

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 4559**

**STATE OF NEW JERSEY**  
**212th LEGISLATURE**

ADOPTED JANUARY 3, 2008

**Sponsored by:**

**Assemblyman UPENDRA J. CHIVUKULA**

**District 17 (Middlesex and Somerset)**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex)**

**Assemblywoman LINDA STENDER**

**District 22 (Middlesex, Somerset and Union)**

**Assemblyman LOUIS M. MANZO**

**District 31 (Hudson)**

**Assemblywoman BONNIE WATSON COLEMAN**

**District 15 (Mercer)**

**Co-Sponsored by:**

**Assemblywoman Jasey, Assemblymen Connors, Egan, Senators Sweeney,  
B.Smith and Adler**

**SYNOPSIS**

Authorizes auction of greenhouse gas allowances; establishes "Global Warming Solutions Fund."

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Assembly Appropriations Committee.

(Sponsorship Updated As Of: 1/8/2008)

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

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. (New section) The Legislature finds and declares that New  
9 Jersey should implement cost-effective measures to reduce  
10 emissions of greenhouse gases, and that emissions trading and the  
11 auction of allowances can be an effective mechanism to accomplish  
12 that objective.

13 The Legislature further finds and declares that entering into  
14 agreements or arrangements with appropriate representatives of  
15 other states may further the purposes of P.L. , c. (C. )  
16 (pending before the Legislature as this bill) and the “Global  
17 Warming Response Act,” P.L.2007, c.112 (C.26:2C-37 et seq.).

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

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

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

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

45 The Legislature further finds and declares that public utility  
46 involvement and competition in the renewable energy, conservation

**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 and energy efficiency industries are essential to maximize  
2 efficiencies and the use of renewable energy and that the provisions  
3 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
4 should be implemented to further competition.

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

10 The Legislature therefore determines that it is in the public  
11 interest to establish a program that authorizes the State to dedicate  
12 to consumer benefit purposes up to 100 percent of the revenues  
13 derived from the auction or other sale of allowances pursuant to an  
14 emissions allowance trading program and to authorize the  
15 Commissioner of Environmental Protection and the President of the  
16 Board of Public Utilities to further the purposes of P.L. ,  
17 c. (C. ) (pending before the Legislature as this bill) and the  
18 “Global Warming Response Act,” P.L.2007, c.112 (C.26:2C-37 et  
19 seq.), by participating with other states in the formation and activity  
20 of a separate legal entity established for the purpose of furthering  
21 the Regional Greenhouse Gas Initiative.

22

23 2. (New section) As used in sections 1 through 11 and sections  
24 14 and 15 of P.L. , c. (C. ) (pending before the Legislature as  
25 this bill):

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

29 “Board” means the Board of Public Utilities.

30 “Compliance entity” means an owner or operator of an electric  
31 generating unit, with a nameplate capacity equal to or greater than  
32 25 megawatts of electrical output, in New Jersey that is required to  
33 obtain allowances in order to operate an electric generating unit that  
34 holds an operating permit from the department issued pursuant to  
35 P.L.1954, c.212 (C.26:2C-1 et seq.), whether that unit is in  
36 operation or in development. “Compliance entity” shall not include  
37 any cogeneration facility or combined heat and power facility that is  
38 an “on-site generation facility” as that term is defined in section 3  
39 of P.L.1999, c.23 (C.48:3-51) and sells less than 10 percent of its  
40 annual gross electrical generation.

41 “Consumer benefit” means any action or measure to: promote  
42 energy efficiency; directly mitigate electricity ratepayer impacts;  
43 develop and deliver renewable or non-carbon-emitting energy  
44 technologies; stimulate or reward investment in the development of  
45 innovative carbon emissions abatement technologies with  
46 significant carbon emissions reduction potential; fund programs that  
47 promote measurable electricity end-use energy efficiency in the  
48 commercial, institutional, and industrial sectors; or fund the

1 administration of greenhouse gas emissions allowance trading and  
2 consumer benefit programs.

3 “Department” means the Department of Environmental  
4 Protection.

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

14 “Global Warming Solutions Fund” or “fund” means the “Global  
15 Warming Solutions Fund” established pursuant to section 6 of  
16 P.L. , c. (C. ) (pending before the Legislature as this bill).

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

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

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

28  
29 3. (New section) a. (1) The department, by rule or regulation  
30 adopted pursuant to the “Administrative Procedure Act,” P.L.1968,  
31 c.410 (C.52:14B-1 et seq.), shall take any measures necessary to  
32 sell, exchange, retire, assign, allocate, or auction any or all  
33 allowances that are created by, budgeted to, or otherwise obtained  
34 by the State in furtherance of any greenhouse gas emissions  
35 allowance trading program implemented to reduce or prevent  
36 emissions of greenhouse gases. The department shall take into  
37 consideration the principles and goals of the New Jersey Energy  
38 Master Plan in the rule making process. The department may  
39 exercise this authority in cooperation and coordination with other  
40 states or countries that are participating in regional, national or  
41 international carbon dioxide emissions trading programs with the  
42 same or similar purpose. In exercising this authority, the  
43 department shall exclude from the requirement to purchase or  
44 acquire any allowances under any greenhouse gas emissions trading  
45 program any cogeneration facility or combined heat and power  
46 facility that is an “on-site generation facility” as that term is defined  
47 in section 3 of P.L.1999, c.23 (C.48:3-51) and sells less than 10  
48 percent of its annual gross electrical generation.

1 (2) Approval and notice by the department of specific  
2 procedures and requirements for any auction or other sale of  
3 allowances which are formulated by a for-profit or non-profit  
4 corporation, association or organization which the department and  
5 the board are authorized to participate in pursuant to section 11 of  
6 P.L. , c. (C. ) (pending before the Legislature as this bill)  
7 shall not be subject to the “Administrative Procedure Act,”  
8 P.L.1968, c.410 (C.52:14B-1 et seq.), provided that the specific  
9 procedures and requirements are consistent with the process and  
10 general requirements outlined in regulation adopted by the  
11 department, and the public is afforded an opportunity for review  
12 and comment on such specific procedures and requirements.

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

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

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

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

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

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

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

40 c. The department shall review its position with any regional  
41 auction on an annual basis, including the amount of allowances that  
42 should be included in a regional auction. This annual review shall  
43 include consideration of the environmental and economic impact of  
44 the auction, leakage impacts, and the impact on electric generation  
45 facilities and ratepayers in the State. The department shall submit a  
46 written report of this review to the Governor and to the Legislature  
47 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1). The report  
48 shall also be posted on the department’s website.

1 4. (New section) A dispatch agreement facility that has been  
2 certified pursuant to section 5 of P.L. , c. (C. ) (pending  
3 before the Legislature as this bill) shall be eligible to purchase  
4 allowances at the price of \$2 per allowance, pursuant to subsection  
5 a. of this section.

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

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

19 c. For any allowances not purchased by an owner or operator  
20 of a dispatch agreement facility pursuant to subsections a. and b. of  
21 this section, an owner or operator of a dispatch agreement facility  
22 shall purchase such allowances in accordance with the rules and  
23 regulations adopted by the department pursuant to section 3 of  
24 P.L. , c. (C. ) (pending before the Legislature as this bill).

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

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

35  
36 5. (New section) a. The owner or operator of a dispatch  
37 agreement facility may certify to the department that the dispatch  
38 agreement facility qualifies to purchase allowances pursuant to  
39 section 4 of P.L. , c. (C. ) (pending before the Legislature as  
40 this bill).

41 b. The certification submitted to the department pursuant to  
42 subsection a. of this section shall be through a sworn affidavit with  
43 supporting documentation from an independent entity that attests to  
44 the facility's adherence to the definition of dispatch agreement  
45 facility as set forth in section 2 of P.L. , c. (C. ) (pending  
46 before the Legislature as this bill). The affidavit shall be signed by  
47 both an official representative of the independent entity and by the  
48 chief financial officer or their equivalent of the owner or operator of

1 the dispatch agreement facility. If there are any material changes to  
2 the sworn affidavit or supporting documentation filed with the  
3 department, the independent entity and representative of the owner  
4 or operator of the dispatch agreement facility shall resubmit an  
5 affidavit pursuant to this section within 30 days after the change  
6 occurs.

7 c. The certification shall be received by the department at least  
8 30 days prior to the department making a notification, pursuant to  
9 subsection a. of section 4 of P.L. , c. (C. ) (pending before the  
10 Legislature as this bill), of an offer to sell allowances to dispatch  
11 agreement facilities in order for the dispatch agreement facility to  
12 be deemed eligible to participate in the sale.

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

17 e. Any signatory to the sworn affidavit in subsection b. of this  
18 section who knowingly gives or causes to be given any false or  
19 misleading information or who knowingly makes any false or  
20 misleading statement in complying with the provisions of this  
21 section shall be subject to a civil penalty of not more than \$500,000  
22 for each offense and shall not be eligible to be certified as a  
23 dispatch agreement facility. Civil penalties imposed pursuant to  
24 this section shall be collected in a civil action by a summary  
25 proceeding pursuant to the "Penalty Enforcement Law of 1999,"  
26 P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties,  
27 the court may assess against the violator the amount of any  
28 economic benefit accruing to the violator from the violation of the  
29 provisions of this section.

30 f. All penalties collected pursuant to this section shall be  
31 deposited in the "Global Warming Solutions Fund," established  
32 pursuant to section 6 of P.L. , c. (C. ) (pending before the  
33 Legislature as this bill), and kept separate from other receipts  
34 deposited therein, and appropriated for the purposes of that fund.

35  
36 6. (New section) There is established in the Department of the  
37 Treasury a special, nonlapsing fund to be known as the "Global  
38 Warming Solutions Fund." The fund shall be administered by the  
39 State Treasurer and shall be credited with:

40 a. moneys received as a result of any sale, exchange or other  
41 conveyance of allowances through a greenhouse gas emissions  
42 allowance trading program;

43 b. such moneys as are appropriated by the Legislature; and

44 c. any return on investment of moneys deposited in the fund.

45  
46 7. (New section) a. The agencies administering programs  
47 established pursuant to this section shall maximize coordination in

1 the administration of the programs to avoid overlap between the  
2 uses of the fund prescribed in this section.

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

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

36 (2) Twenty percent shall be allocated to the board to support  
37 programs that are designed to reduce electricity demand or costs to  
38 electricity customers in the low-income and moderate-income  
39 residential sector with a focus on urban areas, including efforts to  
40 address heat island effect and reduce impacts on ratepayers  
41 attributable to the implementation of P.L. , c. (C. ) (pending  
42 before the Legislature as this bill). For the purposes of this  
43 paragraph, the board, in consultation with the authority and the  
44 department, shall determine the types of programs to be supported  
45 and the mechanism by which to quantify benefits to ensure that the  
46 supported programs result in a measurable reduction in energy  
47 demand;

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

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

23 c. (1) The department may use up to four percent of the total  
24 amount in the fund each year to pay for administrative costs  
25 justifiable and approved in the annual budget process, incurred by  
26 the department in administering the provisions of P.L. ,  
27 c. (C. ) (pending before the Legislature as this bill) and in  
28 administering programs to reduce the emissions of greenhouse  
29 gases including any obligations that may arise under subsection a.  
30 of section 11 of P.L. , c. (C. ) (pending before the  
31 Legislature as this bill).

32 (2) The board may use up to two percent of the total amount in  
33 the fund each year to pay for administrative costs justifiable and  
34 approved in the annual budget process, incurred by the board in  
35 administering the provisions of P.L. , c. (C. ) (pending before  
36 the Legislature as this bill) and in administering programs to reduce  
37 the emissions of greenhouse gases including any obligations that  
38 may arise under subsection a. of section 11 of P.L. , c. (C. )  
39 (pending before the Legislature as this bill).

40 (3) The New Jersey Economic Development Authority may use  
41 up to two percent of the total amount in the fund each year to pay  
42 for administrative costs justifiable and approved in the annual  
43 budget process, incurred by the authority in administering the  
44 provisions of P.L. , c. (C. ) (pending before the Legislature as  
45 this bill) and in administering programs to reduce the emissions of  
46 greenhouse gases.

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

4  
5 8. (New section) a. Within one year after the date of enactment  
6 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
7 the department, in consultation with the New Jersey Economic  
8 Development Authority and the board, shall adopt, in accordance  
9 with the "Administrative Procedure Act," P.L.1968, c.410  
10 (C.52:14B-1 et seq.), guidelines and a priority ranking system to be  
11 used to assist in annually allocating funds to eligible projects or  
12 programs pursuant to subsection b. of section 7 of  
13 P.L. , c. (C. ) (pending before the Legislature as this bill).

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

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

23 (2) result in significant reductions in greenhouse gases relative  
24 to the cost of the project or program and the reduction of impacts on  
25 ratepayers attributable to the implementation of P.L. , c. (C. )  
26 (pending before the Legislature as this bill), and the ability of the  
27 project or program to significantly contribute to achievement of the  
28 State's 2020 limit and 2050 limit established pursuant to the  
29 "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et  
30 seq.), relative to the cost of the project or program;

31 (3) reduce energy use;

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

37 (5) be directly responsive to the recommendations when  
38 submitted by the department to the Legislature pursuant to section 6  
39 of the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-  
40 42).

41  
42 9. (New section) a. The annual appropriations act for each  
43 State fiscal year shall, without other conditions, limitations or  
44 restrictions, appropriate the moneys in the Global Warming  
45 Solutions Fund for the purposes set forth in subsections b. and c. of  
46 section 7 of P.L. , c. (C. ) (pending before the Legislature as  
47 this bill).

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

12        c. Sections 1 through 8 of P.L. , c. (C. ) (pending before  
13 the Legislature as this bill) shall be without effect on and after the  
14 10th day following a certification by the Director of the Division of  
15 Budget and Accounting in the Department of the Treasury pursuant  
16 to subsection b. of this section.

17

18        10. (New section) a. Within three months after the enactment of  
19 federal law providing for implementation of a national emissions  
20 allowance trading program, the Commissioner of Environmental  
21 Protection shall render an interim decision as to whether the  
22 national program is substantially comparable to the greenhouse gas  
23 emissions allowance trading program in which the State is  
24 participating at that time. If the commissioner determines that the  
25 national program is substantially comparable to the existing  
26 greenhouse gas emissions allowance trading program being  
27 implemented in the State, then the department shall take such  
28 anticipatory administrative action in advance of the adoption of  
29 rules and regulations providing for implementation of a national  
30 emissions allowance trading program in order to minimize any  
31 delay in the State's participation in the national program.

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

44        c. The commission shall notify, in writing, the Governor and  
45 the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-  
46 19.1) of the decisions made pursuant to this section.

47        d. The determination of the comparability of the programs,  
48 pursuant to subsections a. and b. of this section, shall be based upon

1 the projected percent reductions of greenhouse gas emissions from  
2 electric generating facilities serving customers in the State under  
3 the greenhouse gas emissions allowance trading program being  
4 implemented in the State at the time as compared to the projected  
5 percent reductions of greenhouse gas emissions from electric  
6 generating facilities serving customers in the State under the  
7 national program and may consider the value of allowances or  
8 allowance auction proceeds directed to the State or other entity to  
9 benefit New Jersey energy consumers. Reductions anticipated  
10 through the implementation of other State regulated carbon  
11 reduction initiatives, including but not limited to a renewable  
12 energy portfolio standard or any energy efficiency portfolio  
13 standard adopted pursuant to section 38 of P.L.1999, c.23 (C.48:3-  
14 87), shall not be considered in determining the comparability of the  
15 programs.

16

17 11. (New section) a. Notwithstanding the provisions of any  
18 other law, rule or regulation to the contrary, to further the purposes  
19 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
20 and the “Global Warming Response Act,” P.L.2007, c.112  
21 (C.26:2C-37 et seq.), the commissioner and the board president, or  
22 their respective designees, are authorized to:

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

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

31 b. Any actions that are consistent with, and that further the  
32 purposes of, P.L. , c. (C. ) (pending before the Legislature as  
33 this bill) and the “Global Warming Response Act,” P.L.2007, c.112  
34 (C.26:2C-37 et seq.) taken by the commissioner or the board  
35 president, or any employee of the department or the board  
36 authorized to take such actions by the commissioner or the board  
37 president, to form such corporation, association or organization, to  
38 participate in its activities, or to enter an agreement or arrangement  
39 prior to the date of enactment of P.L. , c. (C. ) (pending  
40 before the Legislature as this bill), are hereby validated.

41 c. Nothing in P.L. , c. (C. ) (pending before the  
42 Legislature as this bill) shall be deemed to constitute a waiver of  
43 sovereign immunity. By entering any agreement or arrangement  
44 authorized pursuant to this section, neither the commissioner nor  
45 the board president, nor their respective designees, nor the State  
46 consents to suit outside of New Jersey or consents to the  
47 governance of such suit under any law other than that of New  
48 Jersey.

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (2) ~~【If a State department or agency adopts regulations to~~  
4 ~~implement a State policy or an interstate or regional agreement to~~  
5 ~~reduce Statewide greenhouse gas emissions related to electricity~~  
6 ~~generation, then】~~ By July 1, 2009, the board shall adopt, pursuant  
7 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
8 1 et seq.), a greenhouse gas emissions portfolio standard to mitigate  
9 leakage or another regulatory mechanism to mitigate leakage  
10 applicable to all electric power suppliers and basic generation  
11 service providers that provide electricity to customers within the  
12 State. 【Any regulation】 The greenhouse gas emissions portfolio  
13 standard or any other regulatory mechanism to mitigate leakage  
14 shall:

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

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

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

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

47 (1) that two and one-half percent of the kilowatt hours sold in  
48 this State by each electric power supplier and each basic generation

1 service provider be from Class I or Class II renewable energy  
2 sources; and

3 (2) beginning on January 1, 2001, that one-half of one percent  
4 of the kilowatt hours sold in this State by each electric power  
5 supplier and each basic generation service provider be from Class I  
6 renewable energy sources. The board shall increase the required  
7 percentage for Class I renewable energy sources so that by January  
8 1, 2006, one percent of the kilowatt hours sold in this State by each  
9 electric power supplier and each basic generation service provider  
10 shall be from Class I renewable energy sources and shall  
11 additionally increase the required percentage for Class I renewable  
12 energy sources by one-half of one percent each year until January 1,  
13 2012, when four percent of the kilowatt hours sold in this State by  
14 each electric power supplier and each basic generation service  
15 provider shall be from Class I renewable energy sources.

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

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

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

30 (1) net metering standards for electric power suppliers and basic  
31 generation service providers. The standards shall require electric  
32 power suppliers and basic generation service providers to offer net  
33 metering at non-discriminatory rates to residential and small  
34 commercial customers that generate electricity, on the customer's  
35 side of the meter, using wind or solar photovoltaic systems for the  
36 net amount of electricity supplied by the electric power supplier or  
37 basic generation service provider over an annualized period. Where  
38 the amount of electricity generated by the customer-generator plus  
39 any kilowatt hour credits held over from the previous billing  
40 periods exceed the electricity supplied by the electric power  
41 supplier or basic generation service provider, the electric power  
42 supplier or basic generation service provider, as the case may be,  
43 shall credit the customer for the excess kilowatt hours until the end  
44 of the annualized period at which point the customer-generator will  
45 be compensated for any remaining credits at the electric power  
46 supplier's or basic generation service provider's avoided cost of  
47 wholesale power. The board may authorize an electric power  
48 supplier or basic generation service provider to cease offering net

1 metering whenever the total rated generating capacity owned and  
2 operated by net metering customer-generators Statewide equals 0.1  
3 percent of the State's peak electricity demand or the annual  
4 aggregate financial impact to electric power suppliers and basic  
5 generation service providers Statewide, as determined by the board,  
6 exceeds \$2,000,000, whichever is less; and

7 (2) safety and power quality interconnection standards for wind  
8 and solar photovoltaic systems that shall be eligible for net  
9 metering.

10 Such standards shall take into consideration the standards of  
11 other states and the Institute of Electrical and Electronic Engineers  
12 and shall allow customers to use a single, non-demand, non-time  
13 differentiated meter.

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

19 f. The board may assess, by written order and after notice and  
20 opportunity for comment, a separate fee to cover the cost of  
21 implementing and overseeing an emission disclosure system or  
22 emission portfolio standard, which fee shall be assessed based on an  
23 electric power supplier's or basic generation service provider's share  
24 of the retail electricity supply market. The board shall not impose a  
25 fee for the cost of implementing and overseeing a greenhouse gas  
26 emissions portfolio standard adopted pursuant to paragraph (2) of  
27 subsection c. of this section, the electric energy efficiency portfolio  
28 standard adopted pursuant to subsection g. of this section, or the gas  
29 energy efficiency portfolio standard adopted pursuant to subsection  
30 h. of this section.

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

41 h. The board may adopt, pursuant to the "Administrative  
42 Procedure Act," a gas energy efficiency portfolio standard that may  
43 require each gas public utility to implement energy efficiency  
44 measures that reduce natural gas usage for heating in the State by  
45 2020 to a level that is 20 percent below the usage projected by the  
46 board in the absence of such a standard. Nothing in this section  
47 shall be construed to prevent a gas public utility from meeting the

1 requirements of this section by contracting with another entity for  
2 the performance of the requirements.

3 i. As used in this section:

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

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

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

18 (cf: P.L.2007, c.112, s.8)

19

20 13. (New section) a. Notwithstanding the provisions of any  
21 other law or rule or regulation to the contrary:

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

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

33 (3) the board may provide funding for energy efficiency,  
34 conservation, and renewable energy improvements through the  
35 societal benefits charge established pursuant to section 12 of  
36 P.L.1999, c.23 (C.48:3-60), the retail margin on certain hourly-  
37 priced and larger non-residential customers pursuant to the board's  
38 continuing regulation of basic generation service pursuant to  
39 sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), or other  
40 monies appropriated for such purposes. The board may also direct  
41 electric public utilities and gas public utilities to undertake energy  
42 efficiency, conservation, and renewable energy improvements, and  
43 shall allow the recovery of program costs and incentive rate  
44 treatment pursuant to subsection b. of this section.

45 b. An electric public utility or a gas public utility seeking cost  
46 recovery for any program pursuant to this section shall file a  
47 petition with the board to request cost recovery. In determining the  
48 recovery by electric public utilities and gas public utilities of

1 program costs for any program implemented pursuant to this  
2 section, the board may take into account the potential for job  
3 creation from such programs, the effect on competition for such  
4 programs, existing market barriers, environmental benefits, and the  
5 availability of such programs in the marketplace. Unless the board  
6 issues a written order within 180 days after the filing of the petition  
7 approving, modifying or denying the requested recovery, the  
8 recovery requested by the utility shall be granted effective on the  
9 181<sup>st</sup> day after the filing without further order by the board.  
10 Ratemaking treatment may include placing appropriate technology  
11 and program cost investments in the respective utility's rate base, or  
12 recovering the utility's technology and program costs through  
13 another ratemaking methodology approved by the board, including,  
14 but not limited to, the societal benefits charge established pursuant  
15 to section 12 of P.L.1999, c.23 (C.48:3-60). All electric public  
16 utility and gas public utility investment in energy efficiency and  
17 conservation programs or Class I renewable energy programs may  
18 be eligible for rate treatment approved by the board, including a  
19 return on equity, or other incentives or rate mechanisms that  
20 decouple utility revenue from sales of electricity and gas.

21 c. Within 120 days after the date of enactment of P.L. ,  
22 c. (C. ) (pending before the Legislature as this bill), the board  
23 shall issue an order that allows electric public utilities and gas  
24 public utilities to offer energy efficiency and conservation  
25 programs, to invest in Class I renewable energy resources, and to  
26 offer Class I renewable energy programs in their respective service  
27 territories on a regulated basis. The board's order shall be reflected  
28 in rules and regulations thereafter to be adopted by the board  
29 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
30 (C.52:14B-1 et seq.).

31 d. As used in this section:

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

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

42 "Program costs" means all reasonable and prudent costs incurred  
43 in developing and implementing energy efficiency, conservation, or  
44 Class I renewable energy programs approved by the board pursuant  
45 to this section. These costs shall include a full return on invested  
46 capital and foregone electric and gas distribution fixed cost  
47 contributions associated with the implementation of the energy  
48 efficiency, conservation, or Class I renewable energy programs

1 until those cost contributions are reflected in base rates following a  
2 base rate case if such costs were reasonably and prudently incurred.

3

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

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

14

15 15. (New section) If any provision of P.L. , c. (C. )  
16 (pending before the Legislature as this bill) or its application to any  
17 person or circumstance is held invalid, the invalidity shall not affect  
18 any other provision or application of this act which can be given  
19 effect without the invalid provision or application, and to this end  
20 the provisions of this act are severable.

21

22 16. This act shall take effect immediately.