

[First Reprint]

SENATE, No. 3926

STATE OF NEW JERSEY
219th LEGISLATURE

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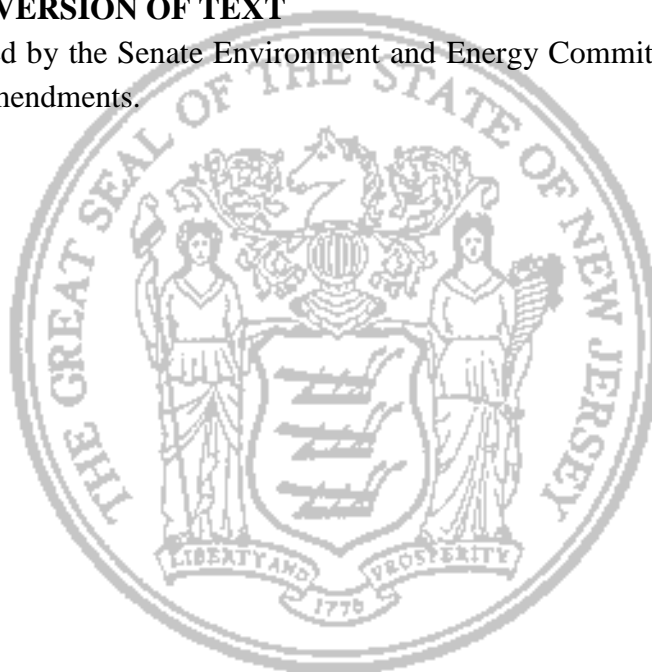
Senator Codey

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 reported by the Senate Environment and Energy Committee on June 15, 2021, with amendments.



(Sponsorship Updated As Of: 6/16/2021)

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

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.

1 to hurricanes, lightning, fog, rogue wave occurrences, and exposed
2 cabling, shall be mitigated; and identifies specific and concrete
3 elements to ensure both construction and operational cost controls.
4 This operations and maintenance plan shall be integrated into the
5 financial analysis of the project, and shall identify the projected
6 plan for the subsequent 20 years, following conclusion of the initial
7 20-year operations, assuming any necessary federal lease
8 agreements are maintained and renewed;

9 (7) the anticipated carbon dioxide emissions impact of the
10 project;

11 (8) a decommissioning plan for the project including provisions
12 for financial assurance for decommissioning as required by the
13 applicable State and federal governmental entities;

14 (9) a list of all State and federal regulatory agency approvals,
15 permits, or other authorizations required pursuant to State and
16 federal law for the offshore wind project, and copies of all
17 submitted permit applications and any issued approvals and permits
18 for the offshore wind project;

19 (10) a cost-benefit analysis for the project including at a
20 minimum:

21 (a) a detailed input-output analysis of the impact of the project
22 on income, employment, wages, indirect business taxes, and output
23 in the State with particular emphasis on in-State manufacturing
24 employment;

25 (b) an explanation of the location, type, and salary of
26 employment opportunities to be created by the project with job
27 totals expressed as full-time equivalent positions assuming 1,820
28 hours per year;

29 (c) an analysis of the anticipated environmental benefits and
30 environmental impacts of the project; and

31 (d) an analysis of the potential impacts on residential and
32 industrial ratepayers of electricity rates over the life of the project
33 that may be caused by incorporating any State subsidy into rates;

34 (11) a proposed OREC pricing method and schedule for the
35 board to consider;

36 (12) a timeline for the permitting, licensing, and construction of
37 the proposed offshore wind project;

38 (13) a plan for interconnection, including engineering
39 specifications and costs; and

40 (14) any other information deemed necessary by the board in
41 order to conduct a thorough evaluation of the proposal. The board
42 may hire consultants or other experts if the board determines that
43 obtaining such outside expertise would be beneficial to the review
44 of the proposal.

45 b. (1) In considering an application for a qualified offshore
46 wind project, submitted pursuant to subsection a. of this section, the
47 board shall determine that the application satisfies the following
48 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 ¹,
11 provided that the wires, conduits, lines, and associated
12 infrastructure are located underground, except to the extent
13 necessary as determined by the board ¹ . Notwithstanding the
14 provisions of any other State law, rule, or regulation to the contrary,
15 no municipality, county, or other instrumentality of the State shall
16 prohibit, or charge a fee for, the use of public streets, thoroughfares,
17 or rights-of way for the purposes set forth in this subsection, other
18 than a fee for a road opening permit, and the issuance of a road
19 opening permit shall not be withheld, except for bona fide public
20 safety reasons;

21 (2) be authorized to obtain easements, rights-of-way, or other
22 real property interests on, over, or through any real property owned
23 by a municipality, county, or other instrumentality of the State that
24 are necessary for the construction of a qualified offshore wind
25 project. If a qualified offshore wind project is unable to obtain an
26 easement, right-of-way, or other real property interest from a
27 municipality, county, or other public body of the State within 180
28 days after the award of ORECs by the board pursuant to this
29 section, the qualified offshore wind project may file a petition with
30 the board. In considering such a petition, the board shall determine
31 whether the requested easement, right-of-way, or other real property
32 interest are reasonably necessary for the construction of the
33 qualified offshore wind project. If the board determines that the
34 requested easement, right-of-way, or other real property interest are
35 reasonably necessary for the construction of the qualified offshore
36 wind project, the board shall issue an order approving the
37 acquisition of the requested easement, right-of-way, or other real
38 property interest, and notwithstanding the provisions of any other
39 State law, rule, or regulation to the contrary, such order shall
40 effectuate the qualified offshore wind project's property interest and
41 shall be recorded by the appropriate county recording officer at the
42 request of the qualified offshore wind project. The entity
43 constructing the qualified offshore wind project shall be responsible
44 for the restoration and maintenance of the area of land subject to an
45 order pursuant to this paragraph. Payment of fair compensation for
46 the easement, right-of-way, or other real property interest shall be
47 made to the appropriate entity pursuant to the procedures set forth
48 in the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et

1 seq.). The acquisition of an easement, right-of-way, or other real
2 property interest pursuant to this paragraph shall not be subject to
3 any public 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 project shall: pay fair market value for the easement, right-of-way,
10 or other real property interest to the owner of the preserved land;
11 and acquire ¹~~two~~ three times the area of the easement, right-of-
12 way, or other real property interest subject to the board's order
13 within the same county within three years after the board's order
14 pursuant to this paragraph ¹, and such land shall be conveyed by the
15 entity constructing the qualified offshore wind project to the State, a
16 local government unit, or a qualifying tax exempt nonprofit
17 organization, as defined in section 3 of P.L.1999, c.152 (C.13:8C-3),
18 and be dedicated for recreation and conservation purposes¹ . Any
19 compensation received by an owner of preserved land pursuant to
20 this paragraph shall be used for the acquisition of land for
21 recreation and conservation purposes; and

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

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

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

45
46 2. This act shall take effect immediately.