

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

STATE OF NEW JERSEY
212th LEGISLATURE

ADOPTED JANUARY 3, 2008

Sponsored by:

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District 27 (Essex)

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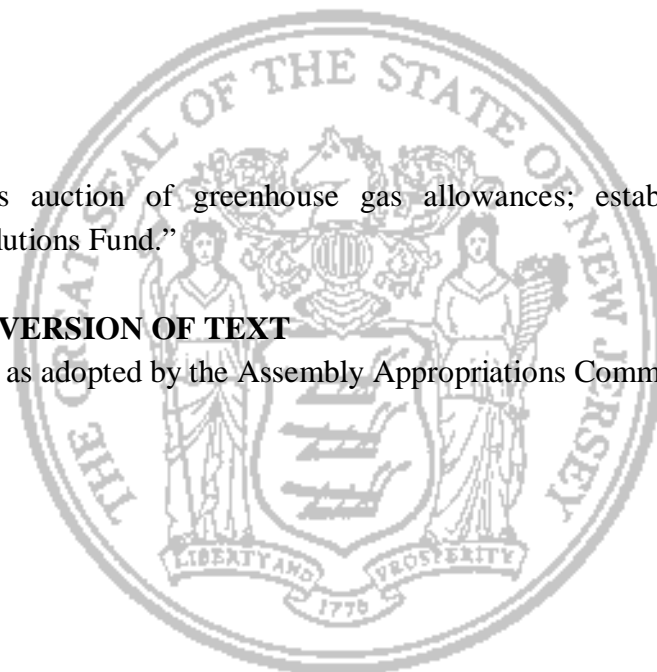
District 15 (Mercer)

SYNOPSIS

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

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Appropriations Committee.



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 181st 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.