

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 2978**  
**STATE OF NEW JERSEY**

**Sponsored by Senator SMITH**

AN ACT concerning renewable electric power generation facilities, supplementing Title 48 of the Revised Statutes, and amending P.L.2021, c.169.

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

1. (New section) Sections 1 through 10 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be known and may be cited as the "New Jersey Clean Energy Act of 2023."

2. (New section) The Legislature finds and declares that:

a. Global atmospheric warming, driven largely by human activities that emit greenhouse gases and other climate pollutants, is leading to significant changes in climate patterns in New Jersey and around the world, presenting an existential threat to the residents of New Jersey and their health, communities, businesses, property, environment, and way of life.

b. The traditional methods of energy production that rely on the burning of fossil fuels release harmful emissions of greenhouse gases, which contribute to global climate change.

c. A substantial number of communities in New Jersey are overburdened by the impacts of climate change and by the high costs and air pollution caused by a fossil fuel-dependent electric grid.

d. Rapidly increasing clean electricity generation to achieve 100 percent of retail sales of electricity in New Jersey by 2035 will help displace fossil-fueled electricity generation and thereby reduce greenhouse gas and co-pollutant emissions.

e. New Jersey is currently on track to satisfy 75 percent of its annual energy usage by 2025, and 84 percent by 2030, through non-emitting sources of generation, including nuclear, offshore wind, solar, and other renewable sources of electricity production.

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f. Affordability, which is not only essential for an equitable clean energy transition, but also for the rapid electrification of the transportation and building sectors, can be achieved through a balanced approach that procures a mix of clean electricity attributes from New Jersey-based solar, nuclear, offshore wind, and other zero-emission technologies, as well as lower-cost regional resources, to collectively satisfy 100 percent of New Jersey's retail energy usage through non-emitting sources of energy.

g. A technology-neutral clean electricity standard implemented through a certificate system will help support the development of new zero-carbon generation technologies, which are critically needed for a reliable and affordable clean electricity system, by providing them additional revenue opportunities.

h. As a key part of New Jersey's efforts to curtail the serious impacts of global climate change caused by greenhouse gas emissions, New Jersey must pursue an equitable and smooth transition to clean and renewable energy sources while building a stronger and fairer economy.

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

"Air contaminant" means the same as the term is defined in section 2 of P.L.1954, c.212 (C.26:2C-2).

"Basic generation service provider" means the same as the term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"Board" means the Board of Public Utilities.

"Class I renewable energy certificate" or "Class I REC" means a renewable energy certificate capable of satisfying the requirement for the procurement of Class I renewable energy established in paragraph (1) of subsection d. of section 38 of P.L.1999, c.23 (C.48:3-87).

"Class II renewable energy certificate" or "Class II REC" means a renewable energy certificate capable of satisfying the requirement for the procurement of Class II renewable energy established in paragraph (2) of subsection d. of section 38 of P.L.1999, c.23 (C.48:3-87).

"Clean electricity production facility" means: (1) a nuclear, wind, solar, or hydroelectric electricity production facility; or (2) any other electricity production facility that generates electric energy in a manner that produces no more than a de minimis level, as determined by the department, of net greenhouse gas emissions or co-pollutant emissions at the point of generation or at any point in the fuel supply chain of the facility. "Clean electricity production facility" shall not include a resource recovery facility.

"Clean electricity attribute certificate" or "CEAC" means a certificate representing the zero-carbon or environmental benefits or attributes of one megawatt-hour of generation from a clean electricity production facility whose electricity is produced in New

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Jersey or settled through the wholesale energy markets operated by PJM Interconnection, L.L.C., or any successor organization, or such other quantity of generation, as may be adjusted by the board pursuant to subsection a. of section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill), to account for the greenhouse gas abatement achieved by the clean electricity production facility. A "CEAC" shall not include a Class I REC, Class II REC, or a technology-specific certificate, including, but not limited to, an SREC, SREC-II, OREC, or ZEC.

"Co-pollutant" means any air contaminant, other than a greenhouse gas, regulated by the department pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.) or the federal "Clean Air Act," 42 U.S.C. s.7401 et seq., including mercury, arsenic, iodine, oxides of nitrogen, volatile organic compounds, ozone and precursors thereof, sulfur dioxide, particulate matter with a diameter of 10 microns or less, particulate matter with a diameter of 2.5 microns or less, carbon monoxide, and lead.

"Department" means the Department of Environmental Protection.

"Electric power supplier" means the same as the term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

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

"Energy year" means the same as the term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"Existing nuclear power plant" means an individual electric generating unit utilizing nuclear fuel to produce electric power that commenced operation prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill).

"Greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other substance emitted into the air that may be reasonably anticipated to cause or contribute to anthropogenic climate change, as may be determined by the board in consultation with the Department of Environmental Protection.

"Offshore wind renewable energy certificate" or "OREC" means the same as the term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"PJM Interconnection, L.L.C." or "PJM" means the same as the term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"Resource recovery facility" means the same as the term is defined in section 3 of P.L.1970, c.39 (C.13:1E-3).

"Solar renewable energy certificate" or "SREC" means the same as the term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"Solar renewable energy certificate II" or "SREC-II" means the same as the term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

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"Transition renewable energy certificate" or "TREC" means a certificate issued by the board or its designee under the solar energy transition incentive program, which is designed to transition between the SREC program and the SREC-II program established pursuant to P.L.2021, c.169 (C.48:3-114 et al.).

"Transmission and distribution system" means the same as the term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"Zero emission certificate" or "ZEC" means the same as the term is defined in section 2 of P.L.2018, c.16 (C.48:3-87.4).

4. (New section) a. The board shall establish a 100 percent clean electricity standard, in order to ensure that the State of New Jersey relies on clean electricity to meet its electricity needs. Each basic generation service provider and electric power supplier in the State shall comply with this standard by procuring and retiring CEACs from clean electricity production facilities in compliance with the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. No later than one year after the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), the board shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing a 100 percent clean electricity standard.

c. A facility seeking to be designated as a clean energy production facility shall apply to the board, in a form and manner determined by the board, and shall be certified and classified by the board in consultation with department.

d. The board shall implement, as part of the clean electricity standard, a process for the certification of clean energy production facilities, and the creation, distribution, and retirement of CEACs.

5. (New section) a. (1) Beginning one year after the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), each basic generation service provider and electric power supplier operating in New Jersey shall procure and retire CEACs such that by June 1, 2027, at least 80 percent, by June 1, 2030, at least 85 percent, and by June 1, 2035, 100 percent of each basic generation service provider's and electric power supplier's retail electricity sales, measured in megawatt-hours over an energy year, and modified to account for any transmission, distribution, and storage losses, as well as for any environmental attribute credits created by distributed energy generation facilities that would otherwise be treated as a reduction in total retail sales, will be matched with CEACs. Each basic generation service provider and electric power supplier shall annually demonstrate, to the board's satisfaction, that it has retired the appropriate number and type of certificates for compliance purposes.

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(2) The board may establish a market structure that accelerates the achievement of the 100 percent clean electricity standard either through the establishment of a downward sloping demand curve, or another appropriate mechanism, if the board determines that the benefits of doing so outweigh the costs to New Jersey residents.

(3) Notwithstanding the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) to the contrary, the board may provide for a CEAC to receive a weighted compliance value less than or greater to one megawatt hour, provided that the assigned value reflects the relative greenhouse gas abatement achieved due to the electric generation with which the CEAC is associated.

b. The board may establish a mechanism for tracking the provision of CEACs, and may establish, impose, and collect fees, escrows, and other charges the board deems necessary and proper to implement the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill), including, but not limited to, the imposition of appropriate escrow fees or credit requirements, bid requirements, required interconnection milestones, and conditions on when a project must achieve commercial operation.

c. The board shall implement market power monitoring and mitigation measures to prevent the exercise of market power under the clean energy standard established pursuant to subsection a. of this section. Authorized market power mitigation measures shall include, but are not limited to, the requirement that all offers of eligible qualified CEACs into a regional marketplace shall be subject to independent review of their competitiveness, and may be rejected or modified if found to be non-competitive in terms of both conduct and impact.

d. A basic generation service provider or electric power supplier may demonstrate compliance with the requirements of subsection a. of this section by retiring, in lieu of a CEAC: a Class I REC, OREC, SREC, SREC-II, TREC, or ZEC. Whenever a basic generation service provider or electric power supplier retires a Class I REC, OREC, SREC, SREC-II, TREC, or ZEC in order to fulfill its energy portfolio standard for the applicable certificate, the retirement shall reduce, by a corresponding amount, the basic generation service provider's or electric power supplier's obligation to retire CEACs pursuant to subsection a. of this section.

e. (1) The board shall cap the number of CEACs procured from existing nuclear power plants, such that the number of CEACs procured plus the number of ZECs procured shall not exceed 40 percent of the total number of megawatt-hours of electricity distributed by electric public utilities in the State in energy year 2017. Any electric energy produced by a new, incremental increase in the rated capacity of an existing nuclear power plant that enters into service after the date of enactment of P.L. , c. (C. )

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(pending before the Legislature as this bill) shall not be subject to this limitation.

(2) In order to implement the provisions of paragraph (1) of this subsection, the board shall establish an application process for existing nuclear power plants that seek to sell CEACs in any given delivery period and the board shall prepare a rank-ordered list, according to the criteria set forth in subsection e. of section 4 of P.L.2018, c.16 (C.48:3-87.5), with purchases of CEACs made from the highest scoring nuclear power plants until the cap is reached. The board shall cap the value of any CEAC awarded to an existing nuclear power plant at a level designed to incentivize the power plant to participate in CEAC market and to retain the carbon-free nuclear generation, which value shall be based on an analysis comparable to that set forth in subsection a. of section 4 of P.L.2018, c.16 (C.48:3-87.5).

f. A CEAC shall be eligible to be used to comply with the clean electricity standard in the energy year in which it is generated, and for the following energy year without limitation. A basic generation service provider or electric power supplier entity may utilize the CEAC for an additional energy year to meet up to 20 percent of its annual obligation.

g. The board may require a basic generation service provider or electric power supplier to meet a portion, or all, of its clean electricity standard compliance obligations not otherwise covered through the retirement of Class I RECs, ORECs, SRECs, SREC-IIs, TRECs, or ZECs through participation in a regional clean electricity attribute market duly established or approved by the board, a regional transmission organization, or another qualified entity.

h. The board may consider and, as appropriate, establish policies that prioritize the procurement of a share of CEACs from new clean electricity production facilities, consistent with ratepayer affordability considerations.

i. The board may establish an alternative compliance payment to enable basic generation service providers and electric power suppliers to comply with the requirements of subsection a. of this section, provided that the alternative compliance payment levels are established at a level sufficient to incentivize the development of efficient, commercially available, new clean electricity production facilities.

6. (New section) a. A megawatt of electricity produced by a clean electricity production facility shall not simultaneously be used for the issuance of a CEAC and another certificate representing the environmental attributes of the electricity, including, but not limited to, a Class I REC, Class II REC, OREC, SREC, SREC-II, TREC, or ZEC, and including certificates issued under a program developed by the board pursuant to P.L.2018, c.17 (C.48:3-87.8 et al.).

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b. A clean electricity production facility that receives a CEAC pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) for a unit of energy generated by the facility shall not otherwise sell, alienate, or dispose of any of the environmental benefits or attributes associated with that electricity.

7. (New section) a. Each basic generation service provider and electric power supplier shall continue to meet all legal obligations to purchase and retire energy certificates, including, but not limited to any requirements to purchase and retire:

(1) Class I RECS, Class II RECs, ORECs, SRECs, and TRECs, as established pursuant to section 38 of P.L.1999, c.23 (C.48:3-87);

(2) SREC-IIs, as established pursuant to P.L.2021, c.169 (C.48:3-114 et al.); and

(3) ZECs, as established pursuant to P.L.2018, c.16 (C.48:3-87.3 et al.).

b. These obligations shall remain in force during their established term under existing law.

8. (New section) The board shall implement the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) with the target of meeting 65 percent of the State's electricity demand from eligible clean electricity production facilities connected to the transmission and distribution system of an electric public utility operating in New Jersey, including consideration of facilities that are currently in operation as well as those included in a procurement plan or under contract, and reasonably anticipated to reach commercial operation. If the board determines that the 65-percent target may not be met for a future energy year, the board may procure additional electricity from clean electricity production facilities, which electricity shall be from the lowest cost source, to the extent necessary to meet the target, and taking into account overall program affordability.

9. (New section) a. The board shall establish the goal of 100 percent of New Jersey's electric reliability needs being met by resources that operate without net emissions of greenhouse gases by no later than 2045.

b. In support of that goal, the board shall develop and implement one or more programs to promote the development and deployment of zero- or reduced-emission technologies to cost-effectively meet the State's reliability requirements for electric capacity, as established and certified by PJM or any successor organization, including consideration of locational requirements for such capacity resources.

c. The board may require a basic generation service provider or electric power supplier to participate in a program established or approved by the board, a regional transmission organization, or

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other qualified entity, with the purpose of increasing the share of zero-emissions technologies used to meet the State's reliability requirements over time such that all reliability requirements are met by zero-emission technologies by 2045, or, if deemed feasible by the board, by an earlier date.

10. (New section) a. Each worker employed in the State on a project for the construction of a clean electricity production facility greater than one megawatt in size, as measured in direct current, that is certified by the board pursuant to section 4 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

b. In order to be eligible to receive a CEAC pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), a project in the State for the construction of a clean electricity production facility greater than one megawatt in size, as measured in direct current, shall comply with the apprentice labor hour requirements necessary for eligibility to receive a federal renewable electricity production tax credit pursuant to 26 U.S.C. s.45(b)(8).

11. (New section) a. As used in this section:

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

"Class II renewable energy certificate" or "Class II REC" means a renewable energy certificate capable of satisfying the requirement for the procurement of Class II renewable energy established in paragraph (2) of subsection d. of section 38 of P.L.1999, c.23 (C.48:3-87).

"Energy year" means the same as the term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"Substantive permit violation" means a violation that resulted in, or likely resulted in, air, water, or soil pollution in excess of the allowable limits under the relevant permit or other approval, as determined by the Department of Environmental Protection.

b. Notwithstanding the provisions of section 38 of P.L.1999, c.23 (C.48:3-87), or the rules and regulations adopted pursuant thereto, to the contrary, a Class II renewable energy facility shall not be eligible to receive a Class II REC or other similar financial incentive authorized by the Board of Public Utilities during an energy year, if, during the prior energy year, the Commissioner of Environmental Protection undertook a final agency action that found that the Class II renewable energy facility committed a substantive permit violation with respect to any permit issued to the facility by the Department of Environmental Protection, including an air pollution control permit issued pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.), or a

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permit or other approval issued pursuant to the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.).

c. The Department of Environmental Protection shall promptly inform the Board of Public Utilities of any final agency action related to a substantive permit violation committed by a Class II renewable energy facility, and the board shall take appropriate steps to disqualify the facility from eligibility to receive Class II RECs during the following energy year.

12. Section 5 of P.L.2021, c.169 (C.48:3-118) is amended to read as follows:

5. a. No solar electric power generation facility shall simultaneously receive SREC-IIs pursuant to P.L.2021, c.169 (C.48:3-114 et al.) and Class I RECs, SRECs, or any other comparable certificates, including those issued under a program developed by the board pursuant to P.L.2018, c.17 (C.48:3-87.8 et al.).

b. A solar electric power generation facility that receives an SREC-II pursuant to P.L.2021, c.169 (C.48:3-114 et al.) for a unit of energy produced shall not otherwise sell, alienate, or dispose of any of the environmental benefits or attributes associated with that energy.

c. A solar electric power generation facility that is selected by the board pursuant to section 4 of P.L.2021, c.169 (C.48:3-117) shall be responsible for the payment of:

(1) an annual remuneration of one percent of the renewable energy incentive payments pursuant to paragraph (4) of subsection c. of section 4 of P.L.2021, c.169 (C.48:3-117), to be submitted to the State Treasurer for deposit into the "Preserve New Jersey Fund Account," established pursuant to section 4 of P.L.2016, c.12 (C.13:8C-46); and

(2) an annual administrative fee, in an amount to be determined by the board in the rules and regulations adopted by the board pursuant to section 2 of P.L.2021, c.169 (C.48:3-115).

d. (1) Each worker employed in the State [during] on a project for the construction of a solar electric power generation facility greater than one megawatt in size, as measured in direct current, that participates in the SREC-II program shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

(2) In order to be eligible to receive an SREC-II pursuant to P.L.2021, c.169 (C.48:3-114 et al.), a project in the State for the construction of a solar electric power generation facility greater than one megawatt in size, as measured in direct current, shall comply with the apprentice labor hour requirements necessary for eligibility to receive a federal renewable electricity production tax

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credit pursuant to 26 U.S.C. s.45(b)(8). The provisions of this paragraph shall apply only to projects for which the initial application to the SREC-II program occurs after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill).

e. The issuance of SREC-IIs pursuant to P.L.2021, c.169 (C.48:3-114 et al.) shall be deemed "Board of Public Utilities financial assistance" as provided under section 1 of P.L.2009, c.89 (C.48:2-29.47).

f. The owner of a solar electric power generation facility that participates in the SREC-II program shall obtain all necessary permits and other approvals as may be required pursuant to federal, State, or local law, rule, regulation, or ordinance.

g. A solar electric power generation facility that is selected pursuant to section 4 of P.L.2021, c.169 (C.48:3-117) shall comply with the standards concerning vegetation adopted by the Department of Environmental Protection pursuant to section 8 of P.L.2021, c.169 (C.13:1B-15.178).  
(cf: P.L.2021, c.169, s.5)

13. This act shall take effect immediately.

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"New Jersey Clean Energy Act of 2023"; establishes 100 percent clean electricity standard and directs BPU to establish clean electricity certificate program.

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