



Climate Change Statutes

STATE OF NEW JERSEY

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Current through the 2009 Legislative Session of the New Jersey State Legislature.

§ 26:2C – 37. Short title

This act shall be known and may be cited as the “ Global Warming Response Act.”

§ 26:2C – 38. Legislative findings and declarations; impact and reduction of greenhouse gases

The Legislature finds and declares that internationally the issue of global warming has caused alarm, awareness, and action concerning climate changes occurring around the globe attributed to the high level of certain gases called “greenhouse gases” -- gases that increase temperatures in the atmosphere and the risk of catastrophic changes to the Earth's ecosystems and environment; that, while this global warming may be a theory to some, the effects of increasing levels of greenhouse gases in the atmosphere are accepted by many respected scientists and members of the international community as seriously detrimental to the ecosystems and environment of the world; that, ultimately, if steps are not taken to reverse these trends, the effects on human, animal and plant life on Earth may be catastrophic; that solutions exist to halt the increasing of greenhouse gases in the atmosphere and reduce these emissions; that, as a global issue, each country and region within a country must do its part to reduce these greenhouse gases that threaten the globe; and that, as a State, there are specific actions that can be taken to attack the problem of global warming, through reductions of greenhouse gas emissions in the State and participation in regional and interstate initiatives to reduce these emissions regionally, nationally, and internationally.

The Legislature therefore finds and declares that it is in the public interest to establish a greenhouse gas emissions reduction program to limit the level of Statewide greenhouse gas emissions, and greenhouse gas emissions from electricity generated outside the State but consumed in the State, to the 1990 level or below, of those emissions by the year 2020, and to reduce those emissions to 80% below the 2006 level by the year 2050.

§ 26:2C – 39. Definitions

For the purposes of this act:

“Department” means the Department of Environmental Protection.

“Greenhouse gas” means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other gas or substance determined by the Department of Environmental Protection to be a significant contributor to the problem of global warming.

"Statewide greenhouse gas emissions" means the sum of calendar year emissions of greenhouse gases from all sources within the State, and from electricity generated outside the State but consumed in the State, as determined by the department pursuant to subsection c. of section 5 of this act.

"2020 limit" means the level of greenhouse gas emissions equal to the 1990 level of Statewide greenhouse gas emissions.

"2050 limit" means the level of greenhouse gas emissions equal to 80 percent less than the 2006 level of Statewide greenhouse gas emissions.

§ 26:2C – 40. Establishment of target greenhouse gas emission levels for 2020 and 2050

a. No later than January 1, 2020, the level of Statewide greenhouse gas emissions shall be reduced to, or below, the 2020 limit. No later than January 1, 2050, the greenhouse gas emissions in the State shall be stabilized at or below the 2050 limit and shall not exceed that level thereafter. The department shall consider the economic impact upon the State and upon the emitters of a greenhouse gas for any measure imposed to meet the 2020 limit and the 2050 limit.

b. No later than one year after the date of enactment of this act, the department shall establish:

- (1) an inventory of the current and 2006 Statewide greenhouse gas emissions; and
- (2) an inventory of the 1990 level of Statewide greenhouse gas emissions.

§ 26:2C – 41. Establishment of a greenhouse gas emissions monitoring and reporting program; rules and regulations; scope of oversight

a. No later than January 1, 2009, the department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations establishing a greenhouse gas emissions monitoring and reporting program to monitor and report Statewide greenhouse gas emissions.

b. The rules and regulations adopted pursuant to subsection a. of this section shall identify all significant sources of Statewide greenhouse gas emissions and shall provide for, but need not be limited to, the following:

- (1) monitoring and reporting of existing emissions and changes in emissions over time from the sources identified by the department;
- (2) reporting the levels of those emissions and changes in those emissions levels annually, commencing on January 1, 2009; and
- (3) monitoring progress toward the 2020 limit and the 2050 limit.

c. Pursuant to the rules and regulations adopted pursuant to subsection a. of this section, the department shall require reporting of the greenhouse gas emissions:

- (1) associated with fossil fuels used in the State, as reported by entities that are manufacturers and distributors of fossil fuels, which may include, but need not be limited to, oil refineries, oil storage facilities, natural gas pipelines, and fuel wholesale and retail distributors;
- (2) from any entity generating electricity in the State and from any entity that generates electricity outside the State that is delivered for end use in the State. With respect to electricity generated outside the State and imported into the State, the department shall determine the

emissions from that generation by subtracting the kilowatt-hours of electricity generated in the State from the kilowatt-hours of electricity consumed in the State, and multiplying the difference by a default emissions rate determined by the department;

(3) from any gas public utility as defined in section 3 of P.L.1999, c. 23 (C.48:3-51); and

(4) from any additional entities that are significant emitters of greenhouse gases, as determined by the department, and as appropriate to enable the department to monitor compliance with progress toward the 2020 limit and the 2050 limit.

§ 26:2C – 42. Evaluation of policies and measures; recommendations and report; adoption of an energy master plan

a. The department, in consultation with the Board of Public Utilities, the Department of Agriculture, the Department of Transportation, and the Department of Community Affairs, shall evaluate policies and measures that will enable the State to achieve the 2020 limit, shall make specific recommendations on how to achieve the emission reduction targets, including measures that reduce emissions in all sectors of the economy including transportation, housing, and consumer products, and shall evaluate the economic benefits and costs of implementing these recommendations. The department shall coordinate its evaluation of greenhouse gas emission reduction policies and measures with the work of the Energy Master Plan Committee established pursuant to section 12 of P.L.1977, c. 146 (C.52:27F-14).

b. No later than June 30, 2008, the department, and any other State agencies, as appropriate, shall prepare a report recommending the measures necessary to reduce greenhouse gas emissions to achieve the 2020 limit. The report shall include specific recommendations for legislative and regulatory action that will be necessary to achieve the 2020 limit. The report shall be transmitted to the Governor, to the State Treasurer, to the Legislature pursuant to section 2 of P.L.1991, c. 164 (C.52:14-19.1) and to the members of the Senate Environment Committee and the Assembly Environment and Solid Waste Committee.

c. No later than June 30, 2010, the department, and any other State agencies, as appropriate, shall prepare a report recommending the measures necessary to reduce greenhouse gas emissions to achieve the 2050 limit. The report shall include specific recommendations for legislative and regulatory action that will be necessary to achieve the 2050 limit. The report shall also include recommendations for additional policies and measures that will be required if the State is otherwise expected to exceed the 2020 limit and any additional measures that will be required to meet the 2050 limit. The report shall be transmitted to the Governor, to the State Treasurer, to the Legislature pursuant to section 2 of P.L.1991, c. 164 (C.52:14-19.1) and to the members of the Senate Environment Committee and the Assembly Environment and Solid Waste Committee.

d. The Energy Master Plan Committee shall include in its adoption of the first update of the energy master plan completed after the date of enactment of this act, a list of recommended policies and measures to reduce the emission of greenhouse gases from the production, processing, distribution, transmission, storage, or use of energy that will contribute to achieving the 2020 limit.

e. Nothing in this act shall impose any limit on the existing authority of the department, the Board of Public Utilities, or any other State department or agency to limit or regulate greenhouse gas emissions pursuant to law.

§ 26:2C – 43. Biennial report to the Governor and Legislature; report contents

a. No later than January 1, 2009, and biennially thereafter, the department shall prepare and transmit, in writing, a report to the Governor, to the State Treasurer, to the Legislature pursuant to section 2 of P.L.1991, c. 164 (C.52:14-19.1) and to the members of the Senate Environment Committee and the

Assembly Environment and Solid Waste Committee, on the status of the greenhouse gas emissions monitoring and reporting program established pursuant to this act, the current level of greenhouse gas emissions in the State and the progress made toward compliance with the 2020 limit and the 2050 limit established pursuant to this act. The report shall also include updated and comparative inventories of Statewide greenhouse gas emissions.

b. No later than January 1, 2015, the department shall evaluate the ecological, economic, and environmental factors and the technological capability affecting the attainment or maintenance of the 2020 limit and the 2050 limit established pursuant to this act.

§ 26:2C – 44. Independent research review panel; membership; duties

a. No later than June 30, 2008, the department shall designate an independent research review panel consisting of economists, business managers, nonprofit environmental organization representatives, and public officials, and scientists from academia, industry and the government, to review the recommendations and evaluations submitted by the department and any other State agencies, as appropriate, in the reports required pursuant to section 6 of this act.

b. The independent research review panel shall review the recommendations and evaluations of the department and any other State agencies, as appropriate, and shall, within 12 months of the date of transmittal of the reports required pursuant to section 6 of this act, prepare and transmit a report evaluating the ecological, economic and social impact of the proposed recommendations submitted by the department and any other State agencies, as appropriate, to the Governor, to the State Treasurer, to the Legislature pursuant to section 2 of P.L.1991, c. 164 (C.52:14-19.1) and to the members of the Senate Environment Committee and the Assembly Environment and Solid Waste Committee.

c. This section shall not be construed to affect the requirements of the greenhouse gas emissions monitoring and reporting program or the department's administration of the program established pursuant to this act.

§ 26:2C – 45. Legislative findings and declarations; Regional Greenhouse Gas Initiative

The Legislature finds and declares that New Jersey should implement cost-effective measures to reduce emissions of greenhouse gases, and that emissions trading and the auction of allowances can be an effective mechanism to accomplish that objective.

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

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

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

The Legislature further finds and declares that efforts to reduce greenhouse gas emissions in New Jersey must include complementary programs to reduce greenhouse gas emissions from electricity generated outside of the State but consumed in New Jersey, and that one measure that may be most effective in doing so is the adoption of a greenhouse gas emissions portfolio standard as authorized

pursuant to the "Global Warming Response Act," P.L.2007, c. 112 (C.26:2C-37 et al.) and section 38 of P.L.1999, c. 23 (C.48:3-87).

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

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

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

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

§ 26:2C – 46. Definitions

As used in sections 1 through 11 and sections 14 and 15 of P.L.2007, c.340 (C.26:2C-45 et seq.):

"Allowance" means a limited authorization, as defined by the department, to emit up to one ton of carbon dioxide or its equivalent.

"Board" means the Board of Public Utilities.

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

"Consumer benefit" means any action or measure to: promote energy efficiency; directly mitigate electricity ratepayer impacts; develop and deliver renewable or non-carbon-emitting energy technologies; stimulate or reward investment in the development of innovative carbon emissions abatement technologies with significant carbon emissions reduction potential; fund programs that promote measurable electricity end-use energy efficiency in the commercial, institutional, and industrial sectors; or fund the administration of greenhouse gas emissions allowance trading and consumer benefit programs.

"Department" means the Department of Environmental Protection.

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

"Global Warming Solutions Fund" or "fund" means the "Global Warming Solutions Fund" established pursuant to section 6 of P.L.2007, c. 340 (C.26:2C-50).

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

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

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

§ 26:2C – 47. Rules and regulations; greenhouse gas emissions allowance trading program; auction; reviews

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

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

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

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

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

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

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

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

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

c. The department shall review its position with any regional auction on an annual basis, including the amount of allowances that should be included in a regional auction. This annual review shall include consideration of the environmental and economic impact of the auction, leakage impacts, and the impact on electric generation facilities and ratepayers in the State. The department shall submit a written report of this review to the Governor and to the Legislature pursuant to section 2 of P.L.1991, c. 164 (C.52:14-19. 1). The report shall also be posted on the department's website.

§ 26:2C – 48. Dispatch agreement facility; purchase allowances

A dispatch agreement facility that has been certified pursuant to section 5 of P.L.2007, c. 340 (C. 26:2C-49) shall be eligible to purchase allowances at the price of \$2 per allowance, pursuant to subsection a. of this section.

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

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

c. For any allowances not purchased by an owner or operator of a dispatch agreement facility pursuant to subsections a. and b. of this section, an owner or operator of a dispatch agreement facility shall purchase such allowances in accordance with the rules and regulations adopted by the department pursuant to section 3 of P.L.2007, c. 340 (C.26:2C-47).

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

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

§ 26:2C – 49. Dispatch agreement facility; certification for purchase allowance; affidavits; penalties

a. The owner or operator of a dispatch agreement facility may certify to the department that the dispatch agreement facility qualifies to purchase allowances pursuant to section 4 of P.L.2007, c. 340 (C.26:2C-48).

b. The certification submitted to the department pursuant to subsection a. of this section shall be through a sworn affidavit with supporting documentation from an independent entity that attests to the facility's adherence to the definition of dispatch agreement facility as set forth in section 2 of P.L.2007, c. 340 (C.26:2C-46). The affidavit shall be signed by both an official representative of the independent entity and by the chief financial officer or their equivalent of the owner or operator of the dispatch agreement facility. If there are any material changes to the sworn affidavit or supporting documentation filed with the department, the independent entity and representative of the owner or operator of the dispatch agreement facility shall resubmit an affidavit pursuant to this section within 30 days after the change occurs.

c. The certification shall be received by the department at least 30 days prior to the department making a notification, pursuant to subsection a. of section 4 of P.L.2007, c. 340 (C.26:2C-48), of an offer to sell allowances to dispatch agreement facilities in order for the dispatch agreement facility to be deemed eligible to participate in the sale.

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

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

f. All penalties collected pursuant to this section shall be deposited in the "Global Warming Solutions Fund," established pursuant to section 6 of P.L.2007, c. 340 (C.26:2C-50), and kept separate from other receipts deposited therein, and appropriated for the purposes of that fund.

§ 26:2C – 50. Global Warming Solutions Fund

There is established in the Department of the Treasury a special, nonlapsing fund to be known as the "Global Warming Solutions Fund." The fund shall be administered by the State Treasurer and shall be credited with:

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

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

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

§ 26:2C – 51. Purposes of fund; audit and supervision

a. The agencies administering programs established pursuant to this section shall maximize coordination in the administration of the programs to avoid overlap between the uses of the fund prescribed in this section.

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

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

(2) Twenty percent shall be allocated to the board to support programs that are designed to reduce electricity demand or costs to electricity customers in the low-income and moderate-income residential sector with a focus on urban areas, including efforts to address heat island effect and reduce impacts on ratepayers attributable to the implementation of P.L.2007, c. 340 (C.26:2C-45 et al.). For the purposes of this paragraph, the board, in consultation with the authority and the department, shall determine the types of programs to be supported and the mechanism by which to quantify benefits to ensure that the supported programs result in a measurable reduction in energy demand;

(3) Ten percent shall be allocated to the department to support programs designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gas emissions, including but not limited to technical assistance to local governments, and the awarding of grants and other forms of assistance to local governments to conduct and implement energy efficiency, renewable energy, and distributed energy programs and land use planning where the grant or assistance results in a measurable reduction of the emission of greenhouse gases or a measurable reduction in energy demand. For the purpose of conducting any program pursuant to this paragraph, the department, in consultation with the authority and the board, shall determine: (a) the appropriate level of grants or other forms of financial assistance to be awarded to local governments; (b) the evaluation criteria for selecting projects to be awarded grants or other forms of financial assistance; (c) the process by which grants or

other forms of financial assistance can be applied for and awarded; and (d) a mechanism by which to quantify benefits; and

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

c. (1) The department may use up to four percent of the total amount in the fund each year to pay for administrative costs justifiable and approved in the annual budget process, incurred by the department in administering the provisions of P.L.2007, c. 340 (C.26:2C-45 et al.) and in administering programs to reduce the emissions of greenhouse gases including any obligations that may arise under subsection a. of section 11 of P.L.2007, c. 340 (C.26:2C-55).

(2) The board may use up to two percent of the total amount in the fund each year to pay for administrative costs justifiable and approved in the annual budget process, incurred by the board in administering the provisions of P.L.2007, c. 340 (C.26:2C-45 et al.) and in administering programs to reduce the emissions of greenhouse gases including any obligations that may arise under subsection a. of section 11 of P.L. 2007, c. 340 (C.26:2C-55).

(3) The New Jersey Economic Development Authority may use up to two percent of the total amount in the fund each year to pay for administrative costs justifiable and approved in the annual budget process, incurred by the authority in administering the provisions of P.L.2007, c. 340 (C.26:2C-45 et al.) and in administering programs to reduce the emissions of greenhouse gases.

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

§ 26:2C – 52. Guidelines and priority ranking system of projects and programs

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

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

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

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

(3) reduce energy use;

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

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

§ 26:2C – 53. Annual appropriations act; compliance and certification

a. The annual appropriations act for each State fiscal year shall, without other conditions, limitations or restrictions, appropriate the moneys in the Global Warming Solutions Fund for the purposes set forth in subsections b. and c. of section 7 of P.L.2007, c. 340 (C.26:2C-51).

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

c. Sections 1 through 8 of P.L.2007, c. 340 (C.26:2C-45 through C.26:2C-52) shall be without effect on and after the 10th day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of this section.

§ 26:2C – 54. National emissions allowance trading program

a. Within three months after the enactment of federal law providing for implementation of a national emissions allowance trading program, the Commissioner of Environmental Protection shall render an interim decision as to whether the national program is substantially comparable to the greenhouse gas emissions allowance trading program in which the State is participating at that time. If the commissioner determines that the national program is substantially comparable to the existing greenhouse gas emissions allowance trading program being implemented in the State, then the department shall take such anticipatory administrative action in advance of the adoption of rules and regulations providing for implementation of a national emissions allowance trading program in order to minimize any delay in the State's participation in the national program.

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

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

d. The determination of the comparability of the programs, pursuant to subsections a. and b. of this section, shall be based upon the projected percent reductions of greenhouse gas emissions from

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

§ 26:2C – 55. Powers of commissioner, board president or respective designees; sovereign immunity

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

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

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

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

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

§ 26:2C – 56. Action plan for ratepayer relief; report

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

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

§ 26:2C – 57. Severability

If any provision of P.L.2007, c. 340 (C.26:2C-45 et al.) or its application to any person or circumstance is held invalid, the invalidity shall not affect any other provision or application of this act which can be

given effect without the invalid provision or application, and to this end the provisions of this act are severable.