total rated generating capacity owned and operated by net metering customer-generators Statewide equals 2.5 percent of the State's peak electricity demand;

(2) safety and power quality interconnection standards for Class I renewable energy source systems used by a customer-generator that shall be eligible for net metering.

Such standards or rules shall take into consideration the goals of the New Jersey Energy Master Plan, applicable industry standards and the standards of other states and the Institute of Electrical and Electronic Engineers. The board shall allow electric public utilities to recover the costs of any new net meters, upgraded net meters, system reinforcements or upgrades, and interconnection costs through either their regulated rates or from the net metering customer-generator; and

(3) credit or other incentive rules for generators using Class I renewable energy generation systems that connect to New Jersey's electric public utilities' distribution system but who do not net meter.

Such rules shall require the board or its designee to issue a credit or other incentive to those generators that do not use a net meter but otherwise generate electricity derived from a Class I renewable energy source and to issue an enhanced credit or other incentive, including, but not limited to, a solar renewable energy credit, to those generators that generate electricity derived from solar technologies.

Such standards or rules shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

f. The board may assess, by written order and after notice and opportunity for comment, a separate fee to cover the cost of implementing and overseeing an emission disclosure system or emission portfolio standard, which fee shall be assessed based on an electric power

supplier's or basic generation service provider's share of the retail electricity supply market. The board shall not impose a fee for the cost of implementing and overseeing a greenhouse gas emissions portfolio standard adopted pursuant to paragraph (2) of subsection c. of this section, the electric energy efficiency portfolio standard adopted pursuant to subsection g. of this section, or the gas energy efficiency portfolio standard adopted pursuant to subsection h. of this section.

g. The board may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), an electric energy efficiency portfolio standard that may require each electric public utility to implement energy efficiency measures that reduce electricity usage in the State by 2020 to a level that is 20 percent below the usage projected by the board in the absence of such a standard. Nothing in this section shall be construed to prevent an electric public utility from meeting the requirements of this section by contracting with another entity for the performance of the requirements.

h. The board may adopt, pursuant to the "Administrative Procedure Act," a gas energy efficiency portfolio standard that may require each gas public utility to implement energy efficiency measures that reduce natural gas usage for heating in the State by 2020 to a level that is 20 percent below the usage projected by the board in the absence of such a standard. Nothing in this section shall be construed to prevent a gas public utility from meeting the requirements of this section by contracting with another entity for the performance of the requirements.

i. As used in this section:

"Energy efficiency portfolio standard" means a requirement to procure a specified amount of energy efficiency or demand side management resources as a means of managing and reducing energy usage and demand by customers.

"Greenhouse gas emissions portfolio standard" means a requirement that addresses or limits the amount of carbon dioxide emissions indirectly resulting from the use of electricity as applied to any electric power suppliers and basic generation service providers of electricity.

"Leakage" means an increase in greenhouse gas emissions related to generation sources located outside of the State that are not subject to a state, interstate or regional greenhouse gas emissions cap or standard that applies to generation sources located within the State.

C.48:3-98.1 Electric, gas public utilities energy efficiency and conservation programs, investments, cost recovery.

13. a. Notwithstanding the provisions of any other law or rule or regulation to the contrary:

(1) an electric public utility or a gas public utility may provide and invest in energy efficiency and conservation programs in its respective service territory on a regulated basis pursuant to this section, regardless of whether the energy efficiency or conservation program involves facilities on the utility side or customer side of the point of interconnection;

(2) an electric public utility or a gas public utility may invest in Class I renewable energy resources, or offer Class I renewable energy programs on a regulated basis pursuant to this section, regardless of whether the renewable energy resource is located on the utility side or customer side of the point of interconnection; and

(3) the board may provide funding for energy efficiency, conservation, and renewable energy improvements through the societal benefits charge established pursuant to section 12 of P.L.1999, c.23 (C.48:3-60), the retail margin on certain hourly-priced and larger non-residential customers pursuant to the board's continuing regulation of basic generation

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service pursuant to sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), or other monies appropriated for such purposes. The board may also direct electric public utilities and gas public utilities to undertake energy efficiency, conservation, and renewable energy improvements, and shall allow the recovery of program costs and incentive rate treatment pursuant to subsection b. of this section.

b. An electric public utility or a gas public utility seeking cost recovery for any program pursuant to this section shall file a petition with the board to request cost recovery. In determining the recovery by electric public utilities and gas public utilities of program costs for any program implemented pursuant to this section, the board may take into account the potential for job creation from such programs, the effect on competition for such programs, existing market barriers, environmental benefits, and the availability of such programs in the marketplace. Unless the board issues a written order within 180 days after the filing of the petition approving, modifying or denying the requested recovery, the recovery requested by the utility shall be granted effective on the 181 day after the filing without further order by the board. Ratemaking treatment may include placing appropriate technology and program cost investments in the respective utility's rate base, or recovering the utility's technology and program costs through another ratemaking methodology approved by the board, including, but not limited to, the societal benefits charge established pursuant to section 12 of P.L.1999, c.23 (C.48:3-60). All electric public utility and gas public utility investment in energy efficiency and conservation programs or Class I renewable energy programs may be eligible for rate treatment approved by the board, including a return on equity, or other incentives or rate mechanisms that decouple utility revenue from sales of electricity and gas.

c. Within 120 days after the date of enactment of P.L.2007, c.340 (C.26:2C-45 et al.), the board shall issue an order that allows electric public utilities and gas public utilities to offer energy efficiency and conservation programs, to invest in Class I renewable energy resources, and to offer Class I renewable energy programs in their respective service territories on a regulated basis. The board's order shall be reflected in rules and regulations thereafter to be adopted by the board pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

d. As used in this section:

"Class I renewable energy program" means any regulated program approved by the board pursuant to this section for the purpose of facilitating the development of Class I renewable energy in the State.

"Energy efficiency and conservation program" means any regulated program, including customer and community education and outreach, approved by the board pursuant to this section for the purpose of conserving energy or making the use of electricity or natural gas more efficient by New Jersey consumers, whether residential, commercial, industrial, or governmental agencies.

"Program costs" means all reasonable and prudent costs incurred in developing and implementing energy efficiency, conservation, or Class I renewable energy programs approved by the board pursuant to this section. These costs shall include a full return on invested capital and foregone electric and gas distribution fixed cost contributions associated with the implementation of the energy efficiency, conservation, or Class I renewable energy programs until those cost contributions are reflected in base rates following a base rate case if such costs were reasonably and prudently incurred.

C.26:2C-56 Action plan for rate payer relief, certain circumstances.

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14. a. If the price of allowances at two consecutive regional auctions in which the State of New Jersey is a participant exceeds \$7 per allowance, the department and the board shall, within 90 days after the second auction, develop an action plan for immediate ratepayer relief and hold a joint public hearing or hearings regarding the allowance price.

b. No later than 90 days after the final hearing is held, the department and the board shall jointly issue a report to the Governor and the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), with their findings and recommendations.

C.26:2C-57 Severability.

15. If any provision of P.L.2007, c.340 (C.26:2C-45 et al.) or its application to any person or circumstance is held invalid, the invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

16. This act shall take effect immediately.

Approved January 13, 2008.