

**SENATE, No. 3926**

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**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

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INTRODUCED JUNE 10, 2021

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**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 OREC's 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. Any compensation received by an owner of  
12    preserved land pursuant to this paragraph shall be used for the  
13    acquisition of land for recreation and conservation purposes; and

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17    qualified offshore wind project are preempted and superseded, upon  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

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

36    (cf: P.L.2019, c.440, s.2)

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38       2. This act shall take effect immediately.

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## STATEMENT

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43       This bill would amend P.L.2010, c.57 (C.48:3-87.1 et al.),  
44       commonly referred to as the "Offshore Wind Economic  
45       Development Act," to authorize a qualified offshore wind project or  
46       an open access offshore wind transmission facility approved by the  
47       Board of Public Utilities (board) to place, replace, construct,  
48       reconstruct, install, reinstall, add to, extend, use, operate, inspect,

1 and maintain wires, conduits, lines, and associated infrastructure,  
2 whether underground or overhead, or within, under, or upon the  
3 public streets, thoroughfares, rights-of-way, or any other public  
4 property of any municipality, county, or other instrumentality of the  
5 State. The bill further provides that a municipality, county, or other  
6 instrumentality of the State may not prohibit, or charge a fee for,  
7 the use of public streets, thoroughfares, or rights-of-way for the  
8 aforementioned purposes, other than a fee for a road opening  
9 permit. The issuance of a road opening permit may not be withheld,  
10 under the bill's provisions, except for bona fide public safety  
11 reasons.

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

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

43 In addition, the bill provides that if an order issued by the board  
44 concerns an easement, right-of-way, or other real property interest  
45 located on, over, or through land preserved for recreation and  
46 conservation purposes, the entity constructing the qualified offshore  
47 wind project would be required to: pay fair market value for the  
48 easement, right-of-way, or other real property interest to the owner

1 of the preserved land; and acquire two times the area of the  
2 easement, right-of-way, or other real property interest subject to the  
3 board's order within the same county within three years after the  
4 board's order. The bill also provides that any compensation  
5 received by an owner of preserved land, pursuant to the bill, would  
6 be required to be used for the acquisition of land for recreation and  
7 conservation purposes.

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

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