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SENATE COMMITTEE SUBSTITUTE FOR
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STATE OF NEW JERSEY
218th LEGISLATURE

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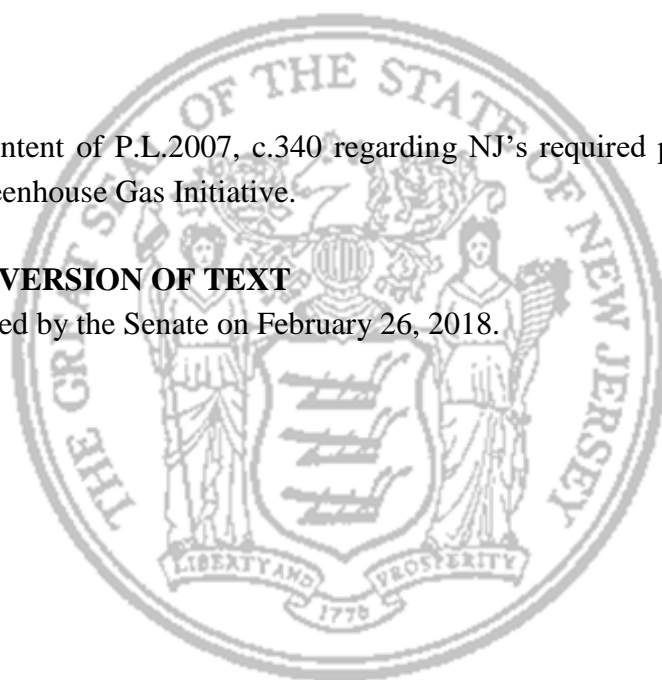
Senator Gordon

SYNOPSIS

Clarifies intent of P.L.2007, c.340 regarding NJ's required participation in Regional Greenhouse Gas Initiative.

CURRENT VERSION OF TEXT

As amended by the Senate on February 26, 2018.



(Sponsorship Updated As Of: 2/6/2018)

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**[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
26 Initiative.]¹

27

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

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

35 The Legislature further finds and declares that entering into
36 agreements or arrangements with appropriate representatives of
37 other states **[may]** ¹**[will further]** further¹ the purposes of
38 P.L.2007, c.340 (C.26:2C-45 et al.) and the "Global Warming
39 Response Act," P.L.2007, c.112 (C.26:2C-37 et al.).

40 The Legislature further finds and declares that any carbon
41 dioxide emissions allowance trading program established in the
42 State to reduce emissions of greenhouse gases **[should]** must
43 provide both incentives to reduce emissions at their sources and
44 funding or other consumer benefit incentives to reduce the demand

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted February 26, 2018.

1 for energy, which in turn would reduce the generation and emission
2 of greenhouse gases.

3 The Legislature further finds and declares that funding consumer
4 benefit purposes will result in reduced costs to New Jersey
5 consumers, decreased energy use, decreased greenhouse gas
6 emissions, and substantial and tangible benefits to the energy-using
7 business sector.

8 The Legislature further finds and declares that efforts to reduce
9 greenhouse gas emissions in New Jersey must include
10 complementary programs to reduce greenhouse gas emissions from
11 electricity generated outside of the State but consumed in New
12 Jersey, and that one measure that **may** ¹**will** may¹ be most
13 effective in doing so is the adoption of a greenhouse gas emissions
14 portfolio standard as authorized pursuant to the "Global Warming
15 Response Act," P.L.2007, c.112 (C.26:2C-37 et al.) and section 38
16 of P.L.1999, c.23 (C.48:3-87).

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

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

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

34 The Legislature therefore determines that it is in the public
35 interest to establish a program that **authorizes** requires the State
36 to dedicate to consumer benefit purposes up to 100 percent of the
37 revenues derived from the auction or other sale of allowances
38 pursuant to an emissions allowance trading program and to
39 **authorize** require the Commissioner of Environmental Protection
40 and the President of the Board of Public Utilities to further the
41 purposes of P.L.2007, c.340 (C.26:2C-45 et al.) and the "Global
42 Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et al.), by
43 participating with other states in the ¹**formation and**¹ activity of a
44 separate legal entity established for the purpose of ¹**furthering**
45 administering¹ the Regional Greenhouse Gas Initiative.
46 (cf: P.L.2007, c.340, s.1)

1 ¹~~3.~~^{2.} Section 3 of P.L.2007, c.340 (C.26:2C-47) is
2 amended to read as follows:

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

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

44 b. ~~If the rules or regulations adopted by the department~~
45 ~~pursuant to subsection a. of this section convey allowances utilizing~~
46 ~~an auction, then any]~~ Any auction to convey allowances:

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

4 (2) ¹shall include the sale of allowances for current and future
5 compliance periods to promote transparency and price stability;

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

9 ¹[(4) shall include provisions to address, and to the extent
10 practicable minimize, the potential for allowance market price
11 volatility during the initial control period of a greenhouse gas
12 emissions allowance trading program;

13 (5)¹ [(3)¹ shall include provisions to ensure the continued market
14 availability of allowances to entities regulated under a greenhouse
15 gas emissions allowance trading program, taking into account the
16 outcomes of auctions and monitoring of the allowance market,
17 which may include the adoption of a flexible process that allows for
18 ongoing modification of auction design and procedures in response
19 to allowance market conditions and allowance market monitoring
20 data, provided that the process allows for public comment and
21 input; and

22 ¹[(6)¹ (4)¹ may be open to all qualified participants, and all
23 qualified participants may sell or otherwise agree to transfer any or
24 all allowances to any eligible entity.

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

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

36
37 ¹3. Section 8 of P.L.2007, c.340 (C.26:2C-52) is amended to
38 read as follows:

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

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

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

10 (2) result in significant reductions in greenhouse gases relative
11 to the cost of the project or program and the reduction of impacts on
12 ratepayers attributable to the implementation of P.L.2007, c.340
13 (C.26:2C-45 et al.), and the ability of the project or program to
14 significantly contribute to achievement of the State's 2020 limit and
15 2050 limit established pursuant to the "Global Warming Response
16 Act," P.L.2007, c.112 (C.26:2C-37 et al.), relative to the cost of the
17 project or program;

18 (3) reduce energy use;

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

24 (5) be directly responsive to the recommendations when
25 submitted by the department to the Legislature pursuant to section 6
26 of the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-
27 42).

28 c. In addition to the criteria set forth in subsection b. of this
29 section, the guidelines and the priority ranking system developed
30 pursuant to this section for selecting projects or programs to be
31 awarded grants or other forms of financial assistance from the fund
32 shall include factors to ensure that grants or other forms of financial
33 assistance from the fund are allocated to projects or programs that
34 will serve communities that are disproportionality impacted by the
35 effects of environmental degradation and climate change, and
36 alleviate the negative effects on human health and the environment
37 resulting therefrom.¹

38 (cf: P.L.2007, c.340, s.8)

39
40 4. Section 11 of P.L.2007, c.340 (C.26:2C-55) is amended to
41 read as follows:

42 11. a. Notwithstanding the provisions of any other law, rule or
43 regulation to the contrary, to further the purposes of P.L.2007,
44 c.340 (C.26:2C-45 et al.) and the "Global Warming Response Act,"
45 P.L.2007, c.112 (C.26:2C-37 et al.), the commissioner and the
46 board president, or their respective designees, **【are authorized to】**
47 shall:

1 (1) enter any agreement or arrangement with the appropriate
2 representatives of other states, including the formation of a for-
3 profit or non-profit corporation, any form of association, or any
4 other form of organization, in this or another state; and
5 (2) participate in any such corporation, association, or
6 organization, and in any activity in furtherance of the purposes
7 thereof, in any capacity including, but not limited to, as directors or
8 officers.
9 b. Any actions that are consistent with, and that further the
10 purposes of, P.L.2007, c.340 (C.26:2C-45 et al.) and the "Global
11 Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et al.) taken
12 by the commissioner or the board president, or any employee of the
13 department or the board authorized to take such actions by the
14 commissioner or the board president, to form such corporation,
15 association, or organization, to participate in its activities, or to
16 enter an agreement or arrangement prior to the date of enactment of
17 P.L.2007, c.340 (C.26:2C-45 et al.), are hereby validated.
18 c. Nothing in P.L.2007, c.340 (C.26:2C-45 et al.) shall be
19 deemed to constitute a waiver of sovereign immunity. By entering
20 any agreement or arrangement authorized pursuant to this section,
21 neither the commissioner nor the board president, nor their
22 respective designees, nor the State consents to suit outside of New
23 Jersey or consents to the governance of such suit under any law
24 other than that of New Jersey.
25 (cf: P.L.2007, c.340, s.11)
26
27 5. This act shall take effect immediately.