

[Second Reprint]

SENATE, No. 3926

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 10, 2021

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Assemblyman JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

Assemblyman JAMES J. KENNEDY

District 22 (Middlesex, Somerset and Union)

Assemblyman ROBERT J. KARABINCHAK

District 18 (Middlesex)

Co-Sponsored by:

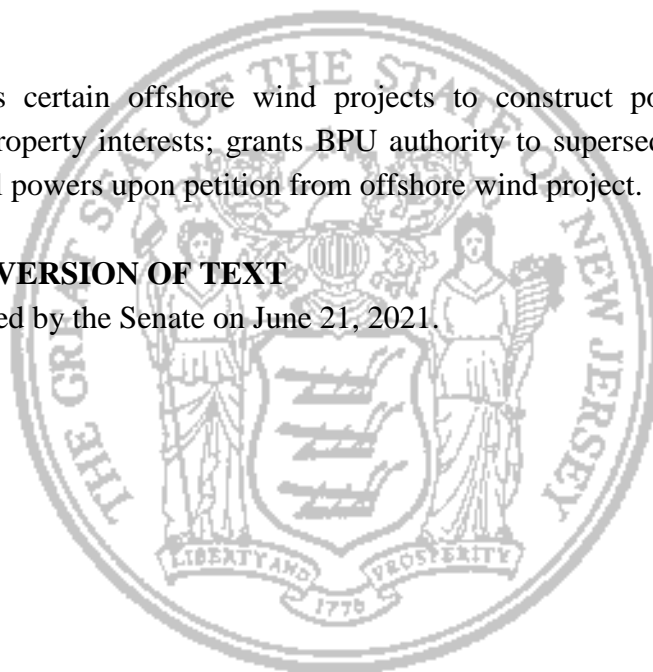
Senator Codey and Assemblyman Caputo

SYNOPSIS

Authorizes certain offshore wind projects to construct power lines and obtain real property interests; grants BPU authority to supersede certain local governmental powers upon petition from offshore wind project.

CURRENT VERSION OF TEXT

As amended by the Senate on June 21, 2021.



(Sponsorship Updated As Of: 6/24/2021)

1 AN ACT concerning offshore wind projects and amending P.L.2010,
2 c.57.

3

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

6

7 1. Section 3 of P.L.2010, c.57 (C.48:3-87.1) is amended to read
8 as follows:

9 3. a. An entity seeking to construct an offshore wind project
10 shall submit an application to the board for approval by the board as
11 a qualified offshore wind project, which shall include, but need not
12 be limited to, the following information:

13 (1) a detailed description of the project, including maps, surveys
14 and other visual aides. This description shall include, but need not
15 be limited to: the type, size, and number of proposed turbines and
16 foundations; the history to-date of the same type, size and
17 manufacturer of installed turbines and foundations globally; a
18 detailed description of the transmission facilities and
19 interconnection facilities to be installed; and a detailed
20 implementation plan that highlights key milestone activities during
21 the permitting, financing, design, equipment solicitation,
22 manufacturing, shipping, assembly, in-field installation, testing,
23 equipment commissioning, and service start-up;

24 (2) a completed financial analysis of the project including pro
25 forma income statements, balance sheets, and cash flow projections
26 for a 20-year period, including the internal rate of return, and a
27 description and estimate of any State or federal tax benefits that
28 may be associated with the project;

29 (3) the proposed method of financing the project, including
30 identification of equity investors, fixed income investors, and any
31 other sources of capital;

32 (4) documentation that the entity has applied for all eligible
33 federal funds and programs available to offset the cost of the project
34 or provide tax advantages;

35 (5) the projected electrical output and anticipated market prices
36 over the anticipated life of the project, including a forecast of
37 electricity revenues from the sale of energy derived from the project
38 and capacity, as well as revenues anticipated by the sale of any
39 ORECs, RECs, air emission credits or offsets, or any tradable
40 environmental attributes created by the project;

41 (6) an operations and maintenance plan for the initial 20-year
42 operation of the project that: details routine, intermittent, and
43 emergency protocols; identifies the primary risks to the built
44 infrastructure and how the potential risks, including but not limited
45 to hurricanes, lightning, fog, rogue wave occurrences, and exposed

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted June 15, 2021.

²Senate floor amendments adopted June 21, 2021.

- 1 cabling, shall be mitigated; and identifies specific and concrete
2 elements to ensure both construction and operational cost controls.
3 This operations and maintenance plan shall be integrated into the
4 financial analysis of the project, and shall identify the projected
5 plan for the subsequent 20 years, following conclusion of the initial
6 20-year operations, assuming any necessary federal lease
7 agreements are maintained and renewed;
- 8 (7) the anticipated carbon dioxide emissions impact of the
9 project;
- 10 (8) a decommissioning plan for the project including provisions
11 for financial assurance for decommissioning as required by the
12 applicable State and federal governmental entities;
- 13 (9) a list of all State and federal regulatory agency approvals,
14 permits, or other authorizations required pursuant to State and
15 federal law for the offshore wind project, and copies of all
16 submitted permit applications and any issued approvals and permits
17 for the offshore wind project;
- 18 (10) a cost-benefit analysis for the project including at a
19 minimum:
- 20 (a) a detailed input-output analysis of the impact of the project
21 on income, employment, wages, indirect business taxes, and output
22 in the State with particular emphasis on in-State manufacturing
23 employment;
- 24 (b) an explanation of the location, type, and salary of
25 employment opportunities to be created by the project with job
26 totals expressed as full-time equivalent positions assuming 1,820
27 hours per year;
- 28 (c) an analysis of the anticipated environmental benefits and
29 environmental impacts of the project; and
- 30 (d) an analysis of the potential impacts on residential and
31 industrial ratepayers of electricity rates over the life of the project
32 that may be caused by incorporating any State subsidy into rates;
- 33 (11) a proposed OREC pricing method and schedule for the
34 board to consider;
- 35 (12) a timeline for the permitting, licensing, and construction of
36 the proposed offshore wind project;
- 37 (13) a plan for interconnection, including engineering
38 specifications and costs; and
- 39 (14) any other information deemed necessary by the board in
40 order to conduct a thorough evaluation of the proposal. The board
41 may hire consultants or other experts if the board determines that
42 obtaining such outside expertise would be beneficial to the review
43 of the proposal.
- 44 b. (1) In considering an application for a qualified offshore
45 wind project, submitted pursuant to subsection a. of this section, the
46 board shall determine that the application satisfies the following
47 conditions:

1 (a) the filing is consistent with the New Jersey energy master
2 plan, adopted pursuant to section 12 of P.L.1977, c.146 (C.52:27F-
3 14), in effect at the time the board is considering the application;

4 (b) the cost-benefit analysis, submitted pursuant to paragraph
5 (10) of subsection a. of this section, demonstrates positive
6 economic and environmental net benefits to the State;

7 (c) the financing mechanism is based upon the actual electrical
8 output of the project, fairly balances the risks and rewards of the
9 project between ratepayers and shareholders, and ensures that any
10 costs of non-performance, in either the construction or operational
11 phase of the project, shall be borne by shareholders; and

12 (d) the entity proposing the project demonstrates financial
13 integrity and sufficient access to capital to allow for a reasonable
14 expectation of completion of construction of the project.

15 (2) In considering an application for a qualified offshore wind
16 project, submitted pursuant to subsection a. of this section, the
17 board shall also consider:

18 (a) the total level of subsidies to be paid by ratepayers for
19 qualified offshore wind projects over the life of the project; and

20 (b) any other elements the board deems appropriate in
21 conjunction with the application.

22 c. An order issued by the board to approve an application for a
23 qualified offshore wind project pursuant to this section shall, at a
24 minimum, include conditions to ensure the following:

25 (1) no OREC shall be paid until electricity is produced by the
26 qualified offshore wind project;

27 (2) ORECs shall be paid on the actual electrical output delivered
28 into the transmission system of the State;

29 (3) ratepayers and the State shall be held harmless for any cost
30 overruns associated with the project; and

31 (4) the applicant will reimburse the board and the State for all
32 reasonable costs incurred for regulatory review of the project,
33 including but not limited to consulting services, oversight,
34 inspections, and audits.

35 An order issued by the board pursuant to this subsection shall
36 specify the value of the OREC and the term of the order.

37 An order issued by the board pursuant to this subsection shall not
38 be modified by subsequent board orders, unless the modifications
39 are jointly agreed to by the parties.

40 d. The board shall review and approve, conditionally approve,
41 or deny an application submitted pursuant to this section within 180
42 days after the date a complete application is submitted to the board.

43 e. Notwithstanding any provision of P.L.2010, c.57 (C.48:3-
44 87.1 et al.) to the contrary, the board may conduct one or more
45 competitive solicitations for open access offshore wind transmission
46 facilities designed to facilitate the collection of offshore wind
47 energy from qualified offshore wind projects or its delivery to the
48 electric transmission system in this State.

1 f. Notwithstanding the provisions of any other State law, rule, or
2 regulation to the contrary, a qualified offshore wind project or an
3 open access offshore wind transmission facility approved by the
4 board pursuant to this section shall ², after consultation with a
5 municipality, county, or other political subdivision of the State, or any
6 agency, authority, or other entity thereof² :

7 (1) have authority to place, replace, construct, reconstruct,
8 install, reinstall, add to, extend, use, operate, inspect, and maintain
9 wires, conduits, lines, and associated infrastructure, whether
10 ¹[underground or overhead or]¹ within, under, or upon the public
11 streets, thoroughfares, ²or² rights-of-way ²[, or any other public
12 property]² of any municipality, county, or other ²[instrumentality
13 of the State] political subdivision of the State, or any agency,
14 authority, or other entity thereof^{2 1}, provided that the wires,
15 conduits, lines, and associated infrastructure are located
16 underground, except to the extent necessary as determined by the
17 board¹ .

18 Notwithstanding the provisions of any other State law, rule, or
19 regulation to the contrary, no municipality, county, or other
20 ²[instrumentality of the State] political subdivision of the State, or
21 any agency, authority, or other entity thereof,² shall prohibit, or
22 charge a fee for, the use of public streets, thoroughfares, or rights-of-
23 way for the purposes set forth in this subsection, other than a fee for
24 a road opening permit, and the issuance of a road opening permit
25 shall not be withheld, except for bona fide public safety reasons;

26 (2) be authorized to obtain easements, rights-of-way, or other
27 real property interests on, over, or through any real property ²other
28 than public streets, thoroughfares, or rights-of-way,² owned by a
29 municipality, county, or other ²[instrumentality of the State]
30 political subdivision of the State, or any agency, authority, or other
31 entity thereof,² that are ²reasonably² necessary for the construction
32 ²or operation² of a qualified offshore wind project ²or an open
33 access offshore wind transmission facility² . If a qualified offshore
34 wind project ²or an open access offshore wind transmission facility²
35 is unable to obtain an easement, right-of-way, or other real property
36 interest from a municipality, county, or other ²[public body of the
37 State within 180 days after the award of ORECs by the board
38 pursuant to this section] political subdivision of the State, or any
39 agency, authority, or other entity thereof, after 90 days of a written
40 request therefor to the applicable entity², the qualified offshore wind
41 project ²or open access offshore wind transmission facility, as the
42 case may be,² may file a petition with the board ²seeking authority
43 to obtain the easement, right-of-way, or other real property interest²

44 In considering ²[such]² a petition ²submitted pursuant to this
45 paragraph² , the board shall ²: conduct, or cause to be conducted, a

1 public hearing in order to provide an opportunity for public input on
2 the petition. Notice of the public hearing shall be given in a manner
3 and form as determined by the board in order to provide an
4 opportunity for public input to be received on the petition. At a
5 minimum, notice of the public hearing shall be provided to the news
6 media, the owner of the real property subject to the petition, and the
7 governing body and municipal clerk of the municipality and the clerk
8 of the county in which the lands proposed to be conveyed are located.
9 The notice of the public hearing shall provide the date, time, and
10 location of the public hearing, identification of the project and
11 property that is the subject of the petition, and any other information
12 deemed appropriate by the board.

13 Following the public hearing and receipt of public comment on the
14 petition, the board shall² determine whether the requested easement,
15 right-of-way, or other real property interest are reasonably
16 necessary for the construction ²or operation² of the qualified
17 offshore wind project ²or open access offshore wind transmission
18 facility².

19 If the board determines that the requested easement, right-of-
20 way, or other real property interest are reasonably necessary for the
21 construction ²or operation² of the qualified offshore wind project
22 ²or open access offshore wind transmission facility², the board
23 shall issue an order approving the acquisition of the requested
24 easement, right-of-way, or other real property interest, and
25 notwithstanding the provisions of any other State law, rule, or
26 regulation to the contrary, such order shall effectuate the qualified
27 offshore wind project's ²or the open access offshore wind
28 transmission facility's² property interest and shall be recorded by
29 the appropriate county recording officer at the request of the
30 qualified offshore wind project ²or open access offshore wind
31 transmission facility. Upon recording of an order pursuant to this
32 paragraph that concerns land preserved for recreation and
33 conservation purposes, as defined in section 3 of P.L.1999, c.152
34 (C.13:8C-3), the entity constructing the qualified offshore wind
35 project or the open access offshore wind transmission facility, as
36 the case may be, shall be: considered the legal or record owner of
37 the property interest; and subject to the rules and regulations
38 adopted by the Department of Environmental Protection concerning
39 the conveyance, diversion, or disposal of lands preserved for
40 recreation and conservation purposes². The entity constructing the
41 qualified offshore wind project ²or the open access offshore wind
42 transmission facility² shall be responsible for the restoration and
43 maintenance of the area of land subject to an order pursuant to this
44 paragraph. Payment of fair compensation for the easement, right-
45 of-way, or other real property interest shall be made to the
46 appropriate entity pursuant to the procedures set forth in the
47 "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.).

1 The acquisition of an easement, right-of-way, or other real property
2 interest pursuant to this paragraph shall not be subject to any public
3 bidding requirements.

4 If an order issued by the board pursuant to this paragraph
5 concerns an easement, right-of-way, or other real property interest
6 located on, over, or through land preserved for recreation and
7 conservation purposes, as defined in section 3 of P.L.1999, c.152
8 (C.13:8C-3), the entity constructing the qualified offshore wind
9 project² or open access offshore wind transmission facility² shall:
10 pay fair market value for the easement, right-of-way, or other real
11 property interest to the owner of the preserved land; and² ~~acquire~~
12 provide funds to the Department of Environmental Protection's
13 Office of Green Acres, established pursuant to section 24 of
14 P.L.1999, c.152 (C.13:8C-24), a local government unit, or a
15 qualifying tax exempt nonprofit organization, as defined in section 3
16 of P.L.1999, c.152 (C.13:8C-3), for the acquisition of² ~~two~~ ^{three}¹
17 times the area of² preserved land within² the easement, right-of-way,
18 or other real property interest subject to the board's order² in
19 additional land for recreation and conservation purposes² within
20 the same county within three years after the board's order pursuant
21 to this paragraph² ~~1~~, and such land shall be conveyed by the entity
22 constructing the qualified offshore wind project to the State, a local
23 government unit, or a qualifying tax exempt nonprofit organization, as
24 defined in section 3 of P.L.1999, c.152 (C.13:8C-3), and be dedicated
25 for recreation and conservation purposes¹ ~~2~~. Any compensation
26 ~~received by an owner of~~ for² preserved land² received² pursuant
27 to this paragraph shall be used for the acquisition of land for
28 recreation and conservation purposes², as defined in section 3 of
29 P.L.1999, c.152 (C.13:8C-3), and may, in the discretion of the
30 Commissioner of Environmental Protection and the State House
31 Commission, be found to satisfy the compensation requirements of
32 the rules and regulations adopted by the Department of
33 Environmental Protection concerning the conveyance, diversion, or
34 disposal of lands preserved for recreation and conservation
35 purposes²; and

36 (3) be authorized to file a petition with the board seeking a
37 determination that all municipal or county approvals, consents, or
38 affirmative filings with other public entities required to construct
39 ² or operate² a qualified offshore wind project² or an open access
40 offshore wind transmission facility² are preempted and superseded,
41 upon a finding by the board that such municipal or county
42 approvals, consents, or affirmative filings are reasonably necessary
43 for the construction² or operation² of the qualified offshore wind
44 project² or the open access offshore wind transmission facility². If
45 the board makes a determination pursuant to this paragraph
46 preempting a municipal or county action that is a condition of the

1 issuance of a permit or other approval of the Department of
2 Environmental Protection or any other department or agency of the
3 State, then notwithstanding the provisions of any other State law,
4 rule, or regulation to the contrary, the department or agency, as
5 applicable, may act without prior municipal or county approval,
6 consent, or affirmative filing. To the extent that a municipal or
7 county approval, consent, or affirmative filing involves the
8 acquisition of an easement, right-of-way, or other real property
9 interest, the procedures set forth in paragraph (2) of this subsection
10 shall apply.

11 g. A qualified offshore wind project² or an open access offshore
12 wind transmission facility² approved by the board pursuant to this
13 section shall be deemed to be an electric power generator for the
14 purposes of section 10 of the “Municipal Land Use Law,” P.L.1975,
15 c.291 (C.40:55D-19)², and the qualified offshore wind project or
16 open access offshore wind transmission facility may proceed in
17 accordance with the decision of the board, notwithstanding any
18 provision of the “Municipal Land Use Law,” P.L.1975, c.291
19 (C.40:55D-19), or any ordinance, rule, or regulation adopted
20 pursuant thereto, to the contrary; provided that the board
21 determines: (1) that, for the purposes of the qualified offshore wind
22 project or the open access offshore wind transmission facility, the
23 electric power generator described in a petition filed with the board
24 is necessary for the service, convenience, or welfare of the public,
25 or that the qualified offshore wind project or the open access
26 offshore wind transmission facility will provide a net benefit to the
27 environment of the State; and (2) that no alternative site is
28 reasonably available to achieve an equivalent public benefit².
29 (cf: P.L.2019, c.440, s.2)

30
31

2. This act shall take effect immediately.