

SENATE, No. 611

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Requires State's participation in Regional Greenhouse Gas Initiative.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/17/2018)

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) a. Except as otherwise provided in subsection
8 b. of this section, the State shall fully participate in the Regional
9 Greenhouse Gas Initiative, established through a Memorandum of
10 Understanding signed by the governors of several states on
11 December 20, 2005, as amended.

12 b. If the Governor determines, after participating in the
13 Regional Greenhouse Gas Initiative pursuant to the provisions of
14 subsection a. of this section and P.L.2007, c.340 (C.26:2C-45 et
15 seq.), that it is not in the best interests of the State to continue to
16 participate in the Regional Greenhouse Gas Initiative, the Governor
17 shall send written notice to the President of the Senate, the Speaker
18 of the General Assembly, and the chairpersons of the Senate
19 Environment and Energy Committee and the Assembly
20 Environment and Solid Waste Committee, or their successors,
21 outlining the reasons for such a determination. Upon adoption by
22 the Legislature of a concurrent resolution stating, in substance, that
23 the Legislature concurs with the determination of the Governor, the
24 Governor may take such steps as are necessary to withdraw the
25 State from participation in the Regional Greenhouse Gas Initiative.

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

29 1. The Legislature finds and declares that New Jersey should
30 implement cost-effective measures to reduce emissions of
31 greenhouse gases, and that emissions trading and the auction of
32 allowances **【can be】** is an effective mechanism to accomplish that
33 objective.

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

39 The Legislature further finds and declares that any carbon
40 dioxide emissions allowance trading program established in the
41 State to reduce emissions of greenhouse gases **【should】** must
42 provide both incentives to reduce emissions at their sources and
43 funding or other consumer benefit incentives to reduce the demand
44 for energy, which in turn would reduce the generation and emission
45 of greenhouse gases.

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 funding consumer
2 benefit purposes will result in reduced costs to New Jersey
3 consumers, decreased energy use, decreased greenhouse gas
4 emissions, and substantial and tangible benefits to the energy-using
5 business sector.

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

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

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

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

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

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

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

1 3. a. (1) The department **【**, by rule or regulation adopted
2 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
3 (C.52:14B-1 et seq.), shall take any measures necessary to sell,
4 exchange, retire, assign, allocate, or auction any or all allowances
5 that are created by, budgeted to, or otherwise obtained by the State
6 in furtherance of any**】** shall establish, consistent with the terms of
7 the Memorandum of Understanding signed by New Jersey and other
8 states on December 20, 2005, a greenhouse gas emissions allowance
9 trading program **【**implemented**】** to participate in the Regional
10 Greenhouse Gas Initiative in order to reduce or prevent emissions
11 of greenhouse gases. The department shall adopt rules and
12 regulations pursuant to the "Administrative Procedure Act,"
13 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the greenhouse
14 gas emissions allowance trading program, and shall take into
15 consideration the principles and goals of the New Jersey Energy
16 Master Plan in the rule making process. The department **【**may
17 exercise this authority in cooperation and coordination**】** shall
18 cooperate and coordinate with other states or countries that are
19 participating in regional, national, or international carbon dioxide
20 emissions trading programs with the same or similar purpose. In
21 **【**exercising this authority**】** doing so, the department shall exclude
22 from the requirement to purchase or acquire any allowances under
23 any greenhouse gas emissions trading program any cogeneration
24 facility or combined heat and power facility that is an "on-site
25 generation facility" as that term is defined in section 3 of P.L.1999,
26 c.23 (C.48:3-51) and sells less than 10 percent of its annual gross
27 electrical generation.

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

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

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

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

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

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

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

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

20 c. The department shall review its position with the Regional
21 Greenhouse Gas Initiative, or any subsequent regional auction , on
22 an annual basis, including the amount of allowances that should be
23 included in a regional auction. This annual review shall include
24 consideration of the environmental and economic impact of the
25 auction, leakage impacts, and the impact on electric generation
26 facilities and ratepayers in the State. The department shall submit a
27 written report of this review to the Governor and to the Legislature
28 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1). The report
29 shall also be posted on the department's website.

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

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

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

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

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

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

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

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

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19 5. This act shall take effect immediately.

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STATEMENT

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

27 This bill would allow a Governor to withdraw the State from
28 participation in RGGI if: (1) the Governor determines that it is not
29 in the best interests of the State to continue to participate, and sends
30 written notice to the President of the Senate, the Speaker of the
31 General Assembly, and the chairpersons of the Senate Environment
32 and Energy Committee and the Assembly Environment and Solid
33 Waste Committee, or their successors, of that determination and the
34 reasons therefor, and (2) the Legislature adopts a concurrent
35 resolution stating, in substance, that the Legislature concurs with
36 the determination of the Governor.

37 P.L.2007, c.340, commonly referred to as the "RGGI"
38 implementing law, was enacted to further the purposes of the
39 "Global Warming Response Act" (GWRA), P.L.2007, c.112
40 (C.26:2C-37 et al.). The RGGI implementing law partially
41 implements the policies of the GWRA by creating an emissions
42 auction and trading mechanism to reduce the level of greenhouse
43 gas emissions, especially carbon dioxide. P.L.2007, c.340
44 recognizes the State's participation in RGGI by setting forth the
45 parameters to be followed for allowance auctions, creating the
46 "Global Warming Solutions Fund," and statutorily dedicating all the
47 proceeds received from the sale, exchange, or other conveyance of
48 allowances through a greenhouse gas emissions allowance trading

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- 1 program to the fund. New Jersey participated in RGGI from its
- 2 inception in December 2005 until the State withdrew from the
- 3 agreement in December 2011.