

P.L. 2021, CHAPTER 178, *approved July 22, 2021*
Senate, No. 3926 (*Second Reprint*)

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;

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.

²Senate floor amendments adopted June 21, 2021.

1 (6) an operations and maintenance plan for the initial 20-year
2 operation of the project that: details routine, intermittent , and
3 emergency protocols; identifies the primary risks to the built
4 infrastructure and how the potential risks, including but not limited
5 to hurricanes, lightning, fog, rogue wave occurrences, and exposed
6 cabling, shall be mitigated; and identifies specific and concrete
7 elements to ensure both construction and operational cost controls.
8 This operations and maintenance plan shall be integrated into the
9 financial analysis of the project, and shall identify the projected
10 plan for the subsequent 20 years, following conclusion of the initial
11 20-year operations, assuming any necessary federal lease
12 agreements are maintained and renewed;

13 (7) the anticipated carbon dioxide emissions impact of the
14 project;

15 (8) a decommissioning plan for the project including provisions
16 for financial assurance for decommissioning as required by the
17 applicable State and federal governmental entities;

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

23 (10) a cost-benefit analysis for the project including at a
24 minimum:

25 (a) a detailed input-output analysis of the impact of the project
26 on income, employment, wages, indirect business taxes, and output
27 in the State with particular emphasis on in-State manufacturing
28 employment;

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

33 (c) an analysis of the anticipated environmental benefits and
34 environmental impacts of the project; and

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

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

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

42 (13) a plan for interconnection, including engineering
43 specifications and costs; and

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

1 b. (1) In considering an application for a qualified offshore
2 wind project, submitted pursuant to subsection a. of this section, the
3 board shall determine that the application satisfies the following
4 conditions:

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

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

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

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

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

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

24 (b) any other elements the board deems appropriate in
25 conjunction with the application.

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

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

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

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

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

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

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

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

47 e. Notwithstanding any provision of P.L.2010, c.57 (C.48:3-
48 87.1 et al.) to the contrary, the board may conduct one or more

1 competitive solicitations for open access offshore wind transmission
2 facilities designed to facilitate the collection of offshore wind
3 energy from qualified offshore wind projects or its delivery to the
4 electric transmission system in this State.

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

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

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

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

1 to obtain the easement, right-of-way, or other real property interest²
2 In considering ²~~such~~² a petition ²submitted pursuant to this
3 paragraph², the board shall ²: conduct, or cause to be conducted, a
4 public hearing in order to provide an opportunity for public input on
5 the petition. Notice of the public hearing shall be given in a manner
6 and form as determined by the board in order to provide an
7 opportunity for public input to be received on the petition. At a
8 minimum, notice of the public hearing shall be provided to the news
9 media, the owner of the real property subject to the petition, and the
10 governing body and municipal clerk of the municipality and the clerk
11 of the county in which the lands proposed to be conveyed are located.
12 The notice of the public hearing shall provide the date, time, and
13 location of the public hearing, identification of the project and
14 property that is the subject of the petition, and any other information
15 deemed appropriate by the board.

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

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

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

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

(3) be authorized 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 ²or operate² a qualified offshore wind project ²or an open access offshore wind transmission facility² 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 ²or operation² of the qualified offshore wind

1 project ²or the open access offshore wind transmission facility². If
2 the board makes a determination pursuant to this paragraph
3 preempting a municipal or county action that is a condition of the
4 issuance of a permit or other approval of the Department of
5 Environmental Protection or any other department or agency of the
6 State, then notwithstanding the provisions of any other State law,
7 rule, or regulation to the contrary, the department or agency, as
8 applicable, may act without prior municipal or county approval,
9 consent, or affirmative filing. To the extent that a municipal or
10 county approval, consent, or affirmative filing involves the
11 acquisition of an easement, right-of-way, or other real property
12 interest, the procedures set forth in paragraph (2) of this subsection
13 shall apply.

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

33
34 2. This act shall take effect immediately.
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39 _____
40 Authorizes certain offshore wind projects to construct power
41 lines and obtain real property interests; grants BPU authority to
42 supersede certain local governmental powers upon petition from
offshore wind project.