

ASSEMBLY, No. 5894

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 14, 2021

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

Assemblyman JAMES J. KENNEDY

District 22 (Middlesex, Somerset and Union)

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 introduced.



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.

- 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:

5 (1) have authority to place, replace, construct, reconstruct,
6 install, reinstall, add to, extend, use, operate, inspect, and maintain
7 wires, conduits, lines, and associated infrastructure, whether
8 underground or overhead or within, under, or upon the public
9 streets, thoroughfares, rights-of-way, or any other public property
10 of any municipality, county, or other instrumentality of the State.
11 Notwithstanding the provisions of any other State law, rule, or
12 regulation to the contrary, no municipality, county, or other
13 instrumentality of the State shall prohibit, or charge a fee for, the
14 use of public streets, thoroughfares, or rights-of way for the
15 purposes set forth in this subsection, other than a fee for a road
16 opening permit, and the issuance of a road opening permit shall not
17 be withheld, except for bona fide public safety reasons;

18 (2) be authorized to obtain easements, rights-of-way, or other
19 real property interests on, over, or through any real property owned
20 by a municipality, county, or other instrumentality of the State that
21 are necessary for the construction of a qualified offshore wind
22 project. If a qualified offshore wind project is unable to obtain an
23 easement, right-of-way, or other real property interest from a
24 municipality, county, or other public body of the State within 180
25 days after the award of ORECs by the board pursuant to this
26 section, the qualified offshore wind project may file a petition with
27 the board. In considering such a petition, the board shall determine
28 whether the requested easement, right-of-way, or other real property
29 interest are reasonably necessary for the construction of the
30 qualified offshore wind project. If the board determines that the
31 requested easement, right-of-way, or other real property interest are
32 reasonably necessary for the construction of the qualified offshore
33 wind project, the board shall issue an order approving the
34 acquisition of the requested easement, right-of-way, or other real
35 property interest, and notwithstanding the provisions of any other
36 State law, rule, or regulation to the contrary, such order shall
37 effectuate the qualified offshore wind project's property interest and
38 shall be recorded by the appropriate county recording officer at the
39 request of the qualified offshore wind project. The entity
40 constructing the qualified offshore wind project shall be responsible
41 for the restoration and maintenance of the area of land subject to an
42 order pursuant to this paragraph. Payment of fair compensation for
43 the easement, right-of-way, or other real property interest shall be
44 made to the appropriate entity pursuant to the procedures set forth
45 in the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et
46 seq.). The acquisition of an easement, right-of-way, or other real
47 property interest pursuant to this paragraph shall not be subject to
48 any public bidding requirements.

1 If an order issued by the board pursuant to this paragraph
2 concerns an easement, right-of-way, or other real property interest
3 located on, over, or through land preserved for recreation and
4 conservation purposes, as defined in section 3 of P.L.1999, c.152
5 (C.13:8C-3), the entity constructing the qualified offshore wind
6 project shall: pay fair market value for the easement, right-of-way,
7 or other real property interest to the owner of the preserved land;
8 and acquire two times the area of the easement, right-of-way, or
9 other real property interest subject to the board's order within the
10 same county within three years after the board's order pursuant to
11 this paragraph, and such land shall be conveyed by the entity
12 constructing the qualified offshore wind project to the State, a local
13 government unit, or a qualifying tax exempt nonprofit organization,
14 as defined in section 3 of P.L.1999, c.152 (C.13:8C-3), and be
15 dedicated for recreation and conservation purposes. Any
16 compensation received by an owner of preserved land pursuant to
17 this paragraph shall be used for the acquisition of land for
18 recreation and conservation purposes; and

19 (3) be authorized to file a petition with the board seeking a
20 determination that all municipal or county approvals, consents, or
21 affirmative filings with other public entities required to construct a
22 qualified offshore wind project are preempted and superseded, upon
23 a finding by the board that such municipal or county approvals,
24 consents, or affirmative filings are reasonably necessary for the
25 construction of the qualified offshore wind project. If the board
26 makes a determination pursuant to this paragraph preempting a
27 municipal or county action that is a condition of the issuance of a
28 permit or other approval of the Department of Environmental
29 Protection or any other department or agency of the State, then
30 notwithstanding the provisions of any other State law, rule, or
31 regulation to the contrary, the department or agency, as applicable,
32 may act without prior municipal or county approval, consent, or
33 affirmative filing. To the extent that a municipal or county
34 approval, consent, or affirmative filing involves the acquisition of
35 an easement, right-of-way, or other real property interest, the
36 procedures set forth in paragraph (2) of this subsection shall apply.

37 g. A qualified offshore wind project approved by the board
38 pursuant to this section shall be deemed to be an electric power
39 generator for the purposes of section 10 of the "Municipal Land Use
40 Law," P.L.1975, c.291 (C.40:55D-19).

41 (cf: P.L.2019, c.440, s.2)

42
43 2. This act shall take effect immediately.

44
45
46 STATEMENT

47
48 This bill would amend P.L.2010, c.57 (C.48:3-87.1 et al.),
49 commonly referred to as the "Offshore Wind Economic

1 Development Act,” to authorize a qualified offshore wind project or
2 an open access offshore wind transmission facility approved by the
3 Board of Public Utilities (board) to place, replace, construct,
4 reconstruct, install, reinstall, add to, extend, use, operate, inspect,
5 and maintain wires, conduits, lines, and associated infrastructure,
6 whether underground or overhead, or within, under, or upon the
7 public streets, thoroughfares, rights-of-way, or any other public
8 property of any municipality, county, or other instrumentality of the
9 State. The bill further provides that a municipality, county, or other
10 instrumentality of the State may not prohibit, or charge a fee for,
11 the use of public streets, thoroughfares, or rights-of-way for the
12 aforementioned purposes, other than a fee for a road opening
13 permit. The issuance of a road opening permit may not be withheld,
14 under the bill’s provisions, except for bona fide public safety
15 reasons.

16 The bill also authorizes a qualified offshore wind project or an
17 open access offshore wind transmission facility approved by the
18 board to obtain easements, rights-of-way, or other real property
19 interests on, over, or through any real property owned by a
20 municipality, county, or other instrumentality of the State that are
21 necessary for the construction of a qualified offshore wind project.
22 If a qualified offshore wind project is unable to obtain an easement,
23 right-of-way, or other real property interest from a municipality,
24 county, or other instrumentality of the State within 180 days after
25 the award of offshore wind renewable energy certificates by the
26 board, the qualified offshore wind project would be able to file a
27 petition with the board. In considering such a petition, the board
28 would determine whether the requested easement, right-of-way, or
29 other real property interest are reasonably necessary for the
30 construction of the qualified offshore wind project.

31 If the board determines that the requested easement, right-of-
32 way, or other real property interest are reasonably necessary for the
33 construction of the qualified offshore wind project, the board would
34 be required to issue an order approving the acquisition of the
35 requested easement, right-of-way, or other real property interest.
36 The order would effectuate the qualified offshore wind project’s
37 property interest and would be recorded by the appropriate county
38 recording officer at the request of the qualified offshore wind
39 project. The entity constructing the qualified offshore wind project
40 would be responsible for the restoration and maintenance of the
41 area of land subject to the board’s order. Payment of fair
42 compensation is to be made pursuant to the “Eminent Domain Act
43 of 1971,” P.1971, c.361 (C.20:3-1et seq.). Further, the bill provides
44 that the acquisition of an easement, right-of-way, or other real
45 property interest pursuant to the bill is not to be subject to any
46 public bidding requirements.

47 In addition, the bill provides that if an order issued by the board
48 concerns an easement, right-of-way, or other real property interest
49 located on, over, or through land preserved for recreation and

1 conservation purposes, the entity constructing the qualified offshore
2 wind project would be required to: pay fair market value for the
3 easement, right-of-way, or other real property interest to the owner
4 of the preserved land; and acquire two times the area of the
5 easement, right-of-way, or other real property interest subject to the
6 board's order within the same county within three years after the
7 board's order, and any such land would be conveyed by the entity
8 constructing the qualified offshore wind project to the State, a local
9 government unit, or a qualifying tax exempt nonprofit organization
10 and be dedicated for recreation and conservation purposes. The bill
11 also provides that any compensation received by an owner of
12 preserved land, pursuant to the bill, would be required to be used
13 for the acquisition of land for recreation and conservation purposes.

14 The bill also authorizes a qualified offshore wind project or an
15 open access offshore wind transmission facility approved by the
16 board to file a petition with the board seeking a determination that
17 all municipal or county approvals, consents, or affirmative filings
18 with other public entities required to construct the qualified
19 offshore wind project are preempted and superseded, upon a finding
20 by the board that such municipal or county approvals, consents, or
21 affirmative filings are reasonably necessary for the construction of
22 the qualified offshore wind project. If the board makes a
23 determination preempting municipal or county action that is a
24 condition of a permit or other approval of the Department of
25 Environmental Protection or any other department or agency of the
26 State, the department or agency may proceed to act without prior
27 municipal or county approval, consent, or affirmative filing.

28 Lastly, the bill provides that a qualified offshore wind project
29 approved by the board is to be deemed an electric power generator
30 for the purposes of section 10 of the "Municipal Land Use Law,"
31 P.L.1975, c.291 (C.40:55D-19).