

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 5894**

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 16, 2021

The Assembly Appropriations Committee reports favorably Assembly Bill No. 5894, with committee amendments.

This bill would amend P.L.2010, c.57 (C.48:3-87.1 et al.), commonly referred to as the “Offshore Wind Economic Development Act,” to authorize a qualified offshore wind project or an open access offshore wind transmission facility approved by the Board of Public Utilities (board) to place, replace, construct, reconstruct, install, reinstall, add to, extend, use, operate, inspect, and maintain wires, conduits, lines, and associated infrastructure, whether within, under, or upon the public streets, thoroughfares, rights-of-way, or any other public property of any municipality, county, or other instrumentality of the State, provided that the wires, conduits, lines, and associated infrastructure is located underground, except to the extent necessary as determined by the board. The bill further provides that a municipality, county, or other instrumentality of the State may not prohibit, or charge a fee for, the use of public streets, thoroughfares, or rights-of-way for the aforementioned purposes, other than a fee for a road opening permit. The issuance of a road opening permit may not be withheld, under the bill’s provisions, except for bona fide public safety reasons.

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

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

In addition, the bill provides that if an order issued by the board concerns an easement, right-of-way, or other real property interest located on, over, or through land preserved for recreation and conservation purposes, the entity constructing the qualified offshore wind project would be required to: pay fair market value for the easement, right-of-way, or other real property interest to the owner of the preserved land; and acquire three times the area of the easement, right-of-way, or other real property interest subject to the board's order within the same county within three years after the board's order. The bill requires that any land so acquired be conveyed by the entity constructing the qualified offshore wind project to the State, a local government unit, or a qualifying tax exempt nonprofit organization and be dedicated for recreation and conservation purposes. The bill also provides that any compensation received by an owner of preserved land, pursuant to the bill, would be required to be used for the acquisition of land for recreation and conservation purposes.

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

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

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

(1) require that the wires, conduits, lines, and associated infrastructure authorized to be constructed by the bill is located underground, except to the extent necessary as determined by the board; and

(2) provide that the land area to be acquired, as compensation when a board order issued pursuant to the bill impacts preserved land, is to be three times (rather than two times) the area of the easement, right-of-way, or other real property interest subject to the board’s order.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.