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974.90 P777, 2007b

Committee meeting of Assembly Environment and Solid Waste Committee: Assembly bill no. 3301: the Global Warming Response Act, plus testimony concerning the issue of climate change and possible legislative options to address the issue. February 20, 2007. West Orange, New Jersey.

974.90 P777, 2007c

Committee meeting of Assembly Environment and Solid Waste Committee: Assembly bill no. 3301: the Global Warming Response Act. February 26, 2007. Trenton, New Jersey.

974.90 P777, 2007d

Public Hearing before Senate Environment Committee: "Testimony on the impact of climate change on the State and how the State should address it. Officials from the California Air Resources Board and Rutgers, The State University have been invited to testify." April 17, 2007.

P.L. 2007, CHAPTER 340, *approved January 13, 2008*
Assembly Committee Substitute for
Assembly Committee Substitute for
Assembly, No. 4559

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).

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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

7 The Legislature further finds and declares that public utility
8 involvement and competition in the renewable energy, conservation
9 and energy efficiency industries are essential to maximize
10 efficiencies and the use of renewable energy and that the provisions
11 of P.L. , c. (C.) (pending before the Legislature as this bill)
12 should be implemented to further competition.

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

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

30
31 2. (New section) As used in sections 1 through 11 and sections
32 14 and 15 of P.L. , c. (C.) (pending before the Legislature as
33 this bill):

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

37 "Board" means the Board of Public Utilities.

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

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

11 “Department” means the Department of Environmental
12 Protection.

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

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

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

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

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

36
37 3. (New section) a. (1) The department, by rule or regulation
38 adopted pursuant to the “Administrative Procedure Act,” P.L.1968,
39 c.410 (C.52:14B-1 et seq.), shall take any measures necessary to
40 sell, exchange, retire, assign, allocate, or auction any or all
41 allowances that are created by, budgeted to, or otherwise obtained
42 by the State in furtherance of any greenhouse gas emissions
43 allowance trading program implemented to reduce or prevent
44 emissions of greenhouse gases. The department shall take into
45 consideration the principles and goals of the New Jersey Energy
46 Master Plan in the rule making process. The department may
47 exercise this authority in cooperation and coordination with other
48 states or countries that are participating in regional, national or

1 international carbon dioxide emissions trading programs with the
2 same or similar purpose. In exercising this authority, the
3 department shall exclude from the requirement to purchase or
4 acquire any allowances under any greenhouse gas emissions trading
5 program any cogeneration facility or combined heat and power
6 facility that is an “on-site generation facility” as that term is defined
7 in section 3 of P.L.1999, c.23 (C.48:3-51) and sells less than 10
8 percent of its annual gross electrical generation.

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

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

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

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

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

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

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

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

1 c. The department shall review its position with any regional
2 auction on an annual basis, including the amount of allowances that
3 should be included in a regional auction. This annual review shall
4 include consideration of the environmental and economic impact of
5 the auction, leakage impacts, and the impact on electric generation
6 facilities and ratepayers in the State. The department shall submit a
7 written report of this review to the Governor and to the Legislature
8 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1). The report
9 shall also be posted on the department's website.

10
11 4. (New section) A dispatch agreement facility that has been
12 certified pursuant to section 5 of P.L. , c. (C.) (pending
13 before the Legislature as this bill) shall be eligible to purchase
14 allowances at the price of \$2 per allowance, pursuant to subsection
15 a. of this section.

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

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

29 c. For any allowances not purchased by an owner or operator
30 of a dispatch agreement facility pursuant to subsections a. and b. of
31 this section, an owner or operator of a dispatch agreement facility
32 shall purchase such allowances in accordance with the rules and
33 regulations adopted by the department pursuant to section 3 of
34 P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

45
46 5. (New section) a. The owner or operator of a dispatch
47 agreement facility may certify to the department that the dispatch
48 agreement facility qualifies to purchase allowances pursuant to

- 1 section 4 of P.L. , c. (C.) (pending before the Legislature as
2 this bill).
- 3 b. The certification submitted to the department pursuant to
4 subsection a. of this section shall be through a sworn affidavit with
5 supporting documentation from an independent entity that attests to
6 the facility's adherence to the definition of dispatch agreement
7 facility as set forth in section 2 of P.L. , c. (C.) (pending
8 before the Legislature as this bill). The affidavit shall be signed by
9 both an official representative of the independent entity and by the
10 chief financial officer or their equivalent of the owner or operator of
11 the dispatch agreement facility. If there are any material changes to
12 the sworn affidavit or supporting documentation filed with the
13 department, the independent entity and representative of the owner
14 or operator of the dispatch agreement facility shall resubmit an
15 affidavit pursuant to this section within 30 days after the change
16 occurs.
- 17 c. The certification shall be received by the department at least
18 30 days prior to the department making a notification, pursuant to
19 subsection a. of section 4 of P.L. , c. (C.) (pending before the
20 Legislature as this bill), of an offer to sell allowances to dispatch
21 agreement facilities in order for the dispatch agreement facility to
22 be deemed eligible to participate in the sale.
- 23 d. The owner or operator of a dispatch agreement facility
24 claiming certification pursuant to this section shall provide on site,
25 upon the request of the department, any information the department
26 requires to determine the validity and extent of the certification.
- 27 e. Any signatory to the sworn affidavit in subsection b. of this
28 section who knowingly gives or causes to be given any false or
29 misleading information or who knowingly makes any false or
30 misleading statement in complying with the provisions of this
31 section shall be subject to a civil penalty of not more than \$500,000
32 for each offense and shall not be eligible to be certified as a
33 dispatch agreement facility. Civil penalties imposed pursuant to
34 this section shall be collected in a civil action by a summary
35 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
36 P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties,
37 the court may assess against the violator the amount of any
38 economic benefit accruing to the violator from the violation of the
39 provisions of this section.
- 40 f. All penalties collected pursuant to this section shall be
41 deposited in the "Global Warming Solutions Fund," established
42 pursuant to section 6 of P.L. , c. (C.) (pending before the
43 Legislature as this bill), and kept separate from other receipts
44 deposited therein, and appropriated for the purposes of that fund.
- 45
- 46 6. (New section) There is established in the Department of the
47 Treasury a special, nonlapsing fund to be known as the "Global

1 Warming Solutions Fund.” The fund shall be administered by the
2 State Treasurer and shall be credited with:

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

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

7 c. any return on investment of moneys deposited in the fund.
8

9 7. (New section) a. The agencies administering programs
10 established pursuant to this section shall maximize coordination in
11 the administration of the programs to avoid overlap between the
12 uses of the fund prescribed in this section.

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

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

46 (2) Twenty percent shall be allocated to the board to support
47 programs that are designed to reduce electricity demand or costs to
48 electricity customers in the low-income and moderate-income

1 residential sector with a focus on urban areas, including efforts to
2 address heat island effect and reduce impacts on ratepayers
3 attributable to the implementation of P.L. , c. (C.) (pending
4 before the Legislature as this bill). For the purposes of this
5 paragraph, the board, in consultation with the authority and the
6 department, shall determine the types of programs to be supported
7 and the mechanism by which to quantify benefits to ensure that the
8 supported programs result in a measurable reduction in energy
9 demand;

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

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

32 c. (1) The department may use up to four percent of the total
33 amount in the fund each year to pay for administrative costs
34 justifiable and approved in the annual budget process, incurred by
35 the department in administering the provisions of P.L. ,
36 c. (C.) (pending before the Legislature as this bill) and in
37 administering programs to reduce the emissions of greenhouse
38 gases including any obligations that may arise under subsection a.
39 of section 11 of P.L. , c. (C.) (pending before the
40 Legislature as this bill).

41 (2) The board may use up to two percent of the total amount in
42 the fund each year to pay for administrative costs justifiable and
43 approved in the annual budget process, incurred by the board in
44 administering the provisions of P.L. , c. (C.) (pending before
45 the Legislature as this bill) and in administering programs to reduce
46 the emissions of greenhouse gases including any obligations that
47 may arise under subsection a. of section 11 of P.L. , c. (C.)
48 (pending before the Legislature as this bill).

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

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

11

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

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

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

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

38 (3) reduce energy use;

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

44 (5) be directly responsive to the recommendations when
45 submitted by the department to the Legislature pursuant to section 6
46 of the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-
47 42).

1 9. (New section) a. The annual appropriations act for each
2 State fiscal year shall, without other conditions, limitations or
3 restrictions, appropriate the moneys in the Global Warming
4 Solutions Fund for the purposes set forth in subsections b. and c. of
5 section 7 of P.L. , c. (C.) (pending before the Legislature as
6 this bill).

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

18 c. Sections 1 through 8 of P.L. , c. (C.) (pending before
19 the Legislature as this bill) shall be without effect on and after the
20 10th day following a certification by the Director of the Division of
21 Budget and Accounting in the Department of the Treasury pursuant
22 to subsection b. of this section.
23

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

38 b. Within three months after the adoption of rules and
39 regulations providing for implementation of a national emissions
40 allowance trading program, the Commissioner of Environmental
41 Protection shall render a final decision as to whether the national
42 program is substantially comparable to the greenhouse gas
43 emissions allowance trading program in which the State is
44 participating at that time. If the commissioner determines that the
45 national program is substantially comparable to the existing
46 greenhouse gas emissions allowance trading program being
47 implemented in the State, the department shall thereafter sell,

1 exchange, retire or otherwise convey allowances only as part of the
2 State's participation in the national program.

3 c. The commission shall notify, in writing, the Governor and
4 the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-
5 19.1) of the decisions made pursuant to this section.

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

23
24 11. (New section) a. Notwithstanding the provisions of any
25 other law, rule or regulation to the contrary, to further the purposes
26 of P.L. , c. (C.) (pending before the Legislature as this bill)
27 and the "Global Warming Response Act," P.L.2007, c.112
28 (C.26:2C-37 et seq.), the commissioner and the board president, or
29 their respective designees, are authorized to:

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

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

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

1 c. Nothing in P.L. , c. (C.) (pending before the
2 Legislature as this bill) shall be deemed to constitute a waiver of
3 sovereign immunity. By entering any agreement or arrangement
4 authorized pursuant to this section, neither the commissioner nor
5 the board president, nor their respective designees, nor the State
6 consents to suit outside of New Jersey or consents to the
7 governance of such suit under any law other than that of New
8 Jersey.

9
10 12. Section 38 of P.L.1999, c.23 (C.48:3-87) is amended to read
11 as follows:

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

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

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

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

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

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

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

39 (3) A uniform emissions disclosure format that is graphic in
40 nature and easily understandable by consumers. The board shall
41 periodically review the disclosure requirements to determine if
42 revisions to the environmental disclosure system as implemented
43 are necessary.

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

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

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

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

11 (2) ~~【If a State department or agency adopts regulations to~~
12 ~~implement a State policy or an interstate or regional agreement to~~
13 ~~reduce Statewide greenhouse gas emissions related to electricity~~
14 ~~generation, then】 By July 1, 2009, the board shall adopt, pursuant
15 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
16 1 et seq.), a greenhouse gas emissions portfolio standard to mitigate
17 leakage or another regulatory mechanism to mitigate leakage
18 applicable to all electric power suppliers and basic generation
19 service providers that provide electricity to customers within the
20 State. 【Any regulation】 The greenhouse gas emissions portfolio
21 standard or any other regulatory mechanism to mitigate leakage
22 shall:~~

23 (a) Allow a transition period, either before or after the effective
24 date of the regulation to mitigate leakage, for a basic generation
25 service provider or electric power supplier to either meet the
26 emissions portfolio standard or other regulatory mechanism to
27 mitigate leakage, or to transfer any customer to a basic generation
28 service provider or electric power supplier that meets the emissions
29 portfolio standard or other regulatory mechanism to mitigate
30 leakage. If the transition period allowed pursuant to this
31 subparagraph occurs after the implementation of an emissions
32 portfolio standard or other regulatory mechanism to mitigate
33 leakage, the transition period shall be no longer than three years;
34 and

35 (b) Exempt the provision of basic generation service pursuant to
36 a basic generation service purchase and sale agreement effective
37 prior to the date of the regulation.

38 Unless the Attorney General or the Attorney General's designee
39 determines that a greenhouse gas emissions portfolio standard
40 would unconstitutionally burden interstate commerce or would be
41 preempted by federal law, the adoption by the board of an electric
42 energy efficiency portfolio standard pursuant to subsection g. of this
43 section, a gas energy efficiency portfolio standard pursuant to
44 subsection h. of this section, or any other enhanced energy
45 efficiency policies to mitigate leakage shall not be considered
46 sufficient to fulfill the requirement of this subsection for the
47 adoption of a greenhouse gas emissions portfolio standard or any
48 other regulatory mechanism to mitigate leakage.

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

7 (1) that two and one-half percent of the kilowatt hours sold in
8 this State by each electric power supplier and each basic generation
9 service provider be from Class I or Class II renewable energy
10 sources; and

11 (2) beginning on January 1, 2001, that one-half of one percent
12 of the kilowatt hours sold in this State by each electric power
13 supplier and each basic generation service provider be from Class I
14 renewable energy sources. The board shall increase the required
15 percentage for Class I renewable energy sources so that by January
16 1, 2006, one percent of the kilowatt hours sold in this State by each
17 electric power supplier and each basic generation service provider
18 shall be from Class I renewable energy sources and shall
19 additionally increase the required percentage for Class I renewable
20 energy sources by one-half of one percent each year until January 1,
21 2012, when four percent of the kilowatt hours sold in this State by
22 each electric power supplier and each basic generation service
23 provider shall be from Class I renewable energy sources.

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

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

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

38 (1) net metering standards for electric power suppliers and basic
39 generation service providers. The standards shall require electric
40 power suppliers and basic generation service providers to offer net
41 metering at non-discriminatory rates to residential and small
42 commercial customers that generate electricity, on the customer's
43 side of the meter, using wind or solar photovoltaic systems for the
44 net amount of electricity supplied by the electric power supplier or
45 basic generation service provider over an annualized period. Where
46 the amount of electricity generated by the customer-generator plus
47 any kilowatt hour credits held over from the previous billing
48 periods exceed the electricity supplied by the electric power

1 supplier or basic generation service provider, the electric power
2 supplier or basic generation service provider, as the case may be,
3 shall credit the customer for the excess kilowatt hours until the end
4 of the annualized period at which point the customer-generator will
5 be compensated for any remaining credits at the electric power
6 supplier's or basic generation service provider's avoided cost of
7 wholesale power. The board may authorize an electric power
8 supplier or basic generation service provider to cease offering net
9 metering whenever the total rated generating capacity owned and
10 operated by net metering customer-generators Statewide equals 0.1
11 percent of the State's peak electricity demand or the annual
12 aggregate financial impact to electric power suppliers and basic
13 generation service providers Statewide, as determined by the board,
14 exceeds \$2,000,000, whichever is less; and

15 (2) safety and power quality interconnection standards for wind
16 and solar photovoltaic systems that shall be eligible for net
17 metering.

18 Such standards shall take into consideration the standards of
19 other states and the Institute of Electrical and Electronic Engineers
20 and shall allow customers to use a single, non-demand, non-time
21 differentiated meter.

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

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

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

1 h. The board may adopt, pursuant to the "Administrative
2 Procedure Act," a gas energy efficiency portfolio standard that may
3 require each gas public utility to implement energy efficiency
4 measures that reduce natural gas usage for heating in the State by
5 2020 to a level that is 20 percent below the usage projected by the
6 board in the absence of such a standard. Nothing in this section
7 shall be construed to prevent a gas public utility from meeting the
8 requirements of this section by contracting with another entity for
9 the performance of the requirements.

10 i. As used in this section:

11 "Energy efficiency portfolio standard" means a requirement to
12 procure a specified amount of energy efficiency or demand side
13 management resources as a means of managing and reducing energy
14 usage and demand by customers.

15 "Greenhouse gas emissions portfolio standard" means a
16 requirement that addresses or limits the amount of carbon dioxide
17 emissions indirectly resulting from the use of electricity as applied
18 to any electric power suppliers and basic generation service
19 providers of electricity.

20 "Leakage" means an increase in greenhouse gas emissions
21 related to generation sources located outside of the State that are not
22 subject to a state, interstate or regional greenhouse gas emissions
23 cap or standard that applies to generation sources located within the
24 State.

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

26
27 13. (New section) a. Notwithstanding the provisions of any
28 other law or rule or regulation to the contrary:

29 (1) an electric public utility or a gas public utility may provide
30 and invest in energy efficiency and conservation programs in its
31 respective service territory on a regulated basis pursuant to this
32 section, regardless of whether the energy efficiency or conservation
33 program involves facilities on the utility side or customer side of
34 the point of interconnection;

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

40 (3) the board may provide funding for energy efficiency,
41 conservation, and renewable energy improvements through the
42 societal benefits charge established pursuant to section 12 of
43 P.L.1999, c.23 (C.48:3-60), the retail margin on certain hourly-
44 priced and larger non-residential customers pursuant to the board's
45 continuing regulation of basic generation service pursuant to
46 sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), or other
47 monies appropriated for such purposes. The board may also direct
48 electric public utilities and gas public utilities to undertake energy

1 efficiency, conservation, and renewable energy improvements, and
2 shall allow the recovery of program costs and incentive rate
3 treatment pursuant to subsection b. of this section.

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

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

38 d. As used in this section:

39 "Class I renewable energy program" means any regulated
40 program approved by the board pursuant to this section for the
41 purpose of facilitating the development of Class I renewable energy
42 in the State.

43 "Energy efficiency and conservation program" means any
44 regulated program, including customer and community education
45 and outreach, approved by the board pursuant to this section for the
46 purpose of conserving energy or making the use of electricity or
47 natural gas more efficient by New Jersey consumers, whether
48 residential, commercial, industrial, or governmental agencies.

1 “Program costs” means all reasonable and prudent costs incurred
2 in developing and implementing energy efficiency, conservation, or
3 Class I renewable energy programs approved by the board pursuant
4 to this section. These costs shall include a full return on invested
5 capital and foregone electric and gas distribution fixed cost
6 contributions associated with the implementation of the energy
7 efficiency, conservation, or Class I renewable energy programs
8 until those cost contributions are reflected in base rates following a
9 base rate case if such costs were reasonably and prudently incurred.

10

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

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

21

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

28

29 16. This act shall take effect immediately.

30

31

32

33

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

ASSEMBLY, No. 4559

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED NOVEMBER 19, 2007

Sponsored by:

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Assemblywoman LINDA STENDER

District 22 (Middlesex, Somerset and Union)

Assemblyman LOUIS M. MANZO

District 31 (Hudson)

SYNOPSIS

The “New Jersey Regional Greenhouse Gas Initiative Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/7/2007)

1 AN ACT concerning the reduction of carbon dioxide emissions, and
2 supplementing Title 26 of the Revised Statutes.

3

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

6

7 1. This act shall be known and may be cited as the “New Jersey
8 Regional Greenhouse Gas Initiative Act.”

9

10 2. As used in this act:

11 “Allowance” means the number of carbon dioxide emissions
12 allowances to be credited to a carbon dioxide budget unit or to the
13 general account of the sponsor of an approved carbon dioxide
14 emissions offset project.

15 “Carbon dioxide budget unit” means a fossil fuel fired electrical
16 generating unit that serves a generator with a nameplate capacity
17 equal to or greater than 25 megawatts of electrical output.

18 “Carbon dioxide budget unit compliance obligation account”
19 means the account established by rules and regulations to be
20 adopted by the department pursuant to section 4 of this act wherein
21 carbon dioxide budget units deposit carbon dioxide emissions
22 allowances.

23 “Carbon dioxide emissions allowance” means a limited
24 authorization by the department for the emission of up to one ton of
25 carbon dioxide.

26 “Carbon dioxide emissions budget” means the total amount of
27 carbon dioxide emissions allowances allocated by the State on an
28 annual basis.

29 “Carbon dioxide emissions offset project” means a project that
30 reduces or avoids loading of carbon dioxide and other greenhouse
31 gases in the atmosphere and is demonstrated to qualify as real,
32 additional, verifiable, enforceable and permanent as those terms are
33 defined in rules and regulations to be adopted by the department.

34 “Carbon dioxide offset project allowance” means a carbon
35 dioxide emissions allowance awarded to the sponsor of a carbon
36 dioxide emissions offset project.

37 “Department” means the Department of Environmental
38 Protection.

39 “Fossil fuel fired” means combustion of fossil fuel when the
40 fossil fuel combusted constitutes, or is projected to constitute, more
41 than 50 percent of the annual heat input on a British Thermal Unit
42 basis.

43 “Generator” means a device that produces electricity and is
44 required to be reported as a generating unit pursuant to the United
45 States Department of Energy Form 860.

46 “Greenhouse gas” means that term as defined in section 3 of
47 P.L.2007, c.112 (C.26:2C-39).

1 “Gross electrical generation” means the electrical output in
2 megawatts at the terminals of a generator.

3 “Nameplate capacity” means the maximum electrical generating
4 output, expressed in megawatts, that a generator can sustain over a
5 specified period of time when not restricted by seasonal or other
6 deratings.

7 “Regional Greenhouse Gas Initiative” means the cooperative
8 effort to reduce carbon dioxide emissions entered into by the
9 governors of nine states through a Memorandum of Understanding
10 signed on December 20, 2005.

11

12 3. a. There is established in the department a carbon dioxide
13 cap-and-trade program for the purpose of reducing carbon dioxide
14 emissions in the State in accordance with the provisions of the
15 “Global Warming Response Act,” P.L.2007, c.112 (C.26:2C-37 et
16 seq.). Any carbon dioxide budget unit shall be subject to the cap-
17 and-trade program, except that a carbon dioxide budget unit shall be
18 exempt from the program if:

19 1) it is incapable of producing enough energy to generate 25
20 megawatts or more of electrical output;

21 2) its sale of electricity to any power distribution system is less
22 than 10 percent of its gross electrical generation on an annual basis.
23 In calculating this percentage, all electricity transmitted to the
24 regional grid over the facilities of a transmission and distribution
25 utility as a result of verifiable conservation and demand-side
26 management initiatives or any emergency mandate of the regional
27 transmission organization or lawful order of a governmental
28 authority shall not be included in the calculation of annual sales; or

29 3) 50 percent or more of its annual heat input comes from the
30 combustion of fuels other than fossil fuels.

31 b. In implementing the program established pursuant to this
32 section, the department shall allocate 100 percent of the annual
33 carbon dioxide emissions allowances for public benefit to produce
34 funds for carbon reduction, energy conservation, as well as other
35 projects that benefit electric users.

36

37 4. a. No later than January 1, 2009, the department, in
38 consultation with the Board of Public Utilities, shall adopt, pursuant
39 to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-
40 1 et seq.), any rules and regulations necessary to implement the cap-
41 and-trade program established pursuant to section 3 of this act.

42 b. The rules and regulations to be adopted by the department
43 pursuant to subsection a. of this section shall include but need not
44 be limited to:

45 (1) the establishment of a system for the annual assignment, sale,
46 and distribution of carbon dioxide emissions allowances consistent
47 with the carbon dioxide emissions budget;

- 1 (2) the establishment of carbon dioxide budget unit compliance
2 obligation accounts;
- 3 (3) the establishment of carbon dioxide offset project allowance
4 categories and requirements;
- 5 (4) the implementation of a licensing process for carbon dioxide
6 budget units;
- 7 (5) the establishment of a carbon dioxide emissions allowance
8 tracking program; and
- 9 (6) the management of the carbon dioxide allowance auction
10 developed in coordination with other states and jurisdictions in the
11 Regional Greenhouse Gas Initiative.
- 12
- 13 5. This act shall take effect immediately.
- 14
- 15

16 STATEMENT

17

18 This bill would establish in the Department of Environmental
19 Protection (DEP) a carbon dioxide cap-and-trade program for the
20 purpose of reducing carbon dioxide emissions in the State in
21 accordance with the provisions of the "Global Warming Response
22 Act," P.L.2007, c.112. In implementing the program, the DEP
23 would allocate 100 percent of the annual carbon dioxide emissions
24 allowances for public benefit to produce funds for carbon reduction,
25 energy conservation, as well as other projects that benefit electric
26 users.

27 The bill would require the DEP, no later than January 1, 2009, to
28 adopt rules and regulations to implement the cap-and-trade
29 program. The rules and regulations would include but need not be
30 limited to (1) the establishment of a system for the annual
31 assignment, sale, and distribution of carbon dioxide emissions
32 allowances consistent with the carbon dioxide emissions budget; (2)
33 the establishment of carbon dioxide budget unit compliance
34 obligation accounts; (3) the establishment of carbon dioxide offset
35 project allowance categories and requirements; (4) the
36 implementation of a licensing process for carbon dioxide budget
37 units; (5) the establishment of a carbon dioxide emissions
38 allowance tracking program; and (6) the management of the carbon
39 dioxide allowance auction developed in coordination with other
40 states and jurisdictions in the Regional Greenhouse Gas Initiative.

41 New Jersey recently enacted the "Global Warming Response
42 Act," which establishes that by January 1, 2020, the level of
43 greenhouse gas emissions in the State shall be reduced to the 1990
44 level of emissions or below, and that by January 1, 2050, the
45 greenhouse gas emissions shall not exceed 80 percent of the 2006
46 level of emissions. The act further requires the DEP to establish, on
47 or before January 1, 2009, a greenhouse gas emissions monitoring

- 1 and reporting program to monitor and report on Statewide
- 2 greenhouse gas emissions levels.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 4559

STATE OF NEW JERSEY

DATED: DECEMBER 6, 2007

The Assembly Environment and Solid Waste Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 4559.

This bill would authorize the Department of Environmental Protection (DEP) to sell, exchange, retire, assign, allocate, or auction allowances from greenhouse gas emissions. The bill sets forth requirements to be followed by the department if allowances are to be conveyed using an auction.

The bill provides that dispatch agreement facilities, as defined in the bill, may be eligible to purchase allowances at a price of \$2 per allowance.

The bill would dedicate any revenues received through the auction or other conveyance of allowances to a special non-lapsing fund, the "Global Warming Solutions Fund." The bill provides that the revenues in the fund be used for the following purposes:

(1) 60% by the New Jersey Economic Development Authority (EDA), to provide grants and other forms of financial assistance to commercial, institutional, and industrial entities to support end-use energy efficiency projects, including but not limited to energy efficiency and renewable energy applications and to develop combined heat and power production facilities and to stimulate or reward investment in the development of innovative carbon emissions abatement technologies with significant carbon emissions reduction potential;

(2) 20% by the Board of Public Utilities (BPU) to support programs that are designed to reduce electricity demand 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 arising from the enactment of this bill into law;

(3) 10% by the DEP to support programs designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gases, 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 measurable reductions in greenhouse gas emissions or measurable reductions in energy demand; and

(4) 10% by the DEP to support programs that enhance the stewardship and restoration of the State's forests that provide important opportunities to sequester or reduce greenhouse gases.

Moneys in the fund may also be used to cover the costs incurred by the EDA, the BPU, and the DEP in administering their responsibilities under the bill.

The bill directs the DEP, in consultation with the BPU and the EDA, to adopt guidelines and a priority ranking system to be followed to award monies from the "Global Warming Solutions Fund," and the bill sets forth evaluation criteria to be included in the guidelines and priority ranking system.

The bill further provides that, within three months after the enactment of federal law providing for implementation of a national emissions allowance trading program, the DEP commissioner would 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 DEP would 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. Further, within three months after the adoption of rules and regulations providing for implementation of a national emissions allowance trading program, the DEP commissioner would 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 would thereafter sell, exchange, retire or otherwise convey allowances only as part of the State's participation in the national program.

The bill also provides that the DEP commissioner and the BPU president, or their respective designees, are authorized to 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 in order to further the purposes of this bill upon enactment into law or the "Global Warming Response Act." In addition, the bill authorizes the DEP commissioner and the BPU

president, or their respective designees, to 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. The bill validates any actions, consistent with, and that further the purposes of, this bill upon enactment into law and the “Global Warming Response Act,” taken 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 this bill into law.

The bill amends current law (paragraph (2) of subsection c. of section 38 of P.L.1999, c.23 (C.48:3-87)) to require the BPU, by January 1, 2009, to adopt a greenhouse gas emission portfolio standard to mitigate leakage or another regulatory mechanism to mitigate leakage. The bill specifies that the adoption of an electric energy efficiency portfolio standard, a gas energy efficiency portfolio standard, or any other enhanced energy efficiency policies to mitigate leakage would not be considered sufficient to fulfill the requirement for the adoption of a greenhouse gas emissions portfolio standard to mitigate leakage or another regulatory mechanism to mitigate leakage.

Lastly, the bill further provides that electric public utilities and gas public utilities, on a regulated basis, may provide and invest in energy efficiency and conservation programs, in their respective service territories, and invest in Class I renewable energy resources or offer Class I renewable energy programs. These programs may be offered regardless of whether the energy efficiency or conservation program involves facilities on, or the renewable energy resource is located on, the utility side or customer side of the point of interconnection. Further, the bill provides that the BPU may allow electric public utilities and gas public utilities to recover program costs through their regulated rates.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 4559

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2007

The Assembly Telecommunications and Utilities Committee reports favorably with committee amendments Assembly Bill No. 4559 (ACS).

As amended, this bill would authorize the Department of Environmental Protection (DEP) to sell, exchange, retire, assign, allocate, or auction allowances from greenhouse gas emissions. The bill sets forth requirements to be followed by the DEP if allowances are to be conveyed using an auction.

The bill provides that dispatch agreement facilities, as defined in the bill, may be eligible to purchase allowances at a price of \$2 per allowance.

The bill would dedicate any revenues received through the auction or other conveyance of allowances to a special non-lapsing fund, the "Global Warming Solutions Fund." The bill provides that the revenues in the fund be used for the following purposes:

(1) 60% by the New Jersey Economic Development Authority (EDA), to provide grants and other forms of financial assistance to commercial, institutional, and industrial entities to support end-use energy efficiency projects, including but not limited to energy efficiency and renewable energy applications and to develop combined heat and power production facilities and to stimulate or reward investment in the development of innovative carbon emissions abatement technologies with significant carbon emissions reduction potential;

(2) 20% by the Board of Public Utilities (BPU) to support programs that are designed to reduce electricity demand 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 arising from the enactment of this bill into law;

(3) 10% by the DEP to support programs designed to promote local government efforts to plan, develop and implement measures to

reduce greenhouse gases, 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 measurable reductions in greenhouse gas emissions or measurable reductions in energy demand; and

(4) 10% by the DEP to support programs that enhance the stewardship and restoration of the State's forests that provide important opportunities to sequester or reduce greenhouse gases.

Moneys in the fund may also be used to cover the costs incurred by the EDA, the BPU, and the DEP in administering their responsibilities under the bill.

The bill directs the DEP, in consultation with the BPU and the EDA, to adopt guidelines and a priority ranking system to be followed to award monies from the "Global Warming Solutions Fund," and the bill sets forth evaluation criteria to be included in the guidelines and priority ranking system.

The bill further provides that, within three months after the enactment of federal law providing for implementation of a national emissions allowance trading program, the DEP commissioner would 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 DEP 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 DEP would 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. Further, within three months after the adoption of rules and regulations providing for implementation of a national emissions allowance trading program, the DEP commissioner would 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 DEP commissioner determines that the national program is substantially comparable to the existing greenhouse gas emissions allowance trading program being implemented in the State, the DEP would thereafter sell, exchange, retire or otherwise convey allowances only as part of the State's participation in the national program.

The bill also provides that the DEP commissioner and the BPU president, or their respective designees, are authorized to 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 in order to further the purposes of this bill upon enactment into law or the “Global Warming Response Act.” In addition, the bill authorizes the DEP commissioner and the BPU president, or their respective designees, to 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. The bill validates any actions, consistent with, and that further the purposes of, this bill upon enactment into law and the “Global Warming Response Act,” taken 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 this bill into law.

The bill amends current law (paragraph (2) of subsection c. of section 38 of P.L.1999, c.23 (C.48:3-87)) to require the BPU, by January 1, 2009, to adopt a greenhouse gas emission portfolio standard to mitigate leakage or another regulatory mechanism to mitigate leakage. The bill specifies that the adoption of an electric energy efficiency portfolio standard, a gas energy efficiency portfolio standard, or any other enhanced energy efficiency policies in order to mitigate leakage would not be considered sufficient to fulfill the requirement for the adoption of a greenhouse gas emissions portfolio standard to mitigate leakage or another regulatory mechanism to mitigate leakage.

The bill further provides that electric public utilities and gas public utilities, on a regulated basis, may provide and invest in energy efficiency and conservation programs, in their respective service territories, and invest in Class I renewable energy resources or offer Class I renewable energy programs. These programs may be offered regardless of whether the energy efficiency or conservation program involves facilities on, or the renewable energy resource is located on, the utility side or customer side of the point of interconnection. The bill also provides that the BPU shall allow electric public utilities and gas public utilities to recover program costs through their regulated rates.

Finally the bill requires the department and the board to jointly hold a public hearing or hearings on allowance prices if the prices exceed \$7.00 for two consecutive regional auctions and to issue a report to the Governor and the Legislature with their findings and recommendations concerning allowance prices.

The committee adopted amendments to: (1) clarify that the definition of “compliance entity” excludes certain electric generating units which sell less than 10 percent of their gross electric generation output to a power distribution system on an annual basis; (2) clarify that the EDA shall determine appropriate payment terms and conditions for EDA investments in energy efficiency projects and that the EDA may be reimbursed for its administrative expenses incurred in connection with its obligations under the bill; (3) delete the reduction

of “vehicle miles traveled” from consideration in the priority ranking system established under section 8 of the bill; (4) clarify that electric and gas public utilities may invest on a regulated basis in Class I renewable energy resources and programs; (5) provide for a joint public hearing or hearings on allowance prices if the prices exceed \$7.00 for two consecutive regional auctions and a report to be jointly issued to the Governor and the Legislature with findings and recommendations concerning allowance prices; (6) clarify that the DEP shall exclude certain "on-site generation facilities" from the requirement to purchase or acquire any allowances under a greenhouse gas emissions trading program; (7) include programs to enhance and restore the State's tidal marshes as eligible to receive funds from the Global Warming Solutions Fund; (8) provide that the BPU shall allow utilities to recover certain program costs through regulated rates, including a full return on invested capital; and (9) make certain other technical and clarifying changes in the bill.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 4559

STATE OF NEW JERSEY

DATED: JANUARY 3, 2008

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 4559 (ACS).

This Assembly Committee Substitute for Assembly Bill No. 4559 (ACS) authorizes the Department of Environmental Protection (DEP) to sell, exchange, retire, assign, allocate, or auction allowances from greenhouse gas emissions. The substitute sets forth requirements to be followed by the DEP if allowances are to be conveyed using an auction.

The substitute provides that dispatch agreement facilities, as defined in the substitute, may be eligible to purchase allowances at a price of \$2 per allowance. The substitute sets forth the process for such certification, and establishes civil penalties of not more than \$500,000 for each offense and revokes the eligibility to be certified as a dispatch agreement facility for signatories to a sworn affidavit who knowingly give or cause to be given any false or misleading information or who knowingly make any false or misleading statement concerning such eligibility.

The substitute dedicates any revenues received through the auction or other conveyance of allowances to a special non-lapsing fund, the "Global Warming Solutions Fund." The substitute provides that the revenues in the fund be used for the following purposes:

(1) 60% by the New Jersey Economic Development Authority (EDA), 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 DEP, 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;

(2) 20% by the Board of Public Utilities (BPU) to support programs that are designed to reduce electricity demand 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 arising from the enactment of this substitute into law;

(3) 10% by the DEP to support programs designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gases, 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 measurable reductions in greenhouse gas emissions or measurable reductions in energy demand; and

(4) 10% by the DEP 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.

Moneys in the fund may also be used to cover the costs incurred by the EDA, the BPU, and the DEP in administering their responsibilities under the substitute.

The substitute directs the DEP, in consultation with the BPU and the EDA, to adopt guidelines and a priority ranking system to be followed to award monies from the "Global Warming Solutions Fund," and the substitute sets forth evaluation criteria to be included in the guidelines and priority ranking system. The substitute further provides that, within three months after the enactment of federal law providing for implementation of a national emissions allowance trading program, the DEP commissioner will 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 DEP 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 DEP will 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. Further, within three months after the adoption of rules and regulations providing for implementation of a national emissions allowance trading program, the DEP commissioner will 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 DEP commissioner determines that the national program is substantially comparable to the existing

greenhouse gas emissions allowance trading program being implemented in the State, the DEP will thereafter sell, exchange, retire or otherwise convey allowances only as part of the State's participation in 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.

The substitute authorizes the DEP commissioner and the BPU president, or their respective designees, to 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 in order to further the purposes of this substitute upon enactment into law of the "Global Warming Response Act." In addition, the substitute authorizes the DEP commissioner and the BPU president, or their respective designees, to 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. The substitute validates any actions, consistent with, and that further the purposes of, this substitute upon enactment into law and the "Global Warming Response Act," taken 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 this substitute into law.

The substitute amends current law (paragraph (2) of subsection c. of section 38 of P.L.1999, c.23 (C.48:3-87)) to require the BPU, by January 1, 2009, to adopt a greenhouse gas emission portfolio standard to mitigate leakage or another regulatory mechanism to mitigate leakage. The substitute specifies that, unless the Attorney General or the Attorney General's designee determines that a greenhouse gas emissions portfolio standard would unconstitutionally burden interstate commerce or would be preempted by federal law, the adoption by the BPU of an electric energy efficiency portfolio standard, a gas energy efficiency portfolio standard, or any other enhanced energy efficiency policies to mitigate leakage would not be considered sufficient to fulfill the requirement for the adoption of a greenhouse gas emissions portfolio standard to mitigate leakage or another regulatory mechanism to mitigate leakage.

The substitute further provides that electric public utilities and gas public utilities, on a regulated basis, may provide and invest in energy efficiency and conservation programs, in their respective service territories, and invest in Class I renewable energy resources or offer Class I renewable energy programs. These programs may be offered regardless of whether the energy efficiency or conservation program involves facilities on, or the renewable energy resource is located on, the utility side or customer side of the point of interconnection. The substitute also provides that the BPU shall allow electric public

utilities and gas public utilities to recover program costs through their regulated rates.

Finally the substitute requires the DEP and the BPU to jointly hold a public hearing or hearings on allowance prices and develop an action plan for immediate ratepayer relief if the prices exceed \$7.00 for two consecutive regional auctions, and issue a report to the Governor and the Legislature with their findings and recommendations concerning allowance prices.

As substituted and reported by the committee, Assembly Bill No. 4559 ACS (1R) is identical to Senate Bill No. 2976 SCS (1R).

FISCAL IMPACT:

The OLS estimates that \$46 million in emission allowances could be purchased annually. This reflects one scenario which assumes that 23 million tons of emissions, the figure calculated by the RGGI as the yearly emissions budget cap for New Jersey, were sold at \$2 per ton. This estimate, however, can vary greatly, depending on the price of allowances sold at any given time. It should also be remembered that the estimated revenue level assumes that all available allowances will be purchased at one price. Since there is no assurance that this will occur, more reliable estimates of revenue levels can be determined only several years after enactment. In any case, all revenues less administrative expenses, are dedicated for specific program purposes.

The OLS estimate of \$3.68 million in State costs is again based on the assumption that \$46 million in allowance revenue will be generated. This sum reflects eight percent of \$46 million, the percentage allocated under the committee substitute for program expenses incurred by the DEP, the BPU and the EDA. The OLS cannot, however, determine at this point in time whether program costs will be fully supported by this allocation level. As mentioned above, reliable projections can be better calculated after actual fund revenues and incurred costs are realized during the first year or two after enactment. In any case, State funding may be needed during the first year after enactment to support implementation costs prior to the generation of sufficient allowance revenues. It is assumed that any such appropriations would likely be repaid from the Global Warming Solutions Fund once sufficient revenues are collected.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 4559

STATE OF NEW JERSEY

212th LEGISLATURE

DATED: JANUARY 2, 2008

SUMMARY

- Synopsis:** Authorizes auction of greenhouse gas allowances; establishes “Global Warming Solutions Fund.”
- Type of Impact:** Revenue generation and expenditure from the Global Warming Solutions Fund. Possible short term impact on the General Fund.
- Agencies Affected:** Department of Environmental Protection, Board of Public Utilities, and N.J. Economic Development Authority

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost			
Administration	\$3,680,000	\$3,680,000	\$3,680,000
Global Warming Solutions Fund	<u>\$42,320,000</u>	<u>\$42,320,000</u>	<u>\$42,320,000</u>
Total Cost	<u>\$46,000,000</u>	<u>\$46,000,000</u>	<u>\$46,000,000</u>
State Revenue	\$46,000,000	\$46,000,000	\$46,000,000

- The committee substitute implements policies of the “Global Warming Response Act” (P.L.2007, c.112) by creating a “cap and trade,” or emissions trading and auction mechanism to reduce the level of greenhouse gases, namely carbon dioxide or its equivalent. The Department of Environmental Protection (DEP) would manage a program that buys, sells or trades allowances for electric generating companies to emit greenhouse gases.
- Certain qualified owners of electric generating facilities may purchase emissions allowances at \$2 per ton if less than auction rates. The Regional Greenhouse Gas Initiative (RGGI) calculated a yearly emissions budget cap for New Jersey at 23 million tons of carbon dioxide.
- Revenues from the sale of emissions allowances go to the Global Warming Solutions Fund to support programs that increase energy efficiency and reduce greenhouse gases.

- The Office of Legislative Services (OLS) estimates \$46 million in emission allowances could be purchased annually, assuming that 23 million tons of emissions were sold at \$2 per ton. This figure can vary greatly, depending on the going allowance rate. State costs of \$3.68 million reflect eight percent of \$46 million, the percentage allocated under the committee substitute for program expenses incurred by affected State agencies.
- If the annual appropriations act fails to allocate Global Warming Solutions Fund resources only for the purposes to which this bill dedicates those resources, then the fund's revenues and programs would terminate.

BILL DESCRIPTION

Assembly Committee Substitute (1R) for Assembly Bill No. 4559 of 2007 authorizes the DEP to sell, exchange, retire, assign, allocate, or auction allowances from greenhouse gas emissions to generators of those emissions, namely electric power companies. An allowance is defined as up to one ton of carbon dioxide emission. The committee substitute also provides that certain owners or operators of electric generating facilities may be eligible to purchase allowances at a price of \$2 per allowance rather than at auction rates, if higher. Revenues received through the auction or other conveyance of allowances are deposited into a special non-lapsing fund, the Global Warming Solutions Fund, and are to be used for the following purposes:

(1) 60% by the New Jersey Economic Development Authority (EDA) to provide grants and other forms of financial assistance to commercial, institutional, and industrial entities to support end-use energy efficiency projects;

(2) 20% by the Board of Public Utilities (BPU) to support programs that are designed to reduce electricity demand 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 arising from the enactment of this committee substitute into law;

(3) 10% by the DEP to support programs designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gases; and

(4) 10% by the DEP 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.

The committee substitute provides that up to four percent of annual allocations to the fund may be used by the DEP to cover costs incurred in administering its responsibilities under the act. Up to two percent of annual fund allocations are provided separately to the EDA and the BPU for the same purpose.

The committee substitute provides that electric public utilities and gas public utilities, on a regulated basis, may provide and invest in energy efficiency and conservation programs in their respective service territories, and invest in Class I renewable energy resources or offer Class I renewable energy programs. The committee substitute also (1) allows electric public utilities and gas public utilities to recover program costs through their regulated rates; (2) addresses actions to be taken if other similar state or Federal laws concerning greenhouse gas emissions are enacted; and (3) provides for the adoption of electric and gas energy efficiency portfolio standards for leakage mitigation.

Pursuant to Section 9, if the annual appropriations act fails to allocate Global Warming Solutions Fund resources only for the purposes to which this bill dedicates those resources, then the fund's revenues and programs would terminate.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that \$46 million in emission allowances could be purchased annually. This reflects one scenario which assumes that 23 million tons of emissions, the figure calculated by the RGGI as the yearly emissions budget cap for New Jersey, were sold at \$2 per ton. This estimate, however, can vary greatly, depending on the price of allowances sold at any given time. It should also be remembered that the estimated revenue level assumes that all available allowances will be purchased at one price. Since there is no assurance that this will occur, more reliable estimates of revenue levels can be determined only several years after enactment.

The OLS estimate of \$3.68 million in State costs is again based on the assumption that \$46 million in allowance revenue will be generated. This sum reflects eight percent of \$46 million, the percentage allocated under the committee substitute for program expenses incurred by the DEP, the BPU and the EDA. The OLS cannot, however, determine at this point in time whether program costs will be fully supported by this allocation level. As mentioned above, reliable projections can be better calculated after actual fund revenues and incurred costs are realized during the first year or two after enactment. In any case, State funding may be needed during the first year after enactment to support implementation costs prior to the generation of sufficient allowance revenues.

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Richard M. Handelman
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

SENATE, No. 2976

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED DECEMBER 3, 2007

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Co-Sponsored by:

Senator Adler

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the reduction of greenhouse gas emissions, and
2 supplementing Title 26 and Title 48 of the Revised Statutes.

3

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

6

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

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

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

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

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

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

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

47 The Legislature therefore determines that it is in the public
48 interest to establish a program that authorizes the State to dedicate

1 to consumer benefit purposes up to 100 percent of the revenues
2 derived from the auction or other sale of allowances pursuant to an
3 emissions allowance trading program and to authorize the
4 Commissioner of Environmental Protection and the President of the
5 Board of Public Utilities to further the purposes of this act and the
6 “Global Warming Response Act,” P.L.2007, c.112 (C.26:2C-37 et
7 seq.) by participating with other states in the formation and activity
8 of a separate legal entity established for the purpose of furthering
9 the Regional Greenhouse Gas Initiative.

10
11 2. As used in sections 1 through 12 of P.L. , c. (C.)
12 (pending before the Legislature as this bill):

13 “Allowance” means a limited authorization, as defined by the
14 department, to emit up to one ton of carbon dioxide or equivalent
15 for any greenhouse gas or greenhouse gases.

16 “Board” means the Board of Public Utilities.

17 “Compliance entity” means an owner or operator of an electric
18 generating unit in New Jersey that is required to obtain allowances
19 in order to operate an electric generating unit that holds an
20 operating permit from the department issued pursuant to P.L.1954,
21 c.212 (C.26:2C-1 et seq.), whether that unit is in operation or in
22 development.

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

33 “Department” means the Department of Environmental
34 Protection.

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

44 “Fund” means the “Global Warming Solutions Fund” established
45 pursuant to section 7 of P.L. , c. (C.) (pending before the
46 Legislature as this bill).

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

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

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

10

11 3. a. (1) The department, by rule or regulation adopted
12 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410
13 (C.52:14B-1 et seq.), shall take any measures necessary to sell,
14 exchange, retire, assign, allocate, or auction, any or all allowances
15 that are created by, budgeted to, or otherwise obtained by the State
16 in furtherance of any greenhouse gas emissions allowance trading
17 program implemented to reduce or prevent emissions of greenhouse
18 gases. The department may exercise this authority in cooperation
19 and coordination with other states or countries that are participating
20 in regional, national or international greenhouse gas emissions
21 trading programs with the same or similar purpose.

22 (2) The rules and regulations adopted by the department
23 pursuant to this section shall not hinder the State’s full participation
24 in a regional, national or international greenhouse gas emissions
25 allowance trading program in which the State is a participant,
26 including full participation in an allowance auction administered in
27 coordination with other states, jurisdictions, or countries
28 participating in such a program.

29 Any changes to the rules and regulations adopted pursuant to this
30 section that are required as a result of the State’s participation in the
31 Regional Greenhouse Gas Initiative shall not be subject to the
32 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
33 seq.), provided that the specific procedures and requirements are
34 consistent with the process and general requirements outlined in
35 regulation adopted by the department, and the public is afforded an
36 opportunity for review and comment on such specific procedures
37 and requirements.

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

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

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

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

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

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

14 (6) may be open to all qualified participants, and all qualified
15 participants may sell or otherwise agree to transfer any or all
16 allowances to any other eligible entities.

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

26
27 4. By January 1, 2009, the board shall adopt a greenhouse gas
28 emission portfolio standard to mitigate leakage or another
29 regulatory mechanism to mitigate leakage as required pursuant to
30 paragraph (2) of subsection c. of section 38 of P.L.1999, c.23
31 (C.48:3-87).

32
33 5. A dispatch agreement facility that has been certified pursuant
34 to section 6 of P.L. , c. (C.) (pending before the Legislature
35 as this bill) shall be eligible to purchase allowances at the price of
36 \$2 per allowance, pursuant to subsection a. of this section.

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

44 b. Within 30 days after receiving the notice required pursuant to
45 subsection a. of this section, an owner or operator of a dispatch
46 agreement facility shall notify the department whether it will accept
47 the offer to purchase allowances pursuant to subsection a. of this
48 section for the owner or operator's allowances.

1 c. Any owner or operator of a dispatch agreement facility which
2 has not accepted an offer to purchase allowances pursuant to
3 subsection a. of this section shall purchase allowances in
4 accordance with the rules and regulations adopted by the
5 department pursuant to section 3 of P.L. , c. (C.) (pending
6 before the Legislature as this bill).

7 d. Any allowances unused by a dispatch agreement facility for
8 compliance at the end of a compliance period shall be assigned
9 thereafter to the department.

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

16
17 6. a. The owner or operator of a dispatch agreement facility
18 may certify to the department that the dispatch agreement facility
19 qualifies to purchase allowances pursuant to section 5 of
20 P.L. , c. (C.) (pending before the Legislature as this bill).

21 b. The certification submitted to the department pursuant to
22 subsection a. of this section shall be through a sworn affidavit with
23 supporting documentation from an independent entity that attests to
24 the facility's adherence to the definition of dispatch agreement
25 facility as set forth in section 2 of P.L. , c. (C.) (pending
26 before the Legislature as this bill). The affidavit shall be signed by
27 both an official representative of the independent entity and by the
28 chief financial officer or their equivalent of the owner or operator of
29 the dispatch agreement facility. If there are any material changes to
30 the sworn affidavit or supporting documentation filed with the
31 department, the independent entity and representative of the owner
32 or operator of the dispatch agreement facility shall resubmit an
33 affidavit pursuant to this section within 30 days after the change
34 occurs.

35 c. The certification shall be received by the department at least
36 30 days prior to the department making a notification, pursuant to
37 subsection a. of section 5 of P.L. , c. (C.) (pending before the
38 Legislature as this bill), of an offer to sell allowances to dispatch
39 agreement facilities in order to be deemed eligible to participate in
40 the sale.

41 d. A signatory of the sworn affidavit pursuant to subsection b. of
42 this section who knowingly gives or causes to be given any false or
43 misleading information or who makes any false or misleading
44 statement in complying with the provisions of this section shall be
45 subject to a fine of not more than \$50,000 for each offense, to be
46 collected in a civil action by a summary proceeding pursuant to the
47 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
48 et seq.).

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

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

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

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

10

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

15 b. In each calendar year, all revenues in the fund up to
16 \$70,000,000 shall be used for the following purposes:

17 (1) 60 percent shall be provided to the New Jersey Economic
18 Development Authority to provide grants and other forms of
19 financial assistance to commercial, institutional, and industrial
20 entities to support end-use energy efficiency projects, including but
21 not limited to energy efficiency and renewable energy applications
22 and to develop combined heat and power production facilities and
23 to stimulate or reward investment in the development of innovative
24 carbon emissions abatement technologies with significant carbon
25 emissions reduction potential. The authority, in consultation with
26 the board and the department, shall determine: (a) the appropriate
27 level of grants or other forms of financial assistance to be awarded
28 to individual commercial, institutional, and industrial sectors and to
29 individual projects within each of these sectors; (b) the evaluation
30 criteria for selecting projects to be awarded grants or other forms of
31 financial assistance, which criteria shall include the ability of the
32 project to result in a measurable reduction of the emission of
33 greenhouse gases or a measurable reduction in energy demand,
34 provided, however, that neither the development of a new combined
35 heat and power production facility, nor an increase in the electrical
36 and thermal output of an existing combined heat and power
37 production facility, shall be subject to the requirement to
38 demonstrate such a measurable reduction; and (c) the process by
39 which grants or other forms of financial assistance can be applied
40 for and awarded;

41 (2) 20 percent shall be provided to the board to support programs
42 that are designed to reduce electricity demand or costs to electricity
43 customers in the low-income and moderate-income residential
44 sector with a focus on urban areas, including efforts to address heat
45 island effect and reduce impacts on ratepayers attributable to the
46 implementation of P.L. , c. (C.) (pending before the
47 Legislature as this bill). For the purposes of this paragraph, the
48 board, in consultation with the authority and the department, shall

1 determine the types of programs to be supported and the mechanism
2 by which to quantify benefits to ensure that the supported programs
3 result in a measurable reduction in energy demand;

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

22 (4) 10 percent shall be provided to the department to support
23 programs that enhance the stewardship and restoration of the State's
24 forests that provide important opportunities to sequester or reduce
25 greenhouse gases.

26 c. The New Jersey Economic Development Authority, the board,
27 and the department may each use up to two percent of the total
28 amount allocated to the fund each year pursuant to subsection b. of
29 this section to pay for administrative costs justifiable and approved
30 in the annual budget process, incurred by each agency in
31 administering the provisions of P.L. , c. (C.) (pending before
32 the Legislature as this bill) and in administering programs to reduce
33 the emissions of greenhouse gases.

34 d. Any moneys accumulated in the fund in excess of
35 \$70,000,000 during a calendar year shall be allocated to the New
36 Jersey Economic Development Authority, in consultation with the
37 board, and shall be used to provide grants to compliance entities to
38 mitigate impacts on ratepayers attributable to the implementation of
39 P.L. , c. (C.) (pending before the Legislature as this bill).

40 e. The Department of the Treasury or another appropriate State
41 entity located outside of the authority, board or department shall
42 conduct or supervise independent audit and fiscal oversight
43 functions of the fund and its uses.

44
45 9. a. Within one year after the date of enactment of
46 P.L. , c. (C.) (pending before the Legislature as this bill), the
47 department, in consultation with the New Jersey Economic
48 Development Authority and the board, shall adopt, in accordance

1 with the "Administrative Procedure Act," P.L.1968, c.410
2 (C.52:14B-1 et seq.), guidelines and a priority ranking system to be
3 used to assist in annually allocating funds to eligible projects or
4 programs pursuant to subsection b. of section 8 of
5 P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

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

23 (3) reduce energy use or vehicle miles traveled, as appropriate;

24 (4) provide co-benefits to the State, including but not limited to
25 creating job opportunities, reducing other air pollutants, reducing
26 costs to electricity and natural gas consumers and contributing to
27 regional initiatives to reduce greenhouse gas emissions; and

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

31

32 10. a. The annual appropriations act for each State fiscal year
33 shall, without other conditions, limitations or restrictions,
34 appropriate the moneys in the Global Warming Solutions Fund for
35 the purposes set forth in subsections b. through d. of section 8 of
36 P.L. , c. (C.) (pending before the Legislature as this bill).

37 b. If the provisions of subsection a. of this section are not met
38 on the effective date of an annual appropriations act for the State
39 fiscal year, or if an amendment or supplement to an annual
40 appropriations act for the State fiscal year should violate the
41 requirements of subsection a. of this section, the Director of the
42 Division of Budget and Accounting in the Department of the
43 Treasury shall, not later than five days after the enactment of the
44 annual appropriations act, or an amendment or supplement thereto,
45 that violates any of the requirements of subsection a. of this section,
46 certify to the Director of the Division of Taxation in the Department
47 of the Treasury that the requirements of subsection a. of this section
48 have not been met.

1 c. Sections 1 through 10 of P.L. , c. (C.) (pending before
2 the Legislature as this bill) shall be without effect on and after the
3 10th day following a certification by the Director of the Division of
4 Budget and Accounting in the Department of the Treasury pursuant
5 to subsection b. of this section.
6

7 11. a. Within three months after the enactment of federal law or
8 rules and regulations providing for implementation of a national
9 emissions allowance trading program, the Commissioner of
10 Environmental Protection shall render a decision as to whether the
11 national program is substantially comparable to the greenhouse gas
12 emissions allowance trading program in which the State is
13 participating at that time.

14 b. If the commissioner determines that the national program is
15 substantially comparable to the existing greenhouse gas emissions
16 allowance trading program being implemented in the State, the
17 department shall, within 18 months after the first sale of allowances
18 under a national program, thereafter sell, exchange, retire or
19 otherwise convey allowances only as part of the State's
20 participation in the national program.

21 c. The commission shall notify, in writing, the Governor and the
22 Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1),
23 of the decision made pursuant to this section.
24

25 12. a. Notwithstanding the provisions of any other law, rule or
26 regulation to the contrary, to further the purposes of
27 P.L. , c. (C.) (pending before the Legislature as this bill) and
28 the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37
29 et seq.), the commissioner and the board president, or their
30 respective designees, are authorized to:

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

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

39 b. Any actions that are consistent with, and that further the
40 purposes of, P.L. , c. (C.) (pending before the Legislature as
41 this bill) and the "Global Warming Response Act," P.L.2007, c.112
42 (C.26:2C-37 et seq.) taken by the commissioner or the board
43 president, or any employee of the department or the board
44 authorized to take such actions by the commissioner or the board
45 president, to form such corporation, association or organization, to
46 participate in its activities, or to enter an agreement or arrangement
47 prior to the date of enactment of P.L. , c. (C.) (pending
48 before the Legislature as this bill), are hereby validated.

1 c. Nothing in P.L. , c. (C.) (pending before the
2 Legislature as this bill) shall be deemed to constitute a waiver of
3 sovereign immunity. By entering any agreement or arrangement
4 authorized pursuant to this section, neither the commissioner nor
5 the board president, nor their respective designees, nor the State
6 consents to suit outside of New Jersey or consents to the
7 governance of such suit under any law other than that of New
8 Jersey.

9
10 13. a. Notwithstanding the provisions of any other law or rule
11 or regulation to the contrary, an electric public utility or a gas
12 public utility may:

13 (1) provide and invest in energy efficiency and conservation
14 programs in its respective service territory on a regulated basis
15 pursuant to this section, regardless of whether the energy efficiency
16 or conservation program involves facilities on the utility side or
17 customer side of the point of interconnection; and

18 (2) invest in Class I renewable energy resources, or offer Class I
19 renewable energy programs, regardless of whether the renewable
20 energy resource is located on the utility side or customer side of the
21 point of interconnection.

22 b. The board shall allow electric public utilities and gas public
23 utilities to recover program costs for any program implemented
24 pursuant to this section through their regulated rates. An electric
25 public utility or a gas public utility seeking cost recovery for any
26 program pursuant to this section shall file a petition with the board
27 to request cost recovery. Unless the board issues a written order
28 within 90 days after the filing of the petition approving, modifying
29 or denying the requested recovery, the recovery requested by the
30 utility shall be granted effective on the 91st day after the filing
31 without further order by the board. Ratemaking treatment may
32 include placing appropriate technology and program cost
33 investments in the respective utility's rate base, or recovering the
34 utility's technology and program costs through another ratemaking
35 methodology approved by the board, including, but not limited to,
36 the societal benefits charge established pursuant to section 12 of
37 P.L.1999, c.23 (C.48:3-60). All electric public utility and gas
38 public utility investment in energy efficiency and conservation
39 programs or Class I renewable energy programs shall be eligible for
40 incentive rate treatment approved by the board, including an
41 enhanced return on equity, or other incentives and rate mechanisms
42 that decouple utility revenue from sales of electricity and gas.

43 c. Within 120 days after the date of enactment of
44 P.L. , c. (C.) (pending before the Legislature as this bill), the
45 board shall adopt interim rules and regulations that allow electric
46 public utilities and gas public utilities to offer energy efficiency and
47 conservation programs, to invest in Class I renewable energy
48 resources, and to offer Class I renewable energy programs in their

1 respective service territories on a regulated basis. These rules and
2 regulations shall thereafter be adopted by the board pursuant to the
3 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
4 seq.).

5 d. As used in this section:

6 “Board” means the Board of Public Utilities.

7 “Class I renewable energy” means the same as the term is
8 defined in section 3 of P.L.1999, c.23 (C.48:3-51).

9 “Class I renewable energy program” means any regulated
10 program approved by the board pursuant to this section for the
11 purpose of facilitating the development of Class I renewable energy
12 in the State.

13 “Electric public utility” means the same as the term is defined in
14 section 3 of P.L.1999, c.23 (C.48:3-51).

15 “Energy efficiency and conservation program” means any
16 regulated program approved by the board pursuant to this section
17 for the purpose of conserving energy or making the use of
18 electricity or natural gas more efficient by New Jersey consumers,
19 whether residential, commercial, industrial, or governmental
20 agencies.

21 “Gas public utility” means the same as the term is defined in
22 section 3 of P.L.1999, c.23 (C.48:3-51).

23 “Program costs” means all reasonable and prudent costs incurred
24 in developing and implementing energy efficiency, conservation, or
25 Class I renewable energy programs approved by the board pursuant
26 to this section including foregone electric and gas distribution fixed
27 cost contributions associated with the implementation of the energy
28 efficiency, conservation, or Class I renewable energy programs
29 until those cost contributions are reflected in base rates following a
30 base rate case.

31
32 14. If any provision of P.L. , c. (C.) (pending before the
33 Legislature as this bill) or its application to any person or
34 circumstance is held invalid, the invalidity shall not affect any other
35 provision or application of this act which can be given effect
36 without the invalid provision or application, and to this end the
37 provisions of this act are severable.

38
39 15. This act shall take effect immediately.
40
41

42 STATEMENT
43

44 This bill would authorize the Department of Environmental
45 Protection (DEP) to sell, exchange, retire, assign, allocate, or
46 auction allowances from greenhouse gas emissions. The bill sets
47 forth requirements to be followed by the department if allowances
48 are to be conveyed using an auction.

1 The bill provides that dispatch agreement facilities, as defined in
2 the bill, may be eligible to purchase allowances at a price of \$2 per
3 allowance.

4 The bill would dedicate any revenues received through the
5 auction or other conveyance of allowances to a special non-lapsing
6 fund, the “Global Warming Solutions Fund.” The bill provides that
7 the revenues in the fund up to \$70 million per calendar year shall be
8 used for the following purposes:

9 (1) 60% by the New Jersey Economic Development Authority
10 (EDA), to provide grants and other forms of financial assistance to
11 commercial, institutional, and industrial entities to support end-use
12 energy efficiency projects, including but not limited to energy
13 efficiency and renewable energy applications and to develop
14 combined heat and power production facilities and to stimulate or
15 reward investment in the development of innovative carbon
16 emissions abatement technologies with significant carbon emissions
17 reduction potential;

18 (2) 20% by the Board of Public Utilities (BPU) to support
19 programs that are designed to reduce electricity demand in the low-
20 income and moderate-income residential sector with a focus on
21 urban areas, including efforts to address heat island effect and
22 reduce impacts on ratepayers arising from the enactment of this bill
23 into law;

24 (3) 10% by the DEP to support programs designed to promote
25 local government efforts to plan, develop and implement measures
26 to reduce greenhouse gases, including but not limited to technical
27 assistance to local governments, and the awarding of grants and
28 other forms of assistance to local governments to conduct and
29 implement energy efficiency, renewable energy, and distributed
30 energy programs and land use planning where such grants or
31 assistance results in measurable reductions in greenhouse gas
32 emissions or measurable reductions in energy demand; and

33 (4) 10% by the DEP to support programs that enhance the
34 stewardship and restoration of the State’s forests that provide
35 important opportunities to sequester or reduce greenhouse gases.

36 Moneys in the fund may also be used to cover the costs incurred
37 by the EDA, the BPU, and the DEP in administering their
38 responsibilities under the bill.

39 The bill provides that any moneys in the fund in a calendar year
40 exceeding \$70 million would be allocated to the EDA, in
41 consultation with the board, to provide grants to compliance entities
42 to mitigate impacts on ratepayers arising from the enactment of this
43 bill into law.

44 The bill directs the DEP, in consultation with the BPU and the
45 EDA, to adopt guidelines and a priority ranking system to be
46 followed to award monies from the “Global Warming Solutions
47 Fund,” and the bill sets forth evaluation criteria to be included in
48 the guidelines and priority ranking system.

1 The bill further provides that, within three months after the
2 enactment of federal law or rules and regulations providing for
3 implementation of a national emissions allowance trading program,
4 the DEP commissioner must make a determination whether the
5 national program is substantially comparable to the greenhouse gas
6 emissions allowance trading program in which the State is
7 participating at that time. If the commissioner determines that the
8 national program is substantially comparable to the greenhouse gas
9 emissions allowance trading program being implemented in the
10 State, the DEP must, within 18 months after the first sale of
11 allowances under a national program, thereafter sell, exchange,
12 retire or otherwise convey allowances only as part of the State's
13 participation in the national program.

14 The bill also provides that the DEP commissioner and the BPU
15 president, or their respective designees, are authorized to enter any
16 agreement or arrangement with the appropriate representatives of
17 other states, including the formation of a for-profit or non-profit
18 corporation, any form of association, or any other form of
19 organization, in this or another state in order to further the purposes
20 of this bill upon enactment into law or the "Global Warming
21 Response Act." In addition, the bill authorizes the DEP
22 commissioner and the BPU president, or their respective designees,
23 to participate in any such corporation, association, or organization,
24 and in any activity in furtherance of the purposes thereof, in any
25 capacity including, but not limited to, as directors or officers. The
26 bill validates any actions, consistent with, and that further the
27 purposes of, this bill upon enactment into law and the "Global
28 Warming Response Act," taken to form such corporation,
29 association or organization, to participate in its activities, or to enter
30 an agreement or arrangement prior to the date of enactment of this
31 bill into law.

32 Lastly, the bill further provides that electric public utilities and
33 gas public utilities, on a regulated basis, may provide and invest in
34 energy efficiency and conservation programs in their respective
35 service territories, and invest in Class I renewable energy resources
36 or offer Class I renewable energy programs. These programs may
37 be offered regardless of whether the energy efficiency or
38 conservation program involves facilities on, or the renewable
39 energy resource is located on, the utility side or customer side of the
40 point of interconnection. Further, the bill provides that electric
41 public utilities and gas public utilities may recover program costs
42 through their regulated rates.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2976**

STATE OF NEW JERSEY

DATED: DECEMBER 17, 2007

The Senate Economic Growth Committee reports favorably a Senate Committee Substitute for Senate Bill No. 2976.

This bill, as substituted, would authorize the Department of Environmental Protection (DEP) to sell, exchange, retire, assign, allocate, or auction allowances from greenhouse gas emissions. The bill sets forth requirements to be followed by the DEP if allowances are to be conveyed using an auction.

The bill provides that dispatch agreement facilities, as defined in the bill, may be eligible to purchase allowances at a price of \$2 per allowance. The bill sets forth the process for such certification, and establishes civil penalties of not more than \$500,000 for each offense and revokes the eligibility to be certified as a dispatch agreement facility for signatories to a sworn affidavit who knowingly give or cause to be given any false or misleading information or who knowingly make any false or misleading statement concerning such eligibility.

The bill would dedicate any revenues received through the auction or other conveyance of allowances to a special non-lapsing fund, the "Global Warming Solutions Fund." The bill provides that the revenues in the fund be used for the following purposes:

(1) 60% by the New Jersey Economic Development Authority (EDA), 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 DEP, 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;

(2) 20% by the Board of Public Utilities (BPU) to support programs that are designed to reduce electricity demand 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 arising from the enactment of this bill into law;

(3) 10% by the DEP to support programs designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gases, 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 measurable reductions in greenhouse gas emissions or measurable reductions in energy demand; and

(4) 10% by the DEP 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.

Moneys in the fund may also be used to cover the costs incurred by the EDA, the BPU, and the DEP in administering their responsibilities under the bill.

The bill directs the DEP, in consultation with the BPU and the EDA, to adopt guidelines and a priority ranking system to be followed to award monies from the "Global Warming Solutions Fund," and the bill sets forth evaluation criteria to be included in the guidelines and priority ranking system.

The bill further provides that, within three months after the enactment of federal law providing for implementation of a national emissions allowance trading program, the DEP commissioner would 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 DEP 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 DEP would 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. Further, within three months after the adoption of rules and regulations providing for implementation of a national emissions allowance trading program, the DEP commissioner would 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 DEP commissioner determines that the national program is substantially comparable to the existing greenhouse gas emissions allowance trading program being implemented in the State, the DEP would thereafter sell, exchange, retire or otherwise convey allowances only as part of the State's participation in the national program.

The bill also provides that the DEP commissioner and the BPU president, or their respective designees, are authorized to 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 in order to further the purposes of this bill upon enactment into law or the “Global Warming Response Act.” In addition, the bill authorizes the DEP commissioner and the BPU president, or their respective designees, to 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. The bill validates any actions, consistent with, and that further the purposes of, this bill upon enactment into law and the “Global Warming Response Act,” taken 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 this bill into law.

The bill amends current law (paragraph (2) of subsection c. of section 38 of P.L.1999, c.23 (C.48:3-87)) to require the BPU, by January 1, 2009, to adopt a greenhouse gas emission portfolio standard to mitigate leakage or another regulatory mechanism to mitigate leakage. The bill specifies that, unless the Attorney General has issued a formal legal opinion finding that an emissions portfolio standard would violate federal law, the adoption by the BPU of an electric energy efficiency portfolio standard, a gas energy efficiency portfolio standard, or any other enhanced energy efficiency policies to mitigate leakage would not be considered sufficient to fulfill the requirement for the adoption of a greenhouse gas emissions portfolio standard to mitigate leakage or another regulatory mechanism to mitigate leakage.

The bill further provides that electric public utilities and gas public utilities, on a regulated basis, may provide and invest in energy efficiency and conservation programs, in their respective service territories, and invest in Class I renewable energy resources or offer Class I renewable energy programs. These programs may be offered regardless of whether the energy efficiency or conservation program involves facilities on, or the renewable energy resource is located on, the utility side or customer side of the point of interconnection. The bill also provides that the BPU shall allow electric public utilities and gas public utilities to recover program costs through their regulated rates.

Finally the bill requires the DEP and the BPU to jointly hold a public hearing or hearings on allowance prices and develop an action plan for immediate ratepayer relief if the prices exceed \$7.00 for two consecutive regional auctions, and issue a report to the Governor and the Legislature with their findings and recommendations concerning allowance prices.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2976**

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 3, 2008

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2976 (SCS) with committee amendments.

The Senate Committee Substitute, as amended by the committee, would authorize the Department of Environmental Protection (DEP) to sell, exchange, retire, assign, allocate, or auction allowances from greenhouse gas emissions. The bill sets forth requirements to be followed by the DEP if allowances are to be conveyed using an auction.

The bill provides that dispatch agreement facilities, as defined in the bill, may be eligible to purchase allowances at a price of \$2 per allowance. The bill sets forth the process for such certification, and establishes civil penalties of not more than \$500,000 for each offense and revokes the eligibility to be certified as a dispatch agreement facility for signatories to a sworn affidavit who knowingly give or cause to be given any false or misleading information or who knowingly make any false or misleading statement concerning such eligibility.

The bill would dedicate any revenues received through the auction or other conveyance of allowances to a special non-lapsing fund, the "Global Warming Solutions Fund." The bill provides that the revenues in the fund be used for the following purposes:

(1) 60% by the New Jersey Economic Development Authority (EDA), 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 DEP, 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;

(2) 20% by the Board of Public Utilities (BPU) to support programs that are designed to reduce electricity demand 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 arising from the enactment of this bill into law;

(3) 10% by the DEP to support programs designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gases, 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 measurable reductions in greenhouse gas emissions or measurable reductions in energy demand; and

(4) 10% by the DEP 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.

Moneys in the fund may also be used to cover the costs incurred by the EDA, the BPU, and the DEP in administering their responsibilities under the bill.

The bill directs the DEP, in consultation with the BPU and the EDA, to adopt guidelines and a priority ranking system to be followed to award monies from the "Global Warming Solutions Fund," and the bill sets forth evaluation criteria to be included in the guidelines and priority ranking system.

The bill further provides that, within three months after the enactment of federal law providing for implementation of a national emissions allowance trading program, the DEP commissioner would 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 DEP 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 DEP would 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. Further, within three months after the adoption of rules and regulations providing for implementation of a national emissions allowance trading program, the DEP commissioner would 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 DEP commissioner determines that the national program is substantially comparable to the existing greenhouse gas emissions allowance trading program being

implemented in the State, the DEP would thereafter sell, exchange, retire or otherwise convey allowances only as part of the State's participation in 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.

The bill also provides that the DEP commissioner and the BPU president, or their respective designees, are authorized to 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 in order to further the purposes of this bill upon enactment into law or the "Global Warming Response Act." In addition, the bill authorizes the DEP commissioner and the BPU president, or their respective designees, to 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. The bill validates any actions, consistent with, and that further the purposes of, this bill upon enactment into law and the "Global Warming Response Act," taken 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 this bill into law.

The bill amends current law (paragraph (2) of subsection c. of section 38 of P.L.1999, c.23 (C.48:3-87)) to require the BPU, by January 1, 2009, to adopt a greenhouse gas emission portfolio standard to mitigate leakage or another regulatory mechanism to mitigate leakage. The bill specifies that, unless the Attorney General or the Attorney General's designee determines that a greenhouse gas emissions portfolio standard would unconstitutionally burden interstate commerce or would be preempted by federal law, the adoption by the BPU of an electric energy efficiency portfolio standard, a gas energy efficiency portfolio standard, or any other enhanced energy efficiency policies to mitigate leakage would not be considered sufficient to fulfill the requirement for the adoption of a greenhouse gas emissions portfolio standard to mitigate leakage or another regulatory mechanism to mitigate leakage.

The bill further provides that electric public utilities and gas public utilities, on a regulated basis, may provide and invest in energy efficiency and conservation programs, in their respective service territories, and invest in Class I renewable energy resources or offer Class I renewable energy programs. These programs may be offered regardless of whether the energy efficiency or conservation program involves facilities on, or the renewable energy resource is located on, the utility side or customer side of the point of interconnection. The bill also provides that the BPU shall allow electric public utilities and gas public utilities to recover program costs through their regulated rates.

Finally the bill requires the DEP and the BPU to jointly hold a public hearing or hearings on allowance prices and develop an action plan for immediate ratepayer relief if the prices exceed \$7.00 for two consecutive regional auctions, and issue a report to the Governor and the Legislature with their findings and recommendations concerning allowance prices.

COMMITTEE AMENDMENTS:

The committee amendments: 1) change the definition of “compliance entity” to remove the definition’s exclusionary provision of “an electric generating unit with a nameplate capacity equal to or greater than 25 megawatts of electrical output that holds an operating permit from the DEP containing a condition restricting the supply of the unit's annual electric output to the electric grid to less than or equal to 10 percent of the annual gross generation of the unit,” and replace such exclusionary provision with “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) provide that the DEP, in exercising the authority 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, shall exclude from the requirement to purchase or acquire any allowances under the program pertaining to 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; 3) change from one to two percent of the total amount in the fund each year the EDA may use to pay for administrative costs justifiable and approved in the annual budget process, incurred by the EDA in administering the provisions of the bill; 4) require the DEP to take into consideration the principles and goals of the New Jersey Energy Master Plan in the rule making process; 5) remove vehicle miles traveled as a factor in the priority ranking system; 6) allow the DEP Commissioner to consider the value of allowances or allowance auction proceeds directed to the State or other entity to benefit New Jersey energy consumers when considering the national program; 7) change from January 1, 2009 to July 1, 2009 the date the BPU is to adopt the greenhouse gas emissions portfolio standard; and 8) provide that, unless the Attorney General or the Attorney General’s designee determines that a greenhouse gas emissions portfolio standard would unconstitutionally burden interstate commerce or would be preempted by federal law, the adoption by the BPU of an electric energy efficiency portfolio standard, a gas energy efficiency portfolio standard, or any other enhanced energy efficiency policies to mitigate leakage would not be considered sufficient to fulfill the requirement for the adoption of a greenhouse gas emissions

portfolio standard to mitigate leakage or another regulatory mechanism to mitigate leakage.

As amended and reported by the committee, Senate Bill No. 2976 SCS is identical to Assembly Bill No. 4559 ACS (1R) ACS.

FISCAL IMPACT:

The OLS estimates that \$46 million in emission allowances could be purchased annually. This reflects one scenario which assumes that 23 million tons of emissions, the figure calculated by the RGGI as the yearly emissions budget cap for New Jersey, were sold at \$2 per ton. This estimate, however, can vary greatly, depending on the price of allowances sold at any given time. It should also be remembered that the estimated revenue level assumes that all available allowances will be purchased at one price. Since there is no assurance that this will occur, more reliable estimates of revenue levels can be determined only several years after enactment. In any case, all revenues less administrative expenses, are dedicated for specific program purposes.

The OLS estimate of \$3.68 million in State costs is again based on the assumption that \$46 million in allowance revenue will be generated. This sum reflects eight percent of \$46 million, the percentage allocated under the committee substitute for program expenses incurred by the DEP, the BPU and the EDA. The OLS cannot, however, determine at this point in time whether program costs will be fully supported by this allocation level. As mentioned above, reliable projections can be better calculated after actual fund revenues and incurred costs are realized during the first year or two after enactment. In any case, State funding may be needed during the first year after enactment to support implementation costs prior to the generation of sufficient allowance revenues. It is assumed that any such appropriations would likely be repaid from the Global Warming Solutions Fund once sufficient revenues are collected.

LEGISLATIVE FISCAL ESTIMATE
 [First Reprint]
 SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2976
STATE OF NEW JERSEY
212th LEGISLATURE

DATED: JANUARY 10, 2008

SUMMARY

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

Type of Impact: Revenue generation and expenditure from the Global Warming Solutions Fund. Possible short term impact on the General Fund.

Agencies Affected: Department of Environmental Protection, Board of Public Utilities, and N.J. Economic Development Authority

Executive Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost			
Administration	\$3,680,000	\$3,680,000	\$3,680,000
Global Warming Solutions Fund	<u>\$42,320,000</u>	<u>\$42,320,000</u>	<u>\$42,320,000</u>
Net Cost	<u>\$46,000,000</u>	<u>\$46,000,000</u>	<u>\$46,000,000</u>
State Revenue	\$46,000,000	\$46,000,000	\$46,000,000

- The committee substitute implements policies of the “Global Warming Response Act” (P.L.2007, c.112) by creating a “cap and trade,” or emissions trading and auction mechanism to reduce the level of greenhouse gases, namely carbon dioxide or its equivalent. The Department of Environmental Protection (DEP) would manage a program that buys, sells or trades allowances for electric generating companies to emit greenhouse gases.
- Certain qualified owners of electric generating facilities may purchase emissions allowances at \$2 per ton if less than auction rates. The Regional Greenhouse Gas Initiative (RGGI) calculated a yearly emissions budget cap for New Jersey at 23 million tons of carbon dioxide.
- Revenues from the sale of emissions allowances and penalty assessments are deposited into the Global Warming Solutions Fund to support programs to increase energy efficiency, reduce greenhouse gases and restore State forests and tidal marshes.

- The Office of Legislative Services (OLS) estimates \$46 million in emission allowances could be purchased annually, assuming that 23 million tons of emissions were sold at \$2 per ton. This figure can vary greatly, depending on the going allowance rate. State costs of \$3.68 million reflect eight percent of \$46 million, the percentage allocated under the committee substitute for program expenses incurred by affected State agencies.
- If the annual appropriations act fails to allocate Global Warming Solutions Fund resources only for the purposes to which this bill dedicates those resources, then the fund's revenues and programs would terminate.

BILL DESCRIPTION

Senate Committee Substitute for Senate Bill No. 2976 (1R) of 2007 authorizes the DEP to sell, exchange, retire, assign, allocate, or auction allowances from greenhouse gas emissions to generators of those emissions, namely electric power companies. An allowance is defined as up to one ton of carbon dioxide emission. The committee substitute also provides that certain owners or operators of electric generating facilities may be eligible to purchase allowances at a price of \$2 per allowance rather than at auction rates, if higher. Revenues received through the auction or other conveyance of allowances are deposited into a special non-lapsing fund, the Global Warming Solutions Fund, and are to be used for the following purposes:

(1) 60 percent by the New Jersey Economic Development Authority (EDA) to provide grants and other forms of financial assistance to commercial, institutional, and industrial entities to support end-use energy efficiency projects;

(2) 20 percent by the Board of Public Utilities (BPU) to support programs that are designed to reduce electricity demand 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 arising from the enactment of this committee substitute into law;

(3) 10 percent by the DEP to support programs designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gases; and

(4) 10 percent by the DEP 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.

The committee substitute provides that up to four percent of annual allocations to the fund may be used by the DEP to cover costs incurred in administering its responsibilities under the act. Up to two percent of annual fund allocations are provided separately to the EDA and the BPU for the same purpose.

The committee substitute provides that electric public utilities and gas public utilities, on a regulated basis, may provide and invest in energy efficiency and conservation programs in their respective service territories, and invest in Class I renewable energy resources or offer Class I renewable energy programs. The committee substitute also (1) allows electric public utilities and gas public utilities to recover program costs through their regulated rates; (2) addresses actions to be taken if other similar state or Federal laws concerning greenhouse gas emissions are enacted; and (3) provides for the adoption of electric and gas energy efficiency portfolio standards for leakage mitigation.

Pursuant to Section 9, if the annual appropriations act fails to allocate Global Warming Solutions Fund resources only for the purposes to which this bill dedicates those resources, then the fund's revenues and programs would terminate.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that \$46 million in emission allowances could be purchased annually. This reflects one scenario which assumes that 23 million tons of emissions, the figure calculated by the RGGI as the yearly emissions budget cap for New Jersey, were sold at \$2 per ton. This estimate, however, can vary greatly, depending on the price of allowances sold at any given time. It should also be remembered that the estimated revenue level assumes that all available allowances will be purchased at one price. Since there is no assurance that this will occur, more reliable estimates of revenue levels can be determined only several years after enactment. All revenues, less administrative expenses, are dedicated for specific program purposes.

The OLS estimate of \$3.68 million in State costs is again based on the assumption that \$46 million in allowance revenue will be generated. This sum reflects eight percent of \$46 million, the percentage allocated under the committee substitute for program expenses incurred by the DEP, the BPU and the EDA. The OLS cannot, however, determine at this point in time whether program costs will be fully supported by this allocation level. As mentioned above, reliable projections can be better calculated after actual fund revenues and incurred costs are realized during the first year or two after enactment. In any case, State funding may be needed during the first year after enactment to support implementation costs prior to the generation of sufficient allowance revenues.

Section: Environment, Agriculture, Energy and Natural Resources

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Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.