

CHAPTER 99

AN ACT concerning federal tax benefits for certain qualified offshore wind projects and supplementing chapter 3 of Title 48 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.48:3-87.2a Findings, declarations.

1. The Legislature finds and declares that:
 - a. Offshore wind, as a source of clean, renewable energy, provides opportunities for New Jersey to reduce dependence on fossil fuels that contribute to climate change, while significantly expanding and securing the State's economy for the short and long term.
 - b. The COVID-19 global pandemic, declared by the World Health Organization on March 11, 2020, created significant challenges for the United States and global economies, including labor shortages and supply chain disruptions, which, combined with other factors, have resulted in rising interest rates.
 - c. To support the offshore wind industry in light of the unique macroeconomic challenges posed by the COVID-19 pandemic, the federal "Taxpayer Certainty and Disaster Tax Relief Act of 2020," Pub.L.116-260, included an investment tax credit rate of 30 percent for offshore wind projects.
 - d. Economy-wide inflation rates in the United States were higher in 2021 and 2022 than at any time since the early 1980s.
 - e. On February 24, 2022, the Russian Federation invaded Ukraine, starting a war that, in addition to causing a horrific loss of life and human suffering in Ukraine, has further exacerbated global market disruptions and further contributed to commodity shortages and higher rates of inflation.
 - f. The federal "2022 Inflation Reduction Act," Pub.L.117-169, was designed to further spur investment in the American clean energy economy in the face of continuing macroeconomic challenges.
 - g. The federal "2022 Inflation Reduction Act," Pub.L.117-169, includes wage and apprenticeship requirements to receive the full offshore wind investment tax credit and includes additional investment tax credits for clean energy projects that source components and materials manufactured in the United States.
 - h. In light of Congress' intention to provide tax credits to support and bolster the offshore wind industry and the production of offshore wind energy in the United States, and in light of the high rates of inflation and unprecedented macroeconomic challenges arising from the global pandemic and war in Ukraine, it is appropriate to reexamine the allocation of tax benefits arising from the "Taxpayer Certainty and Disaster Tax Relief Act of 2020," Pub.L.116-260, the Research and Development Tax Credit under 26 U.S.C. s.41, and the "2022 Inflation Reduction Act," Pub.L.117-169, and, for these specific federal statutes only, to allow for a qualified offshore wind project to elect to retain the benefit of the federal tax credits that were not in existence at the time of a qualified offshore wind project's award in exchange for pledged assurances that the qualified offshore wind project will proceed to construction and that it will make additional investments in New Jersey offshore wind manufacturing facilities.

C.48:3-87.2b Definitions.

2. As used in P.L.2023, c.99 (C.48:3-87.2a et seq.):

"Affiliated New Jersey offshore wind project" means any qualified offshore wind project awarded prior to the effective date of P.L.2023, c.99 (C.48:3-87.2a et seq.) with at least 10 percent common upstream ownership as another qualified offshore wind project.

"Board" means the New Jersey Board of Public Utilities or any successor agency.

"Enhanced area" means the same as that term is defined in section 69 of P.L.2020, c.156 (C.34:1B-337).

"Incremental federal tax benefit" means a federal tax benefit that was established or increased after a project was approved by the board as a qualified offshore wind project and thus was not estimated in the project's original financial analysis and not included in the calculation of the OREC price submitted to the board.

"Offshore wind renewable energy certificate" or "OREC" means a certificate, issued by the board or its designee, representing the environmental attributes of one megawatt hour of electric generation from a qualified offshore wind project.

"Qualified offshore wind project" or "project" means a wind turbine electricity generation facility in the Atlantic Ocean in the Bureau of Ocean Energy Management Lease Area OCS-A 0498, awarded by the board prior to July 1, 2019, and connected to the electric transmission system in this State, and includes the associated transmission-related interconnection facilities and equipment, and approved by the board pursuant to section 3 of P.L.2010, c.57 (C.48:3-87.1).

"Qualified wind energy facility" means the same as that term is defined in section 6 of P.L.2010, c.57 (C.34:1B-209.4).

C.48:3-87.2c Qualified offshore wind project, elect, retain, incremental federal tax benefits.

3. a. Notwithstanding the provisions of P.L.2010, c.57 (C.48:3-87.1 et al.) or of any other law, rule, or regulation, or board regulation or order concerning the development of offshore wind projects, to the contrary, a qualified offshore wind project awarded prior to July 1, 2019 that satisfies the requirements in section 4 of P.L.2023, c.99 (C.48:3-87.2d), as determined by the board, may elect to retain any incremental federal tax benefits that the project receives pursuant to the "Taxpayer Certainty and Disaster Tax Relief Act of 2020," Pub.L.116-260, the "Inflation Reduction Act of 2022," Pub.L.117-169, and section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.41).

b. For the purpose of subsection a. of this section, the amount of each applicable incremental federal tax benefit shall be the product of:

(1) the project's total IRS-approved eligible costs; and

(2) the difference between each federal tax credit rate applicable to the project pursuant to the "Taxpayer Certainty and Disaster Tax Relief Act of 2020," Pub.L.116-260, the "Inflation Reduction Act of 2022," Pub.L.117-169, or section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.41) and the federal tax credit rate identified in the qualified offshore wind project's approved OREC pricing proposal.

c. Notwithstanding the provisions of P.L.2010, c.57 (C.48:3-87.1 et al.) or of any other State law, rule, or regulation, or board regulation or order concerning the development of offshore wind projects, to the contrary, a qualified offshore wind project awarded prior to July 1, 2019 that elects to retain incremental federal tax benefits pursuant to subsection a. of this section and that satisfies the requirements in section 4 of P.L.2023, c.99 (C.48:3-87.2d) may additionally retain the portion of the federal tax credits received by the project, calculated by multiplying the tax credit rate identified in the project's approved OREC pricing proposal by the difference between the project's total IRS-approved eligible costs and the project's estimated costs at bid.

C.48:3-87.2d Eligible qualified offshore wind project, retain, incremental federal tax benefits, file, compliance.

4. a. Within 60 days of the date of enactment of P.L.2023, c.99 (C.48:3-87.2a et seq.), an eligible qualified offshore wind project that elects to retain incremental federal tax benefits pursuant to section 3 of P.L.2023, c.99 (C.48:3-87.2c) shall file with the board, in a form and manner as determined by the board, a compliance filing that includes the following information:

(1) an affidavit from a corporate officer with authority to legally bind the project company affirming that the project company shall complete the qualified offshore wind project and any investments in qualified wind energy facilities identified pursuant to paragraph (2) of this subsection;

(2) (a) a schedule by which the qualified offshore wind project shall make:

(i) all required outstanding investments in qualified wind energy facilities included within the project's awarded solicitation application; and

(ii) required additional investments in qualified wind energy facilities, including investments in one or more offshore wind component manufacturing facilities located in an enhanced area.

(b) The schedule shall include the dates by which the project company shall complete the necessary investments described in this subsection and the dollar amount of each investment. The schedule shall be approved by the board so long as it is consistent with the project's, and any affiliated New Jersey offshore wind project's, awarded solicitation application and will not result in the delayed completion of any qualified wind energy facility or any other qualified offshore wind project. Nothing in this paragraph shall be construed as preventing the board and the qualified offshore wind project from agreeing to a schedule that diverges from that set forth in the awarded solicitation applications. The schedule may be adjusted with the board's approval for good cause shown;

(3) in support of the investments enumerated in the schedule filed with the board pursuant to paragraph (2) of this subsection, no later than 90 days after the date of enactment of P.L.2023, c.99 (C.48:3-87.2a et seq.), the qualified offshore wind project shall deposit \$200,000,000 into an escrow account, which shall be available to qualified wind energy facilities described in paragraph (2) of this subsection in accordance with milestones and commercial terms agreed to by the qualified offshore wind project and the qualified offshore wind energy facilities and the board; and

(4) (a) an obligation to post a performance security in the amount of \$100,000,000 for the completion of the qualified offshore wind project in the form of a parent company guarantee or other financial security reasonably acceptable to the board. The performance security under this paragraph shall be forfeited if the board determines that the project failed to reach commercial operation within 12 months of the date approved by the board, including any extensions to the date specified in the initial order as may be approved by the board. The performance security shall be provided in a compliance filing made with the board within 90 days of enactment of P.L.2023, c.99 (C.48:3-87.2a et seq.). If the performance security is forfeited, the board may elect to return the funds to ratepayers or may utilize the forfeited funds to support infrastructure necessary to advance the offshore wind industry.

(b) The performance security under this paragraph shall not be forfeited if the board finds that the project did not achieve commercial operation within 12 months after the board-approved commercial operations date due solely to a change in federal law, policy, or procedures that affect the entire industry and result in material delays to the project through no faults of its own. A finding by the board that the performance security is not forfeited pursuant to this subparagraph shall not, in and of itself, constitute board approval of a change to the project's OREC Pricing Schedule.

b. The board shall consult with the New Jersey Economic Development Authority in its review of the compliance filings made pursuant to this section but shall not unreasonably delay or condition its acceptance of the compliance filings.

C.48:3-87.2e Severability.

5. a. Nothing in P.L.2023, c.99 (C.48:3-87.2a et seq.) shall affect the allocation of any tax credits or other governmental benefits available to a qualified offshore wind project awarded prior to July 1, 2019 except as explicitly provided in section 3 of P.L.2023, c.99 (C.48:3-87.2c).

b. Nothing in P.L.2023, c.99 (C.48:3-87.2a et seq.) shall affect the allocation of any tax credits or other governmental benefits available to a qualified offshore wind project awarded after July 1, 2019.

C.48:3-87.2f Eligible qualified offshore wind project, retain, incremental federal tax benefits, report.

6. No later than one year after the date of enactment of P.L.2023, c.99 (C.48:3-87.2a et seq.), an eligible qualified offshore wind project that elects to retain incremental federal tax benefits pursuant to section 3 of P.L.2023, c.99 (C.48:3-87.2c) shall submit to the board a report on the anticipated environmental impacts of the project, the anticipated economic benefits of the project, the financial viability of the project, and the feasibility of completing the project by the commercial operation date approved by the board, including any extensions thereto.

7. This act shall take effect immediately.

Approved July 6, 2023.