

[Second Reprint]

ASSEMBLY, No. 5894

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 14, 2021

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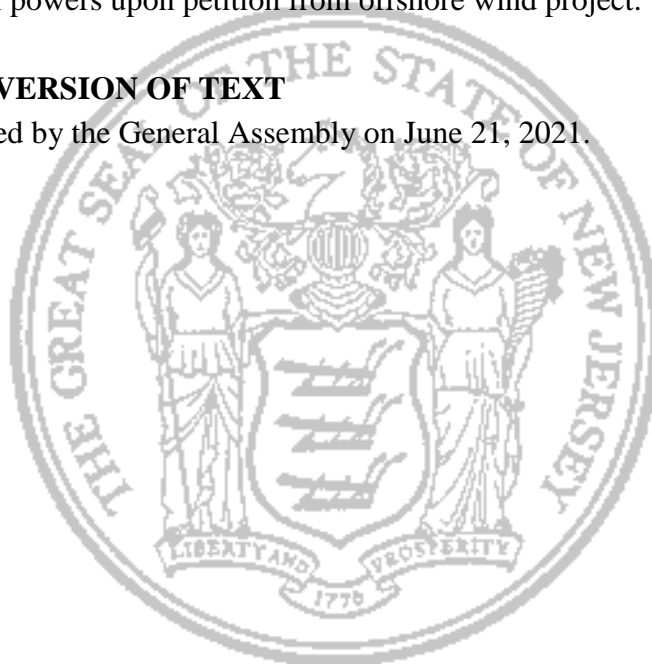
Assemblyman Caputo

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 General Assembly 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

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:

¹Assembly AAP committee amendments adopted June 16, 2021.

²Assembly floor amendments adopted June 21, 2021.

- 1 infrastructure and how the potential risks, including but not limited
2 to hurricanes, lightning, fog, rogue wave occurrences, and exposed
3 cabling, shall be mitigated; and identifies specific and concrete
4 elements to ensure both construction and operational cost controls.
5 This operations and maintenance plan shall be integrated into the
6 financial analysis of the project, and shall identify the projected
7 plan for the subsequent 20 years, following conclusion of the initial
8 20-year operations, assuming any necessary federal lease
9 agreements are maintained and renewed;
- 10 (7) the anticipated carbon dioxide emissions impact of the
11 project;
- 12 (8) a decommissioning plan for the project including provisions
13 for financial assurance for decommissioning as required by the
14 applicable State and federal governmental entities;
- 15 (9) a list of all State and federal regulatory agency approvals,
16 permits, or other authorizations required pursuant to State and
17 federal law for the offshore wind project, and copies of all
18 submitted permit applications and any issued approvals and permits
19 for the offshore wind project;
- 20 (10) a cost-benefit analysis for the project including at a
21 minimum:
- 22 (a) a detailed input-output analysis of the impact of the project
23 on income, employment, wages, indirect business taxes, and output
24 in the State with particular emphasis on in-State manufacturing
25 employment;
- 26 (b) an explanation of the location, type, and salary of
27 employment opportunities to be created by the project with job
28 totals expressed as full-time equivalent positions assuming 1,820
29 hours per year;
- 30 (c) an analysis of the anticipated environmental benefits and
31 environmental impacts of the project; and
- 32 (d) an analysis of the potential impacts on residential and
33 industrial ratepayers of electricity rates over the life of the project
34 that may be caused by incorporating any State subsidy into rates;
- 35 (11) a proposed OREC pricing method and schedule for the
36 board to consider;
- 37 (12) a timeline for the permitting, licensing, and construction
38 of the proposed offshore wind project;
- 39 (13) a plan for interconnection, including engineering
40 specifications and costs; and
- 41 (14) any other information deemed necessary by the board in
42 order to conduct a thorough evaluation of the proposal. The board
43 may hire consultants or other experts if the board determines that
44 obtaining such outside expertise would be beneficial to the review
45 of the proposal.
- 46 b. (1) In considering an application for a qualified offshore
47 wind project, submitted pursuant to subsection a. of this section, the

1 board shall determine that the application satisfies the following
2 conditions:

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

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

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

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

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

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

22 (b) any other elements the board deems appropriate in
23 conjunction with the application.

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

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

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

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

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

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

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

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

45 e. Notwithstanding any provision of P.L.2010, c.57 (C.48:3-
46 87.1 et al.) to the contrary, the board may conduct one or more
47 competitive solicitations for open access offshore wind transmission
48 facilities designed to facilitate the collection of offshore wind

1 energy from qualified offshore wind projects or its delivery to the
2 electric transmission system in this State.

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

9 (1) have authority to place, replace, construct, reconstruct,
10 install, reinstall, add to, extend, use, operate, inspect, and maintain
11 wires, conduits, lines, and associated infrastructure, whether
12 ¹[underground or overhead or]¹ within, under, or upon the public
13 streets, thoroughfares, ²or² rights-of-way ²], or any other public
14 property]² of any municipality, county, or other ²[instrumentality
15 of the State] political subdivision of the State, or any agency,
16 authority, or other entity thereof² ¹, provided that the wires,
17 conduits, lines, and associated infrastructure are located
18 underground, except to the extent necessary as determined by the
19 board¹ .

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

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

1 In considering ²[such]² a petition ²submitted pursuant to this
2 paragraph² , the board shall ²conduct, or cause to be conducted, a
3 public hearing in order to provide an opportunity for public input on
4 the petition. Notice of the public hearing shall be given in a manner
5 and form as determined by the board in order to provide an
6 opportunity for public input to be received on the petition. At a
7 minimum, notice of the public hearing shall be provided to the news
8 media, the owner of the real property subject to the petition, and the
9 governing body and municipal clerk of the municipality and the
10 clerk of the county in which the lands proposed to be conveyed are
11 located. The notice of the public hearing shall provide the date,
12 time, and location of the public hearing, identification of the project
13 and property that is the subject of the petition, and any other
14 information deemed appropriate by the board.

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

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

1 appropriate entity pursuant to the procedures set forth in the
2 “Eminent Domain Act of 1971,” P.L.1971, c.361 (C.20:3-1 et seq.).
3 The acquisition of an easement, right-of-way, or other real property
4 interest pursuant to this paragraph shall not be subject to any public
5 bidding requirements.

6 If an order issued by the board pursuant to this paragraph
7 concerns an easement, right-of-way, or other real property interest
8 located on, over, or through land preserved for recreation and
9 conservation purposes, as defined in section 3 of P.L.1999, c.152
10 (C.13:8C-3), the entity constructing the qualified offshore wind
11 project ²or open access offshore wind transmission facility² shall:
12 pay fair market value for the easement, right-of-way, or other real
13 property interest to the owner of the preserved land; and ²[acquire]
14 provide funds to the Department of Environmental Protection’s
15 Office of Green Acres, established pursuant to section 24 of
16 P.L.1999, c.152 (C.13:8C-24), a local government unit, or a
17 qualifying tax exempt nonprofit organization, as defined in section
18 3 of P.L.1999, c.152 (C.13:8C-3), for the acquisition of² ¹[two]
19 three¹ times the area of ²preserved land within² the easement, right-
20 of-way, or other real property interest subject to the board’s order
21 ²in additional land for recreation and conservation purposes² within
22 the same county within three years after the board’s order pursuant
23 to this paragraph ²[¹], and such land shall be conveyed by the entity
24 constructing the qualified offshore wind project to the State, a local
25 government unit, or a qualifying tax exempt nonprofit organization,
26 as defined in section 3 of P.L.1999, c.152 (C.13:8C-3), and be
27 dedicated for recreation and conservation purposes¹² . Any
28 compensation ²[received by an owner of] for² preserved land
29 ² received² pursuant to this paragraph shall be used for the
30 acquisition of land for recreation and conservation purposes ², as
31 defined in section 3 of P.L.1999, c.152 (C.13:8C-3), and may, in the
32 discretion of the Commissioner of Environmental Protection and the
33 State House Commission, be found to satisfy the compensation
34 requirements of the rules and regulations adopted by the
35 Department of Environmental Protection concerning the
36 conveyance, diversion, or disposal of lands preserved for recreation
37 and conservation purposes² ; and

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

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

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

31

32 2. This act shall take effect immediately.