

# ASSEMBLY, No. 4701

## STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED MARCH 20, 2017

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**Assemblywoman Mosquera, Assemblyman Wisniewski, Assemblywoman Pinkin, Senators Bateman, Greenstein and Gordon**

**SYNOPSIS**

Requires State's full participation in Regional Greenhouse Gas Initiative.

**CURRENT VERSION OF TEXT**

As introduced.

(Sponsorship Updated As Of: 5/26/2017)

1 AN ACT concerning the reduction of greenhouse gas emissions, and  
2 amending and supplementing 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. (New section) The State shall fully participate in the  
8 Regional Greenhouse Gas Initiative, established through a  
9 Memorandum of Understanding signed by the governors of several  
10 states on December 20, 2005, as amended.

11

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

14 1. The Legislature finds and declares that New Jersey should  
15 implement cost-effective measures to reduce emissions of  
16 greenhouse gases, and that emissions trading and the auction of  
17 allowances **[can be]** is an effective mechanism to accomplish that  
18 objective.

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

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

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

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

**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.**

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

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

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

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

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

31

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

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

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

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

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

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

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

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

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

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

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

3 (6) may be open to all qualified participants, and all qualified  
4 participants may sell or otherwise agree to transfer any or all  
5 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)

17

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

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

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

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

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

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

1 Jersey or consents to the governance of such suit under any law  
2 other than that of New Jersey.

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

4

5 5. This act shall take effect immediately.

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STATEMENT

9

10 This bill clarifies the intent of P.L.2007, c.340 (C.26:2C-45 et  
11 al.) and specifically requires the State's full participation in the  
12 Regional Greenhouse Gas Initiative (RGGI).

13 P.L.2007, c.340, commonly referred to as the Regional  
14 Greenhouse Gas Initiative or the "RGGI" implementing law, was  
15 enacted to further the purposes of the "Global Warming Response  
16 Act" (GWRA), P.L.2007, c.112 (C.26:2C-37 et al.). The RGGI  
17 implementing law partially implements the policies of the GWRA  
18 by creating an emissions auction and trading mechanism to reduce  
19 the level of greenhouse gas emissions, especially carbon  
20 dioxide. P.L.2007, c.340 recognizes the State's participation in  
21 RGGI by setting forth the parameters to be followed for allowance  
22 auctions, creating the "Global Warming Solutions Fund," and  
23 statutorily dedicating all the proceeds received from the sale,  
24 exchange or other conveyance of allowances through a greenhouse  
25 gas emissions allowance trading program to the fund.