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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

Yes

"Voice of the People, July 24, 2021." Press of Atlantic City, The (NJ), July 24, 2021: 5A.

"Murphy signs bill ending local control of wind power lines." Associated Press State Wire: New Jersey (NJ), July 22, 2021.

RH/CL

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:

<sup>1</sup>Senate SEN committee amendments adopted June 15, 2021.

<sup>2</sup>Senate 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 <sup>2</sup>, after consultation with a  
9 municipality, county, or other political subdivision of the State, or any  
10 agency, authority, or other entity thereof<sup>2</sup> :

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 <sup>1</sup> [underground or overhead or] <sup>1</sup> within, under, or upon the public  
15 streets, thoroughfares, <sup>2</sup>or<sup>2</sup> rights-of-way <sup>2</sup> [, or any other public  
16 property]<sup>2</sup> of any municipality, county, or other <sup>2</sup> [instrumentality  
17 of the State] political subdivision of the State, or any agency,  
18 authority, or other entity thereof<sup>2</sup> <sup>1</sup>, provided that the wires,  
19 conduits, lines, and associated infrastructure are located  
20 underground, except to the extent necessary as determined by the  
21 board<sup>1</sup> .

22 Notwithstanding the provisions of any other State law, rule, or  
23 regulation to the contrary, no municipality, county, or other  
24 <sup>2</sup> [instrumentality of the State] political subdivision of the State, or  
25 any agency, authority, or other entity thereof,<sup>2</sup> 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 <sup>2</sup> other  
32 than public streets, thoroughfares, or rights-of-way,<sup>2</sup> owned by a  
33 municipality, county, or other <sup>2</sup> [instrumentality of the State]  
34 political subdivision of the State, or any agency, authority, or other  
35 entity thereof,<sup>2</sup> that are <sup>2</sup> reasonably<sup>2</sup> necessary for the construction  
36 or operation<sup>2</sup> of a qualified offshore wind project <sup>2</sup> or an open  
37 access offshore wind transmission facility<sup>2</sup> . If a qualified offshore  
38 wind project <sup>2</sup> or an open access offshore wind transmission facility<sup>2</sup>  
39 is unable to obtain an easement, right-of-way, or other real property  
40 interest from a municipality, county, or other <sup>2</sup> [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 entity<sup>2</sup>, the qualified offshore wind  
45 project <sup>2</sup> or open access offshore wind transmission facility, as the  
46 case may be,<sup>2</sup> may file a petition with the board <sup>2</sup> seeking authority

1 to obtain the easement, right-of-way, or other real property interest<sup>2</sup>  
2 In considering <sup>2</sup>[such]<sup>2</sup> a petition <sup>2</sup>submitted pursuant to this  
3 paragraph<sup>2</sup> , the board shall <sup>2</sup>: 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 shall<sup>2</sup> determine whether the requested easement,  
18 right-of-way, or other real property interest are reasonably  
19 necessary for the construction <sup>2</sup>or operation<sup>2</sup> of the qualified  
20 offshore wind project <sup>2</sup>or open access offshore wind transmission  
21 facility<sup>2</sup>.

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 <sup>2</sup>or operation<sup>2</sup> of the qualified offshore wind project  
25 <sup>2</sup>or open access offshore wind transmission facility<sup>2</sup>, 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 <sup>2</sup>or the open access offshore wind  
31 transmission facility's<sup>2</sup> property interest and shall be recorded by  
32 the appropriate county recording officer at the request of the  
33 qualified offshore wind project <sup>2</sup>or 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 purposes<sup>2</sup>. The entity constructing the  
44 qualified offshore wind project <sup>2</sup>or the open access offshore wind  
45 transmission facility<sup>2</sup> shall be responsible for the restoration and  
46 maintenance of the area of land subject to an order pursuant to this

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

8 If an order issued by the board pursuant to this paragraph  
9 concerns an easement, right-of-way, or other real property interest  
10 located on, over, or through land preserved for recreation and  
11 conservation purposes, as defined in section 3 of P.L.1999, c.152  
12 (C.13:8C-3), the entity constructing the qualified offshore wind  
13 project<sup>2</sup> or open access offshore wind transmission facility<sup>2</sup> shall:  
14 pay fair market value for the easement, right-of-way, or other real  
15 property interest to the owner of the preserved land; and<sup>2</sup> [acquire]  
16 provide funds to the Department of Environmental Protection’s  
17 Office of Green Acres, established pursuant to section 24 of  
18 P.L.1999, c.152 (C.13:8C-24), a local government unit, or a  
19 qualifying tax exempt nonprofit organization, as defined in section 3  
20 of P.L.1999, c.152 (C.13:8C-3), for the acquisition of<sup>2</sup> <sup>1</sup>[two] three<sup>1</sup>  
21 times the area of<sup>2</sup> preserved land within<sup>2</sup> the easement, right-of-way,  
22 or other real property interest subject to the board’s order<sup>2</sup> in  
23 additional land for recreation and conservation purposes<sup>2</sup> within  
24 the same county within three years after the board’s order pursuant  
25 to this paragraph<sup>2</sup> <sup>1</sup>[, and such land shall be conveyed by the entity  
26 constructing the qualified offshore wind project to the State, a local  
27 government unit, or a qualifying tax exempt nonprofit organization, as  
28 defined in section 3 of P.L.1999, c.152 (C.13:8C-3), and be dedicated  
29 for recreation and conservation purposes<sup>1</sup>]<sup>2</sup> . Any compensation  
30 <sup>2</sup>[received by an owner of] for<sup>2</sup> preserved land<sup>2</sup> received<sup>2</sup> pursuant  
31 to this paragraph shall be used for the acquisition of land for  
32 recreation and conservation purposes<sup>2</sup>, as defined in section 3 of  
33 P.L.1999, c.152 (C.13:8C-3), and may, in the discretion of the  
34 Commissioner of Environmental Protection and the State House  
35 Commission, be found to satisfy the compensation requirements of  
36 the rules and regulations adopted by the Department of  
37 Environmental Protection concerning the conveyance, diversion, or  
38 disposal of lands preserved for recreation and conservation  
39 purposes<sup>2</sup>; and

40 (3) be authorized to file a petition with the board seeking a  
41 determination that all municipal or county approvals, consents, or  
42 affirmative filings with other public entities required to construct  
43 <sup>2</sup>or operate<sup>2</sup> a qualified offshore wind project<sup>2</sup> or an open access  
44 offshore wind transmission facility<sup>2</sup> are preempted and superseded,  
45 upon a finding by the board that such municipal or county  
46 approvals, consents, or affirmative filings are reasonably necessary  
47 for the construction<sup>2</sup> or operation<sup>2</sup> of the qualified offshore wind



1 project<sup>2</sup> or the open access offshore wind transmission facility<sup>2</sup>. 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<sup>2</sup> or an open access offshore  
15 wind transmission facility<sup>2</sup> 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)<sup>2</sup>, 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 benefit<sup>2</sup>.

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

33

34 2. This act shall take effect immediately.

35

36

37

38

39 Authorizes certain offshore wind projects to construct power  
40 lines and obtain real property interests; grants BPU authority to  
41 supersede certain local governmental powers upon petition from  
42 offshore wind project.

**SENATE, No. 3926**

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

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.



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2 c.57.

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5 of New Jersey:

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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;

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30 identification of equity investors, fixed income investors, and any  
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33 federal funds and programs available to offset the cost of the project  
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36 over the anticipated life of the project, including a forecast of  
37 electricity revenues from the sale of energy derived from the project  
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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  
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- 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  
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- 24 (b) an explanation of the location, type, and salary of  
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- 28 (c) an analysis of the anticipated environmental benefits and  
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43 of the proposal.
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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  
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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  
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16 project, submitted pursuant to subsection a. of this section, the  
17 board shall also consider:

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26 qualified offshore wind project;

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30 overruns associated with the project; and

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32 reasonable costs incurred for regulatory review of the project,  
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34 inspections, and audits.

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38 be modified by subsequent board orders, unless the modifications  
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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  
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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 a  
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 ORECs 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)

37

38 2. This act shall take effect immediately.

39

40

41

## STATEMENT

42

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).

# SENATE ENVIRONMENT AND ENERGY COMMITTEE

## STATEMENT TO

### **SENATE, No. 3926**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 15, 2021

The Senate Environment and Energy Committee favorably reports Senate Bill No. 3926 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).

The committee amendments:

(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;

(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; and

(3) specify that the land area to be acquired, as compensation when a board order issued pursuant to the bill impacts preserved land, is to 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.

STATEMENT TO  
[First Reprint]  
**SENATE, No. 3926**

with Senate Floor Amendments  
(Proposed by Senator SWEENEY)

ADOPTED: JUNE 21, 2021

These floor amendments would:

(1) provide that a petition pursuant to paragraph (2) of subsection f. of the bill may be submitted to the board with within 90 days after a written request to the applicable entity, instead of 180 days after the award of offshore renewable energy certificates by the board;

(2) require a public hearing to be held on a petition received pursuant to paragraph (2) of subsection f. of the bill;

(3) specify that upon recording of a board order issued pursuant to the bill with the appropriate county recording officer, the entity constructing the qualified offshore wind project or open access offshore wind transmission facility would be considered the legal or record owner for the property interest and, in the case of an order concerning land preserved for recreation and conservation purposes, would be subject to the rules and regulations of the Department of Environmental Protection's Green Acres Program concerning the conveyance, diversion, or disposal of preserved lands;

(4) require, as compensation when a board order issued pursuant to the bill impacts preserved land, the entity constructing the project or facility to provide funds to the Department of Environmental Protection's Office of Green Acres, a local government unit, or a qualifying tax exempt nonprofit organization for the acquisition of three times the area of preserved land within the easement, right-of-way, or other real property interest subject to the board's order in additional land for recreation and conservation purposes within the same county within three years after the board's order, rather than requiring the entity to acquire lands;

(5) provide that the compensation required by the bill, 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 purposes;

(6) provide that open access offshore wind transmission facilities are given the same authorities as qualified offshore wind projects, under the bill;

(7) provide that a qualified offshore wind transmission project or an open access wind transmission facility approved by the board under the bill, would be deemed an "electric power generator" and may proceed, notwithstanding any provisions of the "Municipal Land Use

Law” to the contrary provided that the electric power generator described in a petition filed with the board is necessary for the service, convenience, or welfare of the public, or that the qualified offshore wind project or the open access offshore wind transmission facility will provide a net benefit to the environment of the State, and that no alternative site is reasonably available to achieve an equivalent public benefit; and

(8) make technical and clarifying amendments.

# ASSEMBLY, No. 5894

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 14, 2021

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**

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

**Assemblyman JAMES J. KENNEDY**

**District 22 (Middlesex, Somerset and Union)**

**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 ORECs 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, and such land shall be conveyed by the entity  
12 constructing the qualified offshore wind project to the State, a local  
13 government unit, or a qualifying tax exempt nonprofit organization,  
14 as defined in section 3 of P.L.1999, c.152 (C.13:8C-3), and be  
15 dedicated for recreation and conservation purposes. Any  
16 compensation received by an owner of preserved land pursuant to  
17 this paragraph shall be used for the acquisition of land for  
18 recreation and conservation purposes; and

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

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

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

42

43 2. This act shall take effect immediately.

44

45

46

#### STATEMENT

47

48 This bill would amend P.L.2010, c.57 (C.48:3-87.1 et al.),  
49 commonly referred to as the "Offshore Wind Economic

1 Development Act,” to authorize a qualified offshore wind project or  
2 an open access offshore wind transmission facility approved by the  
3 Board of Public Utilities (board) to place, replace, construct,  
4 reconstruct, install, reinstall, add to, extend, use, operate, inspect,  
5 and maintain wires, conduits, lines, and associated infrastructure,  
6 whether underground or overhead, or within, under, or upon the  
7 public streets, thoroughfares, rights-of-way, or any other public  
8 property of any municipality, county, or other instrumentality of the  
9 State. The bill further provides that a municipality, county, or other  
10 instrumentality of the State may not prohibit, or charge a fee for,  
11 the use of public streets, thoroughfares, or rights-of-way for the  
12 aforementioned purposes, other than a fee for a road opening  
13 permit. The issuance of a road opening permit may not be withheld,  
14 under the bill’s provisions, except for bona fide public safety  
15 reasons.

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

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

47 In addition, the bill provides that if an order issued by the board  
48 concerns an easement, right-of-way, or other real property interest  
49 located on, over, or through land preserved for recreation and

1 conservation purposes, the entity constructing the qualified offshore  
2 wind project would be required to: pay fair market value for the  
3 easement, right-of-way, or other real property interest to the owner  
4 of the preserved land; and acquire two times the area of the  
5 easement, right-of-way, or other real property interest subject to the  
6 board's order within the same county within three years after the  
7 board's order, and any such land would be conveyed by the entity  
8 constructing the qualified offshore wind project to the State, a local  
9 government unit, or a qualifying tax exempt nonprofit organization  
10 and be dedicated for recreation and conservation purposes. The bill  
11 also provides that any compensation received by an owner of  
12 preserved land, pursuant to the bill, would be required to be used  
13 for the acquisition of land for recreation and conservation purposes.

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

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

# 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.

STATEMENT TO  
[First Reprint]  
**ASSEMBLY, No. 5894**

with Assembly Floor Amendments  
(Proposed by Assemblyman BURZICHELLI)

ADOPTED: JUNE 21, 2021

These floor amendments would:

(1) provide that a petition pursuant to paragraph (2) of subsection f. of the bill may be submitted to the board within 90 days after a written request to the applicable entity, instead of 180 days after the award of offshore renewable energy certificates by the board;

(2) require a public hearing to be held on a petition received pursuant to paragraph (2) of subsection f. of the bill;

(3) specify that upon recording of a board order issued pursuant to the bill with the appropriate county recording officer, the entity constructing the qualified offshore wind project or open access offshore wind transmission facility would be considered the legal or record owner for the property interest and, in the case of an order concerning land preserved for recreation and conservation purposes, would be subject to the rules and regulations of the Department of Environmental Protection's Green Acres Program concerning the conveyance, diversion, or disposal of preserved lands, except as otherwise provided by the bill;

(4) require, as compensation when a board order issued pursuant to the bill impacts preserved land, the entity constructing the project or facility to provide funds to the Department of Environmental Protection's Office of Green Acres, a local government unit, or a qualifying tax exempt nonprofit organization for the acquisition of three times the area of preserved land within the easement, right-of-way, or other real property interest subject to the board's order in additional land for recreation and conservation purposes within the same county within three years after the board's order, rather than requiring the entity to acquire lands;

(5) provide that the compensation required by the bill, 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 purposes;

(6) provide that open access offshore wind transmission facilities are given the same authorities as qualified offshore wind projects, under the bill;

(7) provide that a qualified offshore wind transmission project or an open access wind transmission facility approved by the board under the bill, would be deemed an "electric power generator" and may

proceed, notwithstanding any provisions of the “Municipal Land Use Law” to the contrary provided that the electric power generator described in a petition filed with the board is necessary for the service, convenience, or welfare of the public, or that the qualified offshore wind project or the open access offshore wind transmission facility will provide a net benefit to the environment of the State, and that no alternative site is reasonably available to achieve an equivalent public benefit; and

(8) make technical and clarifying amendments.

# Governor Murphy Takes Action on Legislation

07/22/2021

**TRENTON** – Today, Governor Murphy signed the following bills into law:

**S-1558/A-3444 (Scutari/Bramnick, Downey, Quijano)** – Requires automobile insurers to disclose policy limits upon request by an attorney under certain circumstances

**S-3926/A-5894 (Sweeney, Smith/Burzichelli, Kennedy, Karabinchak)** – 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

**A-4250/S-2508 (Downey, Mukherji, Murphy/Gopal, Greenstein)** – Revises law concerning notaries and notarial acts; authorizes electronic signatures

**A-5310/S-3597 (Lopez/Vitale)** – Increases limit on number of social affairs permits that can be issued for one premises from 25 to 52 for designated premises owned by municipality or for event sponsored by municipality

**A-5758/S-3842 (Coughlin, Chiaravalloti, Mazzeo, Timberlake/Singleton, Turner)** – Provides funding for experiential housing advocacy programs to provide legal services for low- and moderate-income tenants in need of housing assistance; appropriates \$2 million