



## EFFICIENCY GAINS: AN ARGUMENT FOR A COMPRESSED WORKWEEK FOR NEW JERSEY'S PUBLIC EMPLOYEES

Kyle Vellutato

Energy plays a vital role in the health of New Jersey's economy and environment. Families who are barely getting by paycheck to paycheck cannot bear ever-increasing energy bills; businesses need reliable supplies of energy at affordable and predictable prices to remain competitive. The production, distribution and use of energy, unless wisely managed, can threaten the economy of this State, the quality of our air and water and the health of our residents.<sup>1</sup>

### I. INTRODUCTION

It is time for New Jersey's leaders to think outside of the box. Like most every other state in the union, New Jersey is not immune to the harsh effects of the recent economic crisis. For the fiscal year of 2011, New Jersey faces nearly a \$10 billion budget deficit and a mid-year budget gap of more than \$2 billion, which is among the highest in the United States.<sup>2</sup> According to a December 2009 report by the Economics Group of Wells Fargo Securities, LLC, New Jersey's unemployment rate

---

<sup>1</sup> *New Jersey Energy Master Plan*, STATE OF NEW JERSEY, 6 (Oct. 2008), [http://www.state.nj.us/emp/docs/pdf/o81022\\_emp.pdf](http://www.state.nj.us/emp/docs/pdf/o81022_emp.pdf).

<sup>2</sup> Press Release, Governor of N.J., Rebuilding N.J.'s Economy: FY 2010 Budget Solutions as a Foundation for Reform (Feb. 11, 2010), *available at* [http://www.state.nj.us/governor/news/news/552010/pdf/FY2010BudgetSolutions\\_press.pdf](http://www.state.nj.us/governor/news/news/552010/pdf/FY2010BudgetSolutions_press.pdf).

has more than doubled since January 2008, currently standing at 9.7%.<sup>3</sup> As a result of continuing high unemployment, economists predict decreased state income tax receipts and increased demand for state services, which will ultimately make it more difficult for the state to close its budget gap.<sup>4</sup> Further, because state fiscal problems have historically lagged national recessions, it is likely that New Jersey's budget deficit will continue into 2012 or beyond.<sup>5</sup> It logically follows then that eliminating state services entirely, thereby terminating state employees, may reduce budget forecasts in the short run, but will only create greater demand for state aid among New Jersey citizens. If history is an accurate indicator, it is clear that the Garden State is in desperate need of a solution to its budget woes.

Simultaneously, New Jersey is facing unrelenting energy and pollution problems. As New Jersey's workers have one of the longest average commute times in the country, it comes as no surprise that the transportation sector leads state energy consumption.<sup>6</sup> As of 2008, it was estimated that the New Jersey state government spends \$171 million per year on energy costs, emitting approximately 739,000 metric tons of carbon dioxide.<sup>7</sup>

---

<sup>3</sup> Mark Vitner, Anika R. Khan & Yasmine Kamaruddin, *New Jersey Economic Outlook: December 2009*, WELLS FARGO SECURITIES ECONOMICS GROUP, 1 (Dec. 30, 2009), <http://mediaserver.fxstreet.com/Reports/f94cca42-c3fa-47e4-88dd-b4c17aocded/1c1539a3-92b9-49f6-9ced-27eed05367ad.pdf>.

<sup>4</sup> Elizabeth McNichol & Nicholas Johnson, *Recession Continues to Batter State Budgets; State Responses Could Slow Recovery*, CTR. ON BUDGET & POL'Y PRIORITIES, 3-4 (Oct. 20, 2009), <http://replay.waybackmachine.org/20091022133249/http://www.cbpp.org/files/9-8-08sfp.pdf> (accessed by searching for Center on Budget and Policy Priorities in the Internet Archives Index).

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *State Energy Profile of New Jersey*, U.S. ENERGY INFO. ADMIN., [http://tonto.eia.doe.gov/state/state\\_energy\\_profiles.cfm?sid=NJ](http://tonto.eia.doe.gov/state/state_energy_profiles.cfm?sid=NJ) (last updated Oct. 2009).

<sup>7</sup> N.J. Dep't Envtl. Prot., Div. of Sci., Research & Tech., *Energy Use and Renewable Energy Sources*, ENVTL. TRENDS REPORT, 4 (Oct. 2008), <http://replay.waybackmachine.org/20090427151922/http://www.nj.gov/dep/dsr/trends2005/pdfs/energy.pdf> (accessed by searching Environmental Trends Report in the Internet Archives Index).

While it must be recognized that New Jersey is a leader in promoting energy efficiency and should be commended for its effort to reduce greenhouse gas emissions, there is room for improvement. In his testimony to the U.S. Senate Committee on Environment and Public Works Committee, Governor Jon Corzine outlined four major problems burdening New Jersey residents: 1) rising energy demands; 2) rising peak demands for electricity; 3) rising and volatile energy prices; and 4) the rising amount of greenhouse gas emissions attributed to our current energy practices.<sup>8</sup>

If New Jersey residents can acknowledge both energy consumption and fiscal management as two core policy areas in need of adjustment for a more productive and fruitful state, we must next ask the question: are solutions for these intersections of public policy mutually exclusive? This article proposes that they are not; in fact, these areas of public policy are inherently intertwined. However, the common and more recent approach towards fiscal and energy intervention in New Jersey advocates for synthesized tax policies, such as tax incentives for renewable energy and green technology implementation, investment in new machinery, and cap and trade legislation.<sup>9</sup> This article does not attempt to refute or promote the utility of such policy measures; rather, it argues that the necessary first step to reducing the deficit and decreasing energy consumption is to maximize efficiency without incurring new or additional costs.

One possible solution, long overlooked in this region, is the mandatory implementation of a compressed work schedule for public sector employees, whereby specified state agencies would operate four days per week, ten hours per day.<sup>10</sup> A shift

---

<sup>8</sup> *Testimony to the Senate Comm. on Env't and Pub. Works Comm.*, 111th Cong. 1 (2009) (statement of Gov. Jon Corzine, N.J.), available at [http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=a106703a-fddd-4632-82d7-f44f66903c36](http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=a106703a-fddd-4632-82d7-f44f66903c36).

<sup>9</sup> Daniel A. Brown, Comment, *Executive Constraint, Judicial Uncertainty, and Legislative Complacency: Washington Responds with a Progressive Approach to Climate Change*, 31 SEATTLE U. L. REV. 707, 709-10 (2008).

<sup>10</sup> While it is possible for some civil service employees to request an alternate work schedule through their Human Resource Officer, this note argues for the use of a mandatory statewide initiative to create compressed work schedules. See *Alternative Workweek Program*, N.J. CIVIL SERV. COMM'N, <http://www.state.nj.us/csc/programs/alternate.htm> (last visited Apr. 2, 2011).

from the typical nine-to-five, Monday-to-Friday workweek to a compressed schedule would allow for public agencies to continue operating on a standard forty-hour schedule, and provide a common solution for reducing New Jersey's budget deficit and energy consumption. Moreover, this solution is in accord with the overarching policy goals of the state legislature to implement cost-effective measures to reduce greenhouse gas emissions.

The potential benefits of a compressed workweek to employees, employers and residents of New Jersey are broad. Potential benefits for the employee include reduced commuting costs, reduced exposure to pollutants, and reduced day-care costs, not to mention the prospect of three-day weekends, which could have a profound effect on individual morale. Similarly, employers can reduce facility operating and labor costs, and would potentially benefit from increased productivity, decreased overtime costs, and decreased absenteeism among employees.<sup>11</sup> Even residents not working under the compressed workweek could experience less traffic congestion and would benefit indirectly from the reduced greenhouse gas emissions, all without decreasing the overall amount of services provided by state agencies.

This article first examines New Jersey's current public policy and legislation that addresses both state fiscal and energy demands. The article then turns to a brief examination of federal legislation for alternative work schedules, and an in-depth analysis of Utah, which recently completed a year-long pilot program for a compressed workweek in its *Working 4 Utah* initiative. Finally, this article contemplates the potential successes and pitfalls of instituting a similar compressed workweek initiative in New Jersey.

While this article addresses two issues critical to New Jerseyans—the fiscal budget and energy—it should be noted up front that it does not propose a cure-all solution to either problem. Further, with the election of Republican Governor

---

<sup>11</sup> According to a survey conducted by a team of management professors at Brigham Young University, which analyzed employees working compressed schedules in Utah, 64% reported increased morale among employees and 41% reported increased productivity. Jennifer Senior, *The Four-Day Workweek: Getting Over Overtime*, N.Y. MAG. (Oct. 30, 2009), available at <http://nymag.com/news/intelligencer/61749/>.

Chris Christie, it is impractical to hypothesize the direction of New Jersey's proposed energy initiatives. Rather, this article offers a pragmatic, common-sense approach to bypass the ideological and political struggles that often stifle the legislative process. As Professor Noah Sachs writes, "[i]ndeed, improved efficiency is the 'first fuel' the United States should turn to for powering its economy in a time of deep fiscal constraints and dependence on hostile states for energy supplies."<sup>12</sup>

## II. NEW JERSEY'S RECENT RESPONSES TO FISCAL AND ENERGY CONCERNS

In dealing with both fiscal and energy policy, New Jersey has implemented a series of initiatives aimed at stifling problematic areas while attempting to incur minimal costs upon its citizens. Unfortunately, the attempts have all but missed the mark. While Governor Corzine took broad strides in combating global warming, the spending necessary to accomplish these ends has escalated beyond the State's means.<sup>13</sup> Though Governor Christie has been in office for only a matter of months, his initial action reflects a conservative policy of reduced spending and elimination of state services.<sup>14</sup> The intent of this section is to highlight the practicality of implementing a compressed work schedule within the framework of New Jersey's existing law and policy.

### A. NEW JERSEY'S RESPONSES ADDRESSING THE BUDGET DEFICIT

A governmental unit facing fiscal pressure--whether it be state, county, school district, or municipality--is fundamentally an organization faced with a problem which it must solve in order to achieve organizational goals. It thus must

---

<sup>12</sup> Noah M. Sachs, *Greening Demand: Energy Consumption and U.S. Climate Policy*, 19 DUKE ENVTL. L. & POL'Y F. 295, 301 (2009).

<sup>13</sup> See McNichol & Johnson, *supra* note 4, at 3.

<sup>14</sup> See *infra* note 38.

initiate a search for a solution or set of solutions which will satisfy the problem . . . .<sup>15</sup>

Fiscally speaking, New Jersey's state government is somewhat constrained by article VIII, section 2 of the New Jersey Constitution, the "balanced budget" requirement,<sup>16</sup> which, unlike the federal government, requires that a balanced budget be approved as an Appropriations Act and ratified by the Governor by July 1 every year.<sup>17</sup> In a last ditch effort to contain costs, Governor Corzine advocated a series of fourteen furlough days (closures of state departments and agencies) to help reduce the budget gap. Governor Corzine stated:

---

<sup>15</sup> Harold Wolman & George Peterson, *State and Local Government Strategies for Responding to Fiscal Pressure*, 55 TUL. L. REV. 773, 775 (1981).

<sup>16</sup> The "balanced budget" provision of the New Jersey Constitution provides:

No money shall be drawn from the State treasury but for appropriations made by law. All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year; except that when a change in the fiscal year is made, necessary provision may be made to effect the transition. No general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein, together with all prior appropriations made for the same fiscal period, shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the Governor.

N.J. CONST. art. VIII, § 2.

<sup>17</sup> See *The Budget Process*, N.J. DEP'T OF THE TREASURY, OFFICE OF MGMT. & BUDGET, <http://www.nj.gov/treasury/omb/ReadersGuide/budgetprocess.shtml> (last visited Apr. 2, 2011); but see Lavinia L. Mears, Note, *The Truth About the Balanced Budget Amendment*, 20 SETON HALL LEGIS. J. 592, 611 (1996) (stating that even with a balanced budget amendment, the use of smoke-and-mirror tactics, such as forcing adjustments in the accounting system, deferring disbursements to the following fiscal year, and transferring assets via sale-leaseback schemes, allow for the appearance of a balanced budget without making any real changes).

One of the things we're trying to accomplish with furloughs is to reduce the cost of operating government . . . . Furloughs allow us to balance our budget while still maintaining services. Furloughs are going on across the country not just in New Jersey. Until we get out of this recession, which I believe there is a lot of reason to have positive expectations because there is a major recovery program President Obama has put in place and Congress has supported and we helped shape here in the state of New Jersey. That recovery will work its way through the system and revenues will come back and we will be able to get back to what people would call normal operations of government activities. Until we get through that, we're not like the federal government. We have a constitutional responsibility to balance revenues and expenditures . . . .<sup>18</sup>

To accomplish this goal, Governor Corzine utilized the Emergency Temporary Layoff Rule ("ETLR"), an emergency regulation that implements furlough days as a means to reduce government spending by temporarily laying off thousands of public employees.<sup>19</sup> Though this legislation was ultimately accepted as a positive alternative to permanent layoffs, its effectiveness was challenged by union organizations.<sup>20</sup>

Concerning the temporary layoffs, the Civil Service Commission (CSC) conducted a public hearing to address agency responses to section 4A:8-1.1A of the New Jersey

---

<sup>18</sup> Tom Hester Sr. & Andy Lagomarsino, *New Jersey State Employee Furloughs Underway*, NEW JERSEY NEWSROOM, (May 18, 2009), <http://www.newjerseynewsroom.com/state/state-workers-to-denounce-dmv-furloughs>.

<sup>19</sup> N.J. ADMIN. CODE § 4A:8-1.1A (repealed Dec. 21, 2009).

<sup>20</sup> See *In Re Unpaid Furlough Days for Unrepresented Emps. Pilot Program*, N.J. CIVIL SERV. COMM'N. DOC. NO. 2010-163 (2009), 2009 N.J. CSC LEXIS 159, at \*1-2, available at <http://www.state.nj.us/csc/msb/decisions09/aug09/IMO%20Unpaid%20Furlough%20Days%20for%20Unrepresented%20Employees%20Pilot%20Program.pdf>.



Administrative Code in April of 2009.<sup>21</sup> In total, twenty-eight responses were received by the commission opposing the proposed legislation. Agencies ranging from the New Jersey Firefighters Mutual Benevolent Association to the Board of Chosen Freeholders submitted comments and amendments, which collectively advocated that the Emergency Temporary Layoff Rule (ETLR) would run counter to economic stimulus efforts and would disproportionately affect lower-income workers.<sup>22</sup> Unfortunately for these agencies, the CSC ultimately decided that regardless of the negative impacts, “temporary layoffs are still preferable to the imposition of permanent layoffs,” and that temporary layoffs would “equalize sacrifice and minimize disruption, serving as an equitable means of sharing the burden of reducing the costs of government in the face of sharply declining revenues.”<sup>23</sup>

Other organizations still were not satisfied. Opposition headed by the Communications Workers of America (CWA), which represents 40,000 state employees, addressed the problems of furlough days. Hetty Rosenstein, the CWA state director stated:

Our members who work for Motor Vehicles live paycheck to paycheck, and the governor is asking them to give up nearly 9% of their income . . . . The governor’s furlough today cuts services for the public, cuts wages for workers, but saves the state no money whatsoever. It’s time for the governor to stop his political posturing, get back to the table and work with the unions to achieve real solutions to the problems the state is facing.<sup>24</sup>

---

<sup>21</sup> Temporary Layoffs, N.J. Civ. Serv. Comm’n, R. 2009, d. 206, at 2 (May 22, 2009), available at <http://www.state.nj.us/csc/laws/rules/TempLayoffWEB.pdf>.

<sup>22</sup> See *id.* at 2-3.

<sup>23</sup> *Id.* at 4-5.

<sup>24</sup> Hester & Lagomarsino, *supra* note 18.



Other commentators echo these complaints, noting that estimated savings do not parallel the drastic reduction in services provided.<sup>25</sup>

In April of 2009, the New Jersey Appellate Division accelerated an appeal regarding the emergency regulation.<sup>26</sup> Ultimately, the court opined that the emergency layoff regulation complied with the statutory requirement embodied in N.J.S.A. 52:14B-4(c), which gives the Civil Service Commission and the Governor the authority to take managerial action that supersedes the stipulations of a collective bargaining agreement if there is the existence of an “imminent peril.”<sup>27</sup> Further, the court reasoned, “a decision to lay off all employees in a layoff unit, even on a temporary basis, must be considered a managerial prerogative, and lawfully embodied in the emergent regulation.”<sup>28</sup> After all is said and done, however, the ETLR does not provide a long-lasting solution to reduce spending.

In contrast, Governor Christie’s approach towards reducing the budget deficit focuses on permanent, line-item spending cuts. Yet again, however, this action neglects to examine the opportunity for savings through efficiency gains, rather than a flat out reduction in services.<sup>29</sup> Before addressing the proposed budget cuts though, one proposal that merits further discussion is declaring a state fiscal emergency, which

---

<sup>25</sup> Editorial, *2-Day Furloughs For State Staff Woefully Short as Fiscal Remedy*, HOME NEWS TRIBUNE (East Brunswick, NJ), Feb. 19, 2009, available at 2009 WLNR 21501943.

<sup>26</sup> *In re* Emergency Temporary Layoff Rule, Nos. A-3626-08T2, A-3627-08T2, A-3656-08T2, A-3657-08T2, 2009 N.J. Super. Unpub. LEXIS 1549, at \*2 (N.J. Super. Ct. App. Div. Apr. 17, 2009).

<sup>27</sup> *Id.* “Given the economic crisis confronting the state and nation, and the fluid and rapidly unfolding circumstances in which we live, we find the statement of ‘imminent peril’ to be sufficient.” *Id.*

<sup>28</sup> *Id.* at \*4.

<sup>29</sup> Again, it must be noted that this article does not suggest that efficiency gains are profitable enough to eliminate the \$2.1 billion budget gap, but that it should be a primary consideration before eliminating promising services.

was considered during the 2009 gubernatorial campaign and recently implemented by Governor Christie.<sup>30</sup>

Under N.J.S.A. App. A:9-33 *et seq.*, the New Jersey Governor can expand their executive power over state services by declaring a fiscal emergency.<sup>31</sup> N.J.S.A. App. A:9-34 provides:

The Governor is authorized to utilize and employ all the available resources of the State Government and of each and every political subdivision of this State, whether of men, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to avoid or protect against any emergency subject to the future payment of the reasonable value of such services and privately owned property . . . .<sup>32</sup>

---

<sup>30</sup> See Terrence Dopp, *Christie Said to Consider Declaring Fiscal Emergency*, BLOOMBERG (Nov. 10, 2009), <http://www.bloomberg.com/apps/news?pid=20601103&sid=aodBFRcI9mpk#>.

<sup>31</sup> New Jersey Statutes Annotated Appendix A:9-33 provides:

The purpose of this act is to provide for the health, safety and welfare of the people of the State of New Jersey and to aid in the prevention of damage to and the destruction of property during any emergency as herein defined by prescribing a course of conduct for the civilian population of this State during such emergency and by centralizing control of all civilian activities having to do with such emergency under the Governor and for that purpose to give to the Governor control over such resources of the State Government and of each and every political subdivision thereof as may be necessary to cope with any condition that shall arise out of such emergency and to invest the Governor with all other power convenient or necessary to effectuate such purpose.

N.J. STAT. ANN. § App. A:9-33 (West, Westlaw through L.2011, c.25 and J.R. No. 2).

<sup>32</sup> *Id.*

Though these provisions extend the Governor's power, they serve as no guarantee that the use of such power will provide a remedy to the emergency.

Politically, declaration of a fiscal emergency may convey the recognition of severe monetary concerns, but it is not a solution in and of itself. This was evidenced in 2006 by Executive Order No. 17,<sup>33</sup> in which Governor Corzine declared a fiscal emergency, exacting the power to furlough state workers and cancel non-essential services.<sup>34</sup> Little was accomplished and four years later the budget is still in dire straits. Though Governor Christie himself has even acknowledged the controversial nature of using this executive power,<sup>35</sup> he has nevertheless utilized this action as a first step.<sup>36</sup> Under Executive Order No. 14, Governor Christie has declared a state of fiscal emergency and effectuated an immediate spending freeze.<sup>37</sup>

In his first 2009 address to the New Jersey Legislature, Governor Christie focused on the state budget, and outlined his plan to end "the days of Alice in Wonderland budgeting in Trenton."<sup>38</sup> Governor Christie remarked:

---

<sup>33</sup> N.J. Exec. Order No. 17, (July 1, 2006), *reprinted at* 38 N.J.R. 3090(a) (Aug. 7, 2006), *available at* <http://www.state.nj.us/infobank/circular/eojsc17.htm>.

<sup>34</sup> *See Fiscal Emergency is Option for NJ's Gov-Elect*, ASSOCIATED PRESS, Nov. 11, 2009, *available at* <http://www.zimbio.com/Jon+Corzine/articles/dZWxYIcH2IK/Fiscal+emergency+option+NJ+gov+elect>.

<sup>35</sup> *Id.*

<sup>36</sup> *See* N.J. Exec. Order No. 14 (Feb. 11, 2010), *reprinted at* 42 N.J.R. 660(b) (Mar. 15, 2010).

<sup>37</sup> *Id.*

<sup>38</sup> *Remarks of Governor Chris Christie to the Special Session of the New Jersey Legislature Regarding the Budget for Fiscal Year 2010*, STATE OF NEW JERSEY (Feb. 11, 2009), <http://www.state.nj.us/governor/news/addresses/2010s/approved/20100211.html>.

This year's budget projected 5.1% growth in sales tax revenue and flat growth in corporate business tax revenues. In June of 2009, was there anyone in New Jersey, other than in the department of treasury, who actually believed any revenues would grow in 2009-2010? With spiraling unemployment heading over 10%, with a financial system in crisis and with consumers petrified to spend, only Trenton treasury officials could certify that kind of growth. In fact, sales tax revenue is not up 5%, it is down 5.5%; and corporate business tax revenue is not flat, it is down 8%.<sup>39</sup>

To counteract these problems, Governor Christie announced a series of spending cuts on over 375 state programs, including spending freezes on unspent funds to upgrade energy systems in state facilities, reduction in the state municipal aid program, delay of capital improvements to state buildings, correctional facilities and state parks, and a drastic decrease in state school aid.<sup>40</sup>

Again, this article does not suppose that compressed work weeks will cure the fiscal woes in one fell swoop, but it does appear to accomplish the aims of Republicans, Democrats, and Independents alike. Efficiency gains are non-partisan, and are a worthwhile and necessary first step in promoting a healthy state economy. As Harold Wolman and George Peterson acknowledge, "[e]xpenditures can be reduced without reducing service levels through gains in efficiency. Such gains may result . . . through changes in the process of producing services which result in a lower production cost."<sup>41</sup> Certainly, efficiency should be a top priority.

## B. NEW JERSEY'S CURRENT ENERGY INITIATIVES

Regardless of one's personal beliefs on the theory of climate change, New Jersey's Legislature has recognized global

---

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Wolman & Peterson, *supra* note 15, at 794.

warming as a severe threat to our citizens, and has been at the forefront of promoting legislative action to reduce greenhouse gas (GHG) emissions.<sup>42</sup> It is estimated that in 2004, greenhouse gas emissions from electricity generation and heating sectors of New Jersey were 80.6 million metric tons of CO<sub>2</sub> equivalents.<sup>43</sup>

Under New Jersey's current initiatives, a goal has been set to reduce these emissions by 80% of the 2006 levels by 2050,<sup>44</sup> and, as mentioned above, New Jersey should receive praise as a leading advocate against global warming. Recently, New Jersey ranked fourth in the American Council for an Energy-Efficient Economy "scorecard" for implementing transportation policies designed to reduce greenhouse gases.<sup>45</sup> However, these gains in energy efficiency have come at an outrageously high cost.

In 2006, Governor Corzine effectuated Executive Order No. 11, which established the position of Director of Energy Savings, and aimed to cement New Jersey's role as a leading force in curbing emissions.<sup>46</sup> Executive Order No. 11 also recognized the positive monetary effect of energy conservation,<sup>47</sup>

---

<sup>42</sup> BARRY G. RABE, GREENHOUSE & STATEHOUSE: THE EVOLVING STATE GOVERNMENT ROLE IN CLIMATE CHANGE 36 (Pew Center on Global Climate Change ed., 2002).

<sup>43</sup> N.J. Energy Master Plan: Greenhouse Gas Emissions Fact Sheet, STATE OF NEW JERSEY, <http://www.state.nj.us/emp/facts/pdf/factsghg.pdf> (last visited Apr. 2, 2011).

<sup>44</sup> N.J. STAT. ANN. § 26:2C-38 (West, Westlaw through L.2011, c.65 and J.R. No. 3).

<sup>45</sup> MAGGIE ELDRIDGE ET AL., THE 2008 STATE ENERGY EFFICIENCY SCORECARD 19 (Am. Council for an Energy Efficient Econ. ed., 2008), available at <http://www.aceee.org/research-report/eo86>.

<sup>46</sup> N.J. Exec. Order No. 11 (Apr. 22, 2006), reprinted at 38 N.J.R. 2235(a) (June 5, 2006), available at <http://www.state.nj.us/infobank/circular/eojsc11.htm>.

<sup>47</sup> See *id.* Executive Order No. 11 provided in part:

WHEREAS, New Jersey State government controls hundreds of buildings throughout the State and spends nearly \$128 million annually on energy for its various facilities; and . . . WHEREAS, reducing energy usage through energy efficiency and increased use of renewable energy will improve the State's

and compels the Director of Energy Savings to “[c]oordinate with the agencies that own, lease, occupy or maintain State buildings to implement immediate energy efficiency practices.”<sup>48</sup> The expense of this added layer of bureaucracy is not cheap, and regardless of its proposal to increase efficiency, it relies heavily on expending funds for technological change and innovation.<sup>49</sup>

New Jersey’s efforts over the past decade are commendable, and in some sense do advocate for energy efficiency; but the goal of this article is to recognize a change that would reduce the role of bureaucracy, that would create an immediate decrease in costs, and that would require little to no additional funding. What follows is a brief examination of some of the current New Jersey energy initiatives.

### GLOBAL WARMING RESPONSE ACT

On July 6, 2007, the New Jersey Legislature passed the Global Warming Response Act (“Act”), which aimed to reduce greenhouse gas emissions to 80% below the 2006 level by the year 2050.<sup>50</sup> Acknowledging the current skepticism confronting man-made climate change, the Act reasons that ultimately it is in New Jersey’s best interest to confront pollution emissions head-on:

[W]hile this global warming may be a theory to some, the effects of increasing levels of greenhouse gases in the atmosphere are accepted by many

---

economy by exerting downward pressure on natural gas prices and otherwise lowering the cost of energy . . . .

*Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *But see* David E. Adelman & Kristen H. Engel, Symposium, *Reorienting State Climate Change Policies to Induce Technological Change*, 50 ARIZ. L. REV. 835, 847 (2008) (arguing that “technological change continues to be overshadowed by policymakers and public interest in direct commitments to reducing GHG emissions.”).

<sup>50</sup> N.J. STAT. ANN. § 26:2C-38 (West, Westlaw through L.2011, c.65 and J.R. No. 3).

respected scientists and members of the international community as seriously detrimental to the ecosystems and environment of the world; that, ultimately, if steps are not taken to reverse these trends, the effects on human, animal and plant life on Earth may be catastrophic . . . .<sup>51</sup>

To meet the needs of reducing emissions, the Act required, among other things, the appropriation of an “Energy Master Plan Committee,” charged with recommending policies to reduce emission of greenhouse gas from the “production, processing, distribution, transmission, storage, or use of energy.”<sup>52</sup>

In December of 2009, the New Jersey Department of Environmental Protection (“DEP”) published a report discussing New Jersey’s achievements in meeting the goals outlined in the Global Warming Response Act.<sup>53</sup> The report relied on studies provided by the Center for Climate Strategies and Rutgers University Center for Energy, Economic & Environmental Policy, which assessed GHG emission reduction within the state.<sup>54</sup> Among its findings, the report suggests that the largest GHG emissions reduction potential rests in the transportation sector, followed by the waste management and building sectors.<sup>55</sup> A compressed workweek has the potential to positively affect each of these areas.

---

<sup>51</sup> *Id.*

<sup>52</sup> N.J. STAT. ANN. § 26:2C-42 (West, Westlaw through L.2011, c.65 and J.R. No. 3).

<sup>53</sup> N.J. DEP’T OF ENVTL. PROT., MEETING NEW JERSEY’S 2020 GREENHOUSE GAS LIMIT: NEW JERSEY’S GLOBAL WARMING RESPONSE ACT RECOMMENDATIONS REPORT 1 (2009), available at [http://www.nj.gov/globalwarming/home/documents/pdf/njgwra\\_final\\_report\\_dec2009.pdf](http://www.nj.gov/globalwarming/home/documents/pdf/njgwra_final_report_dec2009.pdf).

<sup>54</sup> *Id.* at 6.

<sup>55</sup> *Id.*



## NEW JERSEY ENERGY MASTER PLAN

The New Jersey Energy Master Plan (“EMP”), as required by N.J.S.A. 52:27F-14, was passed under the hand of Governor Corzine in October 2008.<sup>56</sup> This plan essentially outlines a roadmap to meeting New Jersey’s energy challenges.<sup>57</sup> While the EMP addresses the difficulty in embracing clean energy, five major goals are outlined: (1) maximize the State’s energy conservation and energy efficiency to achieve reductions in energy consumption of at least 20% by 2020; (2) reduce peak demand for electricity by 5,700 MW by 2020; (3) strive to surpass the current RPS goals with a goal of achieving 30% of the State’s electricity needs from renewable sources by 2020; (4) develop a 21st century energy infrastructure that supports the goals and action items of the Energy Master Plan, ensures the reliability of the system, and makes available additional tools to consumers to manage their energy consumption; and, (5) invest in innovative clean energy technologies and businesses to stimulate the industry’s growth in New Jersey.<sup>58</sup>

Among the actions taken by the State in accordance with the EMP, New Jersey has implemented prioritized energy audits, upgraded its lighting resources to reduce lighting consumption by 58%, and developed a new recycling program for state facilities.<sup>59</sup> As stated above, the Office of Energy Savings was also created to search for solutions to improve efficiency.<sup>60</sup> This new office “was charged with ensuring that New Jersey State government would lead by example, identifying and implementing ways to reduce energy consumption and cost in state buildings and utilizing clean, renewable energy alternatives.”<sup>61</sup> The Office of Energy Savings

---

<sup>56</sup> See *New Jersey Energy Master Plan*, *supra* note 1.

<sup>57</sup> *Id.*

<sup>58</sup> *New Jersey Energy Master Plan*, *supra* note 1, at 4-5.

<sup>59</sup> *Id.* at 89.

<sup>60</sup> N.J. Exec. Order No. 11, *supra* note 46.

<sup>61</sup> John H. Rhodes, *Energy Master Plan Progress: State Government*, N.J. DEP’T OF TREASURY, OFFICE OF PUB. FIN., 2 (Oct. 1, 2009), [http://www.state.nj.us/treasury/public\\_finance/pdf/energy-plan.pdf](http://www.state.nj.us/treasury/public_finance/pdf/energy-plan.pdf).

and the EMP address increasing the efficient use of energy among state operated facilities, and while they do not address the potential impact of compressed workweeks, they do not outright reject such a concept.<sup>62</sup>

### NEW JERSEY CLEAN ENERGY PROGRAM

One of the more effective, yet costly, energy policies adopted in New Jersey is the Clean Energy Program (“CEP”). Established in 2003 by the New Jersey Board of Public Utilities (“BPU”),<sup>63</sup> the CEP is a ratepayer program that provides financial incentives to encourage efficient energy use and installation of renewable energy technology.<sup>64</sup> In 2008 alone, the CEP distributed rebates to over 24,000 residents for the purchase of high efficiency cooling and heating equipment, provided 7,239 low-income homes energy efficiency improvements (“at no cost to the customer”), and paid rebates to almost 14,000 customers that purchased efficient window air conditioners.<sup>65</sup>

According to BPU’s 2008 Annual Report, the CEP saved 335,001 megawatt hours and avoided 418,463 tons of CO<sub>2</sub> emissions through its local projects.<sup>66</sup> Certainly, these figures are commendable, but what in fact did this program cost? “In 2008, over \$112 million was spent directly on incentives paid to customers or on measures installed in customers’ homes.”<sup>67</sup> Additionally, before Governor Corzine’s tenure ended, the BPU approved a budget providing an additional “\$269 million in new

---

<sup>62</sup> *New Jersey Energy Master Plan*, *supra* note 1, at 89.

<sup>63</sup> *About NJCEP*, NJCLEANENERGY.COM, <http://www.njcleanenergy.com/main/about-njcep/about-njcep> (last visited April 2, 2011).

<sup>64</sup> *What is N.J. Doing About Climate Change*, STATE OF NEW JERSEY, <http://www.state.nj.us/globalwarming/initiatives/> (last visited April 2, 2011).

<sup>65</sup> N.J. BD. OF PUB. UTIL., 2008 ANNUAL REPORT 12, *available at* <http://www.bpu.state.nj.us/bpu/pdf/about/annualreports/2008.pdf>.

<sup>66</sup> *Id.* at 11.

<sup>67</sup> *Id.*

funding to promote and deliver renewable energy and energy efficiency solutions,” including increased rebates from \$30 to \$50 for purchases of energy efficient refrigerators and freezer and incentives to retrofit lighting fixtures.<sup>68</sup> Is it any wonder why Governor Christie cut funding for the Clean Energy Fund in his 2011 budget?<sup>69</sup>

### REGIONAL GREENHOUSE GAS INITIATIVE

New Jersey is also part of the Regional Greenhouse Gas Initiative (“RGGI”), a ten-state cooperative effort working to implement regional cap-and-trade programs for power plants.<sup>70</sup> Under the RGGI, participating states are linked through CO<sub>2</sub> allowance reciprocity, and regulated power plants can use a CO<sub>2</sub> allowance granted by any of the states.<sup>71</sup> Under a phased approach, participants in the RGGI implement state-specific programs modeled on an RGGI model rule, in an attempt to decrease a CO<sub>2</sub> emissions budget (cap) by ten percent.<sup>72</sup> By “[p]roviding a market-based emissions auction and trading system where electric power generators can buy, sell and trade CO<sub>2</sub> emissions allowances” and participating in a “tracking

---

<sup>68</sup> Press Release, New Jersey Board of Public Utilities, New Jersey Board of Public Utilities Approves 2010 Budget for New Jersey’s Clean Energy Program (Dec. 16, 2009), *available at* <http://www.state.nj.us/bpu/newsroom/news/pdf/20091216.pdf>.

<sup>69</sup> OFFICE OF MGMT. AND BUDGET, FISCAL 2011: BUDGET IN BRIEF 94 (2010), *available at* <http://www.state.nj.us/treasury/omb/publications/11bib/BIB.pdf>.

<sup>70</sup> *Fact Sheet*, REGIONAL GREENHOUSE GAS INITIATIVE, [http://www.rggi.org/docs/RGGI\\_Fact\\_Sheet.pdf](http://www.rggi.org/docs/RGGI_Fact_Sheet.pdf) (last visited Apr. 2, 2011). Participants in the RGGI include Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. *State Statutes & Regulations*, REGIONAL GREENHOUSE GAS INITIATIVE, <http://www.rggi.org/design/regulations> (last visited Apr. 2, 2011).

<sup>71</sup> *Program Design*, REGIONAL GREENHOUSE GAS INITIATIVE, <http://www.rggi.org/design> (last visited April 2, 2011); *Fact Sheet*, *supra* note 70.

<sup>72</sup> *Program Design*, *supra* note 71; *Fact Sheet*, *supra* note 70.

system,” New Jersey will attempt to decrease emissions and utilize state resources more efficiently.<sup>73</sup>

On February 13, 2007, Governor Corzine also mandated that the Greenhouse Gas (“GHG”) Inventory serve as a permanent system in which the Department of Environmental Protection (“DEP”) develops an inventory of the state’s GHG emissions, and coordinates the results with the RGGI.<sup>74</sup> Like the EMP, this initiative calls for approximately a twenty percent reduction in GHG emissions by 2020, an eighty percent reduction in emissions by 2050, and reliance on the NJDEP for recommendation on how to achieve these reductions.<sup>75</sup>

Along the same line, in 2008, New Jersey Assemblywoman L. Grace Spencer promoted an act to monitor electricity usage in State buildings as a method to reduce energy consumption.<sup>76</sup> Under this legislation, the Division of Property Management and Construction (a subdivision of the Department of the Treasury) is required to conduct a study measuring electricity usage by owned or leased state facilities, and “[b]ased on the findings of the study, the division shall develop and implement procedures, beginning six months after the date of enactment of this act, to reduce electric usage by a total of 10 percent over a two-year period in each building or facility owned or leased by the State.”<sup>77</sup> Assemblywoman Spencer’s proposed legislation supports the same fundamental goals that a compressed workweek could help realize; in fact, these studies could prove vital to measuring the success of a four-ten initiative.

---

<sup>73</sup> RGGI, ENERGY & UTILITY CONFERENCE.ORG, [http://www.energyandutilityconference.org/Assets/2009%20Conference/2009%20Presentations/2009\\_Hot%20Topics\\_Jacob.pdf](http://www.energyandutilityconference.org/Assets/2009%20Conference/2009%20Presentations/2009_Hot%20Topics_Jacob.pdf) (last visited Apr. 2, 2011).

<sup>74</sup> *State and Local Climate and Energy Programs – New Jersey*, ENVTL. PROTECTION AGENCY, <http://www.epa.gov/statelocalclimate/state/tracking/individual/nj.html#a05-i> (last visited Apr. 2, 2011).

<sup>75</sup> N.J. Dep’t Envtl. Prot., *supra* note 7, at 3.

<sup>76</sup> Assem. B. 707, 213th Gen. Assem., (N.J. 2008) *available at* [http://www.njleg.state.nj.us/2008/Bills/A1000/707\\_I1.HTM](http://www.njleg.state.nj.us/2008/Bills/A1000/707_I1.HTM).

<sup>77</sup> *Id.*

## THE UNDETERMINED FUTURE OF NEW JERSEY ENERGY POLICY

While Governor Corzine was a firm believer in global warming and energy conservation, Governor Christie has been less vocal about implementing environmentally conscious changes focusing primarily on economic concerns. During his 2008 campaign, Chris Christie listed eight methods to utilize clean energy production in industry through his eighty-eight step platform, as outlined on his campaign website;<sup>78</sup> however, his initial action in office does not reflect such a desire. Five of the proposed solutions focus on encouraging greater energy production within the state (primarily through tax incentives), and three of the solutions focus on the installation of solar panels throughout the state.<sup>79</sup> Instead, as noted above, Governor Christie has deferred spending on energy efficiency by freezing unspent monies distributed to install energy efficiency upgrades in state buildings.<sup>80</sup> Additionally, Governor Christie eliminated \$18,000,000 from New Jersey's Clean Energy Fund.<sup>81</sup> Again, it would be premature to predict the direction the newly elected governor will lead us in terms of energy policy, but presently it does not appear that his position would oppose a compressed workweek.

In summary, New Jersey has contemplated and enacted a number of energy initiatives, each of which monitor energy use and seek improved methods for energy consumption. While the RGGI is essentially its own animal, none of the current policies would be dislodged by introducing alternative work schedules among a limited number of state agencies. In fact, a compressed

---

<sup>78</sup> *88 Ways Chris Christie Will Fix New Jersey*, THE VISITING SCHOLAR (Nov. 27, 2009), <http://thevisiting scholar.blogspot.com/2009/11/88-ways-chris-christie-will-fix-new.html>.

<sup>79</sup> *Id.*

<sup>80</sup> *Remarks of Governor Chris Christie to the Special Session of the New Jersey Legislature Regarding the Budget for Fiscal Year 2010*, *supra* note 38.

<sup>81</sup> *Rebuilding NJ's Economy: FY 2010 Budget Solutions as a Foundation for Reform*, N.J. DEPT OF AGRIC., <http://www.state.nj.us/governor/news/news/552010/pdf/FY2010BudgetSolutions0219.pdf> (last visited April 2, 2011).

work schedule is directly in line with the New Jersey Energy Master Plan. But what is a compressed workweek and how would it help?

### III. THE 4/10 SOLUTION

Now that we have addressed the recent and current state of New Jersey's energy and fiscal situation, it is time to look forward. As stated above, this article asks readers to reconsider a shift in the current working time structure, and adjust from the typical Monday-Friday, 9-5 workweek, to a four-day-per-week, ten-hour-per-day system. A compressed workweek is not a new concept, though it is an idea that has been gaining momentum over the past several years.

#### A. A BRIEF LOOK AT FEDERAL LEGISLATION FOR ALTERNATIVE WORK SCHEDULES

Use of alternative work schedules has long been considered by federal lawmakers as a method to reduce commuting costs and increase productivity.<sup>82</sup> Spurred by the success of alternative work schedules in the private sector, Congress aimed to initiate similar work schedules among federal employees.<sup>83</sup> In 1978, the Federal Employees Flexible and Compressed Work Schedules Act ("FEFCWA") was enacted as an experimental program to evaluate the use of alternative work

---

<sup>82</sup> While this note focuses on the use of a compressed workweek, it should also be recognized that as of 2004, approximately 27 million full-time wage and salary workers had flexible work schedules, which allow the employees to vary the time they begin or end work. Bureau of Labor Statistics, *Workers on Flexible and Shift Schedules in 2004 Summary*, U.S. DEP'T OF LABOR (July 1, 2005, 10:00 AM), <http://www.bls.gov/news.release/flex.nro.htm>.

<sup>83</sup> "The Congress finds that new trends in the usage of 4-day workweeks, flexible work hours, and other variations in workday and workweek schedules in the private sector appear to show sufficient promise to warrant carefully designed, controlled, and evaluated experimentation by Federal agencies over a 3-year period to determine whether and in what situations such varied work schedules can be successfully used by Federal agencies on a permanent basis." Federal Employees Flexible and Compressed Work Schedules Act of 1978, Pub. L. No. 95-390, 92 Stat. 755-62 (1978).

schedules in federal agencies.<sup>84</sup> At the conclusion of the initial three-year experimental program, questions remained as to the effectiveness of the program, and Congress amended the law to continue the experiment for an additional three years.<sup>85</sup> When the second experimental phase concluded in 1985, the General Accounting Office presented positive findings among both federal employees and the employing agencies, supporting continued use of alternative work schedules.<sup>86</sup> In December of 1985, Congress permanently authorized FEFCWA.<sup>87</sup> As stated in the FEFCWA, “[t]he Congress finds that the use of flexible and compressed work schedules has the potential to improve productivity in the Federal Government and provide greater service to the public.”<sup>88</sup>

Apart from the original intent to increase productivity and reduce commuting costs to employees, more recent studies suggest that alternate work schedules also create a positive impact on air quality. In 1998, the Environmental Protection Agency (“EPA”) addressed the use of “Transportation Control Measures” to meet the goals specified in the Clean Air Act.<sup>89</sup> The EPA report advocated use of compressed workweeks because there would be “fewer vehicle miles traveled across the work week and employees will be arriving and departing during

---

<sup>84</sup> *Id.*; see also *Bureau of Land Mgmt. v. Fed. Labor Relations Auth.*, 864 F.2d 89, 90 (9th Cir. 1988); *Blair v. United States*, 15 Cl. Ct. 763, 766 (1988).

<sup>85</sup> Federal Employees Flexible and Compressed Work Schedules Act of 1982, Pub. L. 97-221, 96 Stat. 227 (1982).

<sup>86</sup> See 131 Cong. Rec. H5907 (daily ed. July 18, 1985) (statements of Reps. Ackerman & Gilman).

<sup>87</sup> Federal Employees Flexible and Compressed Work Schedules Act of 1982, Pub. L. 99-196, 99 Stat. 1350 (1985) (codified as amended by 5 U.S.C. § 6120-31).

<sup>88</sup> 5 U.S.C. § 6120 (West, Westlaw through P.L. 112-12).

<sup>89</sup> ENVTL. PROTECTION AGENCY, EPA420-S-98-014, TRANSPORTATION CONTROL MEASURES: WORK SCHEDULE CHANGES (1998). The EPA classifies a compressed workweek as a transportation control measure because it would reduce the number of drivers during peak travel times. *Id.*



non-peak periods, thus reducing concentrations of ozone precursors.”<sup>90</sup>

Even recently, we have seen a renewed push for expansion of compressed workweeks for federal employees because of the potential monetary and energy savings. Following a severe rise in gas prices in 2008, Congressman Steny Hoyer of Maryland wrote to Linda Springer, then Director of the Office of Personnel Management, stressing the need for additional federal agencies to shift to a four-day, 40-hour workweek.<sup>91</sup> In his letter, Congressman Hoyer addressed the benefits of a work schedule shift:

American consumers are using less gasoline this summer, as prices have reached historic highs. Many Americans, including our hard-working federal employees, simply cannot afford to maintain their regular driving habits. State and local governments across the nation, including New Mexico, Virginia, and Utah, are implementing 4-day work weeks to conserve energy, reduce fuel consumption, and alleviate congestion.<sup>92</sup>

Unfortunately for Congressman Hoyer and his constituents, his effort was stifled, ironically, due to transition in personnel at the Office of Personnel Management, and a response has yet to be given.<sup>93</sup>

## B. FOUR/TEN SCHEDULES AT THE STATE AND LOCAL LEVEL

While the use of a compressed workweek and flexible work schedules for various federal employees still exists, it is

---

<sup>90</sup> *Id.*

<sup>91</sup> Letter from Steny Hoyer, U.S. Rep., to Linda Springer, Dir. of the Office of Pers. & Mgmt. (Aug. 4, 2008), available at [http://hoyer.house.gov/index.php?option=com\\_content&view=article&id=1663&catid=31:2008-press-releases](http://hoyer.house.gov/index.php?option=com_content&view=article&id=1663&catid=31:2008-press-releases).

<sup>92</sup> *Id.*

<sup>93</sup> Alyssa Rosenberg, *House Majority Leader Calls for Expanding Alternative Work Schedules*, GOVERNMENTEXECUTIVE.COM (Aug. 20, 2008), <http://www.govexec.com/dailyfed/0808/082008ar1.htm>.

incumbent upon the states to implement similar policies at state and local levels.<sup>94</sup> By and large, compressed workweeks are popular particularly among local and municipal levels, where recent estimates suggest one-sixth of U.S. cities with populations greater than 25,000 offer city employees a four-day workweek.<sup>95</sup> And the trend appears to be growing. A number of states, particularly on the local level, and their representatives have begun to call for the implementation of alternative work schedules. For instance, in 2008 the town of Fishkill, New York implemented a four-day workweek; the scheduling shift received high praise from a majority of the town's residents and employees.<sup>96</sup> Similarly, local governments in the cities of El Paso, Texas and Birmingham, Alabama have recently mandated compressed, four-day workweeks.<sup>97</sup>

Iowa, Hawaii, and the State of Washington have also begun to tout the idea of a four-day workweek. Iowa Governor Chet Culver, following the recommendation of a consulting firm hired to strategize budget-cutting moves, commented that, "Overall, the Utah experience has been a positive one . . . [N]ot only have states like Utah moved to it, but a lot of city and local

---

<sup>94</sup> It appears that the trend among employers to offer flexible work schedules gained significant momentum throughout the 1990's, where the percentage of U.S. workers who reported having the ability to restructure work schedules increased from 15% to 28%. Peter Berg et al, *Contesting Time: International Comparisons of Employee Control of Working Time*, 57 INDUS. & LAB. REL. REV. 331, 341 (2004).

<sup>95</sup> Susan Seitel, *Compressing the Work Week*, 15 NO. 4 EMPLOYER'S GUIDE TO FRINGE BENEFIT RULES NEWSLETTER 3 (Thompson Publishing Group, Washington, D.C.), Oct. 2008.

<sup>96</sup> *Four Day Work Week Roundtable*, PATTERN FOR PROGRESS at 2, 3 (Dec. 8, 2008), <http://pattern-for-progress.org/sites/default/files/documents/FourDayWorkWeekRoundtableReport.pdf>.

<sup>97</sup> Press Release, City Departments Prepare for 4/10 Work Week (Apr. 16, 2010), <http://www.elpasotexas.gov/community/issue.asp?no=3&dte=04-16-10>; Joseph Bryant, *Birmingham City Employees to Have Four-Day Work Week to Save Money*, THE BIRMINGHAM NEWS, May 28, 2008, available at <http://www.al.com/news/birminghamnews/index.ssf?/base/news/121196268319850.xml&coll=2>. Birmingham officials estimate expected savings for employees as high as \$1 million in gas expenses, and a reduction of five million pounds of CO<sup>2</sup> emissions. *Id.*

governments around the country have experimented with it, too.”<sup>98</sup> While Governor Culver noted the action hinges on legislative approval and changes in the contracts with state employee unions,<sup>99</sup> this is yet another sign that state and local governments are beginning to think outside of the box and look for efficiency gains within existing infrastructure as a necessary first step.

Queens Assemblyman Michael N. Gianaris, has also proposed a four/ten schedule for non-essential New York state employees (some 237,000 workers) in a letter to Governor David Paterson, estimating state savings on building maintenance and transportation costs at \$30 million per year.<sup>100</sup> Reasoning for the use of a four-day workweek, Assemblyman Gianaris stated:

With a historic budget deficit looming, we must identify innovative ways to make our state more efficient . . . . Before deciding which programs to cut and which taxes to levy, we should first exhaust all efforts to do more with less. Establishing a 4-day work week is a win-win proposition that saves tens of millions of dollars, improves the environment, provides flexibility for our state workforce, and expanded access to state services for the public.<sup>101</sup>

Interestingly, Mr. Gianaris commented that the savings could prevent service cuts and increases in bus fares,<sup>102</sup> a fate

---

<sup>98</sup> O. Kay Henderson, *A Four-Day Work Week for State Government?*, IOWA RADIO NEWS NETWORK (Dec. 25, 2009), <http://www.radioiowa.com/2009/12/25/a-four-day-work-week-for-state-government/>.

<sup>99</sup> *Id.*

<sup>100</sup> A.E. Velez, *4-Day Workweek Proposed to Ease the State's Deficit*, N.Y. TIMES, Jan.12, 2009, at A18, available at <http://www.nytimes.com/2009/01/12/nyregion/12workweek.html>.

<sup>101</sup> Press Release, Michael N. Gianaris, Assemblyman Gianaris Proposes 4-Day Work Week for State Workers (Jan. 11, 2009) (on file with author).

<sup>102</sup> *Id.*

New Jersey is now experiencing following Governor Christie's latest budget announcement.<sup>103</sup>

In addition to the potential economic and environmental benefits accompanying a compressed workweek, recent studies have also revealed that employees working under the 4/10 schedule report improvement in their personal and family lives.<sup>104</sup> Brigham Young University researchers Rex L. Facer, II and Lori Wadsworth conducted a study of 132 public employees who operate under alternative work schedules in Spanish Fork, Utah, and found that an overwhelming majority reported a positive experience with the compressed workweek.<sup>105</sup> Importantly, more than 60% of employees reported higher productivity,<sup>106</sup> 63.9% believed citizen access to public services had improved,<sup>107</sup> over 90% reported that childcare arrangements were less difficult or neutral,<sup>108</sup> and over 90% of employees reported high job satisfaction.<sup>109</sup> While it would be naïve to suggest that one study merits a change for the entire state of New Jersey, it certainly should give New Jersey, the employer, something to consider.

### C. UTAH'S 4/10 INITIATIVE

As evidenced above, federal promotion of alternative work schedules extends only so far; it is the responsibility and prerogative of the states alone to implement action. Even in times of a national energy emergency, it is likely that

---

<sup>103</sup> Remarks of Governor Chris Christie to the Special Session of the New Jersey Legislature Regarding the Budget for Fiscal Year 2010, *supra* note 38.

<sup>104</sup> Press Release, Brigham Young Univ., BYU Study Reveals Results of City's Four-Day Work Week (June 9, 2008), available at <http://news.byu.edu/archive08-JUN-4ten.aspx>.

<sup>105</sup> Rex L. Facer, II & Lori Wadsworth, *Alternative Work Schedules and Work-Family Balance: A Research Note*, 28 REV. PUB. PERSONNEL ADMIN. 166, 170-71 (2008).

<sup>106</sup> *Id.* at 170.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 170-71.

<sup>109</sup> *Id.* at 171.

government intervention will be effectuated by the states.<sup>110</sup> Fortunately, it is argued that the most positive impact on reducing energy usage will be fostered through state and local government initiatives, rather than through sweeping federal action.<sup>111</sup> One such example of effecting this change exists in the state of Utah.

Currently, Utah presents the best working model of compressed work schedules on a state level. On July 31, 2008, Governor Huntsman of Utah issued Executive Order 2008-0006, titled “Launching the Working 4 Utah Initiative,” which mandated a year-long program of four-day workweeks for a number of public employees.<sup>112</sup> Under this program, working hours for state agencies were (and still are) adjusted from five eight-hour days a week to four ten-hour days a week and access to government services was expanded through internet and telecommunication services.<sup>113</sup> In issuing this order, Governor Huntsman clearly stated his purpose:

As we go forward with this initiative, we will conserve energy, save money, improve our air quality, and enhance customer service. . . . We live in a dynamic, ever-changing environment, and it’s

---

<sup>110</sup> See Earle H. O’Donnell & Laurel W. Glassman, *Energy Emergencies: Constitutional Constraints on State Efforts to Control Oil Supplies and Prices*, 5 ENERGY L.J. 77, 77 (1984). During the oil crisis of the 1980’s, a number of states advocated use of compressed workweeks to deal with future energy shortages. *Id.* at 83.

<sup>111</sup> See, e.g., Edna Sussman, *Reshaping Municipal and County Laws to Foster Green Building, Energy Efficiency, and Renewable Energy*, 556 PRACTICING L. INST. REAL ESTATE L. & PRACTICE COURSE HANDBOOK SERIES 103, 109 (2008) (“Municipalities can have a substantial impact just by changing their own operations. They own and control thousands and thousands of buildings, vehicle fleets, and energy intensive infrastructure facilities. . . . [L]ocal governments are central to the effort to reduce global warming as they can require the reduction of vehicle miles traveled, encourage better site design, and commission more efficient buildings.”)

<sup>112</sup> Utah Exec. Order No. 2008/0006 (July 31, 2008), available at <http://www.rules.utah.gov/execdoks/2008/ExecDoc140994.htm>.

<sup>113</sup> *Id.* As stated in the Executive Order, this program does not apply to “certain essential government services, such as those within public safety, emergency management, and corrections . . . .” *Id.*

crucial that we take a serious look at how we can adapt and maintain our state's unparalleled quality of life.<sup>114</sup>

In terms of energy, Governor Huntsman hoped to achieve an increase of energy efficiency by twenty percent.<sup>115</sup>

Before implementing the initiative, a baseline report was presented to provide a methodology to help the state evaluate the initiative's impact, focusing on four key areas: (1) state savings on building operational costs, as well as spreading the load on transportation infrastructure; (2) improved availability of services beyond the traditional workday; (3) quality of life benefit to existing state employees, as well as an increased ability to recruit new talent; and (4) reduced energy usage correlates to reduced CO<sub>2</sub> emissions.<sup>116</sup> Similarly, in creating this program, Utah provided a method to analyze both the agency adjustments and energy usage and cost savings measurement.<sup>117</sup>

In February 2009, an interim performance report was released, exhibiting positive results under the baseline methodology. Key among the early indicators provided by the interim report was projected monetary savings. Utah's initial action upon launching the initiative was to renegotiate contracts relating to state owned and operated buildings.<sup>118</sup> Only six months into the program, it was estimated that \$203,177 was saved in reducing custodial service contracts.<sup>119</sup> Additionally, as

---

<sup>114</sup> Press Release, Utah Governor, Governor Huntsman Announces Extended Government Service Hours (June 26, 2008), *available at* [http://www.utah.gov/governor/news\\_media/article.html?article=1724](http://www.utah.gov/governor/news_media/article.html?article=1724).

<sup>115</sup> Press Release, Governor Continues Focus on Energy Efficiency (Oct. 6, 2006), *available at* [http://www.utah.gov/governor/news\\_media/article.html?article=733](http://www.utah.gov/governor/news_media/article.html?article=733).

<sup>116</sup> UTAH GOVERNOR'S OFFICE OF PLANNING & BUDGET, WORKING 4 UTAH: INITIATIVE PERFORMANCE REPORT BASELINE DRAFT 3 (2008), *available at* <http://www.utah.gov/governor/docs/Working4UtahReport.pdf>.

<sup>117</sup> *Id.*

<sup>118</sup> UTAH GOVERNOR'S OFFICE OF PLANNING & BUDGET, WORKING 4 UTAH: INITIATIVE PERFORMANCE REPORT INTERIM DRAFT 4 (2009), *available at* <http://www.utah.gov/governor/docs/Working4UtahInterimReport.pdf>.

<sup>119</sup> *Id.*

per the baseline report guidelines, the study tracked energy usage in 101 out of approximately 900 state buildings. Out of the buildings studied, one half of them achieved a 10%-20% reduction in energy usage.<sup>120</sup>

The Interim Performance Report also indicated positive results for the estimated environmental impact. Notably, it was estimated that the reduced energy usage correlates to an annual reduction of 12,652 metric tons of greenhouse gas emissions.<sup>121</sup> Additionally, the reduction of gasoline usage by commuting public employees was estimated at 744,000 gallons.<sup>122</sup>

The Interim Report also offers promising impacts on several fields indirectly related to the program. First, it appears that a majority of the general public in Utah approve of the initiative. Surveys and reports collected from the Department of Workforce Services, the Utah Center for Health Data, the Utah State Library, and the Division of Motor Vehicles suggest that the general public has utilized the extended hours and experienced decreased wait times.<sup>123</sup> Public employees of Utah have also expressed positive reaction to the legislation. According to the Interim Report, “70% of affected employees prefer the 4/10 schedule[,] employee turnover rates have decreased slightly[,] and employee absenteeism has decreased.”<sup>124</sup>

---

<sup>120</sup> *Id.* These figures were calculated using utility bills as the main source of data to identify electricity and gas usage. *Id.*

<sup>121</sup> *Id.* at 18. This figure was calculated by combining the estimated savings of electricity usage in state facilities (6,095 metric tons of CO<sub>2</sub>) and reduced gas emissions of employee personal vehicle use (6,557 metric tons of CO<sub>2</sub>). *Id.*

<sup>122</sup> UTAH GOVERNOR’S OFFICE OF PLANNING & BUDGET, *supra* note 118, at 18. This statistic was estimated through surveys of 5,535 responses. *Id.*

<sup>123</sup> *Id.* at 9-10.

<sup>124</sup> *Id.* at 12.



## INITIATIVE PERFORMANCE REPORT FINAL

In December 2009, Utah issued a final performance report of the Working 4 Utah initiative.<sup>125</sup> Though fiscal savings were not as high as originally predicted, the overall results were positive and merited continued use of the initiative in all but a few government offices.

Based on utility bill data from August 15, 2008 through August 15, 2009, the overall energy consumption was reduced 10.5%, which led to a cost avoidance savings of \$502,000.<sup>126</sup> As stated above, state agencies also reduced costs of janitorial contracts, saving approximately \$203,000.<sup>127</sup> Additionally, there was an estimated \$1,446,767 in savings due to a reduction in the usage of fleet vehicles, where a total reduction of use for all state vehicles was approximately 3.1 million miles saved.<sup>128</sup>

The final report shows a positive environmental impact from the program as well. According to the Utah Department of Environmental Quality (“DEQ”), greenhouse gas emissions were reduced by 5,494 metric tons from vehicles and 4,546 metric tons from facilities, totaling an overall decrease of 10,040 metric tons of emissions.<sup>129</sup> Additionally, gasoline consumption was reduced by 523,980 gallons during the one-year program.<sup>130</sup> Again, while these savings are below the initial estimates, the overall positive results cannot and should not be overlooked.

The final performance report also accounted for the opinions of both employees under the program and Utah citizens, with a majority of both groups approving of the initiative. Among Utah citizens, 62% had a favorable opinion of the initiative according to a survey conducted in October

---

<sup>125</sup> UTAH GOVERNOR’S OFFICE OF PLANNING & BUDGET, WORKING 4 UTAH: FINAL INITIATIVE PERFORMANCE REPORT 1 (2009), *available at* [http://www.dhrm.utah.gov/Working4Utah\\_FinalReport\\_Dec2009.pdf](http://www.dhrm.utah.gov/Working4Utah_FinalReport_Dec2009.pdf).

<sup>126</sup> *Id.* at 3-4. This calculation took into account an adjustment for weather normalization. *Id.* at 4.

<sup>127</sup> UTAH GOVERNOR’S OFFICE OF PLANNING & BUDGET, *supra* note 118, at 3.

<sup>128</sup> UTAH GOVERNOR’S OFFICE OF PLANNING & BUDGET, *supra* note 125, at 5.

<sup>129</sup> *Id.* at 19.

<sup>130</sup> *Id.*

2009.<sup>131</sup> Among state employees on the four/ten schedule, 82% (an increase from the interim report) wanted to maintain the compressed workweek, and 65% reported increased savings in commuting costs.<sup>132</sup> Further, Utah experienced a 30% decrease in overtime pay from the year prior to the initiative enactment.<sup>133</sup>

Ultimately, the Working 4 Utah Initiative achieved its general goals of cost savings and energy conservation. While it is clear from the data that initially savings projections were overestimated, we should be encouraged, not discouraged by the final results. The decreased consumption of gasoline and carbon emissions, decreased buildings operations costs, and highly positive reaction among Utah's citizens and four/ten employees are indisputable, and Utah's continued use of the compressed schedule is one that is catching on across the nation.

#### IV. IMPLEMENTING A 4/10 INITIATIVE IN NEW JERSEY

The implementation of a compressed, four/ten workweek is a viable solution to decreasing the budget deficit and energy usage in New Jersey. At least on the local level, some New Jersey residents have already experienced the positive effects of a compressed work schedule for government employees. In 2008, Mayor Cindy Rau-Hatton of Gloucester Township, New Jersey implemented the four/ten schedule.<sup>134</sup> Mayor Rau-

---

<sup>131</sup> *Id.* at 3. See also DAN JONES & ASSOCS., SUMMARY OF KEY QUESTIONS 4 (2009), available at <http://www.dhrm.utah.gov/4DayWorkweekKeyCharts.pdf>. It should be noted, however, that the Division of Motor Vehicles and Driver License Division were identified as two offices that newly elected Governor Herbert has decided to re-open on Friday. Robert Gehrke, *Utah Sticks With Four-Day Workweek*, SALT LAKE TRIBUNE, Dec. 12, 2009, available at 2009 WLNR 24393928.

<sup>132</sup> UTAH GOVERNOR'S OFFICE OF PLANNING & BUDGET, *supra* note 125, at 3,16.

<sup>133</sup> Senior, *supra* note 11.

<sup>134</sup> Cindy Rau-Hatton, *A Four Day Week Works in Gloucester*, N.J. STATE LEAGUE OF MUNICIPALITIES, [http://www.njslom.org/magart\\_1008\\_pg90.html](http://www.njslom.org/magart_1008_pg90.html) (last visited May 27, 2011).

Hatton noted a projected estimated savings of \$35,000 in utility bills.<sup>135</sup> Following Gloucester's lead, in July 2008, Long Hill, New Jersey approved a similar four/ten schedule.<sup>136</sup> At least two other New Jersey towns, Irvington and Fanwood, had begun researching the four/ten concept in 2008 as well.<sup>137</sup>

However, the implementation of a compressed workweek on a state level is a much broader undertaking than in a municipality. Presently, Utah provides the most comprehensive model on which to gauge a similar transition. If we consider the relative sizes and populations of the two states, it is likely that New Jersey would achieve similar, positive results. New Jersey's total population is 8,707,739, with a population density of 1,134.5 persons per square mile.<sup>138</sup> Over 530,000 of its citizens are employed by state and local governments.<sup>139</sup> In comparison, Utah has a total population of 2,784,572, with a density of 27.2 persons per square mile.<sup>140</sup> 215,600 Utah citizens work as government employees.<sup>141</sup> While statistical correlation is beyond the scope of this article, it is not a broad reach to assume that positive effects would be multiplied in the more densely and heavily populated state of New Jersey.

---

<sup>135</sup> *Id.*

<sup>136</sup> Leslie Kwoh, *Long Hill Approves 4-day Work Week to Save Costs*, STAR LEDGER (Newark, N.J.), July 11, 2008, available at [http://www.nj.com/news/index.ssf/2008/07/long\\_hill\\_twp\\_approves\\_4day\\_wo.html](http://www.nj.com/news/index.ssf/2008/07/long_hill_twp_approves_4day_wo.html).

<sup>137</sup> Alexi Friedman, *Towns Study Shorter Work Week to Save*, STAR LEDGER (Newark, N.J.), July 9, 2008, available at [http://www.nj.com/news/index.ssf/2008/07/\\_work\\_week11.html](http://www.nj.com/news/index.ssf/2008/07/_work_week11.html).

<sup>138</sup> *State and County QuickFacts – New Jersey*, U.S. CENSUS BUREAU (Nov. 4, 2010), <http://quickfacts.census.gov/qfd/states/34000.html>.

<sup>139</sup> *Current Employment Statistics*, N.J. DEP'T OF LABOR & WORKFORCE DEV., [http://lwd.state.nj.us/labor/lpa/employ/ces/ces\\_index.html](http://lwd.state.nj.us/labor/lpa/employ/ces/ces_index.html) (last visited Apr. 2, 2011).

<sup>140</sup> *State and County QuickFacts – Utah*, U.S. CENSUS BUREAU (Nov. 4, 2010) <http://quickfacts.census.gov/qfd/states/49000.html>.

<sup>141</sup> *Economy at a Glance – Utah*, U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, [http://stats.bls.gov/eag/eag.ut.htm#eag\\_ut](http://stats.bls.gov/eag/eag.ut.htm#eag_ut) (last updated Apr. 1, 2011).

The following section examines one potential approach for adopting a compressed work schedule in New Jersey. While it is not exhaustive, it highlights some of the key areas addressed in the recommendations of the Working 4 Utah Final Report.

### ESTABLISHING A PILOT PROGRAM

While it appears this initiative could be implemented as an emergency power,<sup>142</sup> it would provide for a smoother transition if this policy measure were conducted with the consent of New Jersey's citizens. Even as a proponent of the four-day workweek, it would be irrational to implement this transition without giving the public adequate assurance that this proposal will need to pass a trial basis before becoming a staple of our state. Under this approach, an integral step in assuring this initiative's success is securing the trust and support of New Jerseyans. If we are to assume that this program can work without the backing of the citizens participating in it (i.e. eight and a half million New Jersey residents), this measure will fail before it begins.

As a practical matter then, a pivotal step in implementing the four/ten schedule would be to first establish the change as a pilot program. Under *N.J.S.A. 11A:2-11(i)* the CSC is permitted to establish pilot programs and other projects for a maximum of one year.<sup>143</sup>

*N.J.A.C. 4A:1-4.3(d)* states that a proposed pilot program must be submitted to the Commission and include:

1. A description of the program;

---

<sup>142</sup> *In re* Emergency Temporary Layoff Rule, Nos. A-3626-08T2, A-3627-08T2, A-3656-08T2, A-3657-08T2, 2009 N.J. Super. Unpub. LEXIS 1549, at \*2 (N.J. Super. Ct. App. Div. Apr. 17, 2009).

<sup>143</sup> Unpaid Furlough Days for Unrepresented Emps. Pilot Program, N.J. CIVIL SERV. COMM'N. Doc. No. 2010-163, 2009 N.J. CSC LEXIS 159, at \*3-4 (Aug. 5, 2009), available at <http://www.state.nj.us/csc/msb/decisions09/aug09/IMO%20Unpaid%20Furlough%20Days%20for%20Unrepresented%20Employees%20Pilot%20Program.pdf>. See also *Comm'n Workers of Am. v. N.J. Dep't of Pers.*, 154 N.J. 121, 127 (1998); N.J. ADMIN. CODE § 4A:1-4.3 (2010).

2. The individuals affected by the program;
3. The duration of the program;
4. The anticipated benefits of the program, including an explanation of how the program furthers the purposes of Title 11A [of the New Jersey Statutes Annotated];
5. A summary of appointing authority consultations with negotiations representatives;
6. Evaluation criteria;
7. A statement identifying the sections, if any, of [those] rules or of Title 11A, New Jersey Statutes with which the program is at variance; and
8. Such other information as required by the Commissioner.<sup>144</sup>

In fulfilling the needs of enacting this proposal, it would work well to keep parts of our current energy initiatives in place. Particularly, the full potential of the compressed, four/ten workweek will best be realized by continuing the efforts of legislation to produce more effective methods of metering energy usage. As noted above, current New Jersey legislation, as provided in the New Jersey Energy Master Plan, outlines the production and use of metering technology for measuring the state's energy usage.<sup>145</sup> Coincidentally, this goal iterates a notion suggested by the Final Utah Report, which states:

Closing buildings and determining operation during the rest of the week is critical to estimating potential 4/10 energy savings. In several cases, energy studies were needed to determine the cost avoidance because of a lack of utility meters at

---

<sup>144</sup> Unpaid Furlough Days for Unrepresented Emp. Pilot Program, 2009 N.J. CSC LEXIS 159, at \*3-4.

<sup>145</sup> *New Jersey Energy Master Plan*, *supra* note 1, at 77.

specific buildings. Upgrading the controls and meters in buildings facilitated better consumption habits.<sup>146</sup>

Therefore, current New Jersey legislation has already placed the state facilities on a path that can work in conjunction with the implementation of a four/ten initiative. Following through with this goal of the EMP will allow the State to better measure and quantify the results of the four/ten program.

In creating a pilot program, it would also be effective to coordinate with union agencies and public employees during the planning stages. Per the recommendations of the final Initiative Performance Report, an integral step in creating and managing an effective shift to the four/ten schedule is accounting for the needs of the affected public employees.<sup>147</sup> Three key lessons addressed in the Utah report are: (1) addressing employee fatigue, (2) conducting an energy savings awareness partnership campaign early, and (3) improving the use of alternative transportation.<sup>148</sup> Each of these lessons focuses on a grassroots effort to educate and accommodate employees' major concerns and difficulties with the transition. Though this article advocates the alternate workweek schedule, it would be naïve to think that every employee would wholeheartedly accept this change. By preparing and gaining the support of affected employees, the full potential of the program "cannot be realized without a change in behavior from the people occupying the building[s]."<sup>149</sup>

Additionally, as thousands of public employees are members of a number of collective unions, a transition to the four/ten schedule will benefit from collaboration with these unions from the outset. Intuitively, because this initiative alleviates a majority of the concerns that stemmed from the outcry against temporary layoffs, pushback from the unions will be less costly.

---

<sup>146</sup> UTAH GOVERNOR'S OFFICE OF PLANNING & BUDGET, *supra* note 125, at 20.

<sup>147</sup> *Id.* at 17.

<sup>148</sup> *Id.* at 20.

<sup>149</sup> *Id.*

Ultimately, the policy goals of Governor Huntsman's Working 4 Utah initiative are in lockstep with those outlined in the New Jersey Energy Master Plan. By capitalizing on efficiency, the compressed workweek can create positive change and work for New Jersey.

#### IV. CONCLUSION

It is clear that New Jersey has undertaken proactive measures to address both budget deficits and the demand for increased energy efficiency, but in its attempts, both legislators and citizens have overlooked a simplistic solution that would be an effective first step to combat these problems. The compressed workweek offers a pragmatic, innovative and plausible solution that contributes to solving two of the biggest problems New Jersey faces. Like most of the proposed legislative initiatives, the compressed workweek has its shortcomings, and there are a number of issues that still must be resolved. Fortunately, Utah has paved the way. Its successes and failures provide a reasonable model for implementing a similar program in New Jersey, and highlight key areas that can be improved if New Jersey were to take on such an initiative. To quote Justice Brandeis: "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."<sup>150</sup> There is no better time than now for New Jersey to make this change.

---

<sup>150</sup> *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).