

ASSEMBLY, No. 5651

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 20, 2023

Sponsored by:

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District 6 (Burlington and Camden)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

SYNOPSIS

Concerns treatment of federal tax benefits for certain qualified offshore wind projects.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/26/2023)

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

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. The Legislature finds and declares that:

9 a. Offshore wind, as a source of clean, renewable energy,
10 provides opportunities for New Jersey to reduce dependence on
11 fossil fuels that contribute to climate change, while significantly
12 expanding and securing the State's economy for the short and long
13 term.

14 b. The COVID-19 global pandemic, declared by the World
15 Health Organization on March 11, 2020, created significant
16 challenges for the United States and global economies, including
17 labor shortages and supply chain disruptions, which, combined with
18 other factors, have resulted in rising interest rates.

19 c. To support the offshore wind industry in light of the unique
20 macroeconomic challenges posed by the COVID-19 pandemic, the
21 federal "Taxpayer Certainty and Disaster Tax Relief Act of 2020,"
22 Pub.L.116-260, included an investment tax credit rate of 30 percent
23 for offshore wind projects.

24 d. Economy-wide inflation rates in the United States were
25 higher in 2021 and 2022 than at any time since the early 1980s.

26 e. On February 24, 2022, the Russian Federation invaded
27 Ukraine, starting a war that, in addition to causing a horrific loss of
28 life and human suffering in Ukraine, has further exacerbated global
29 market disruptions and further contributed to commodity shortages
30 and higher rates of inflation.

31 f. The federal "2022 Inflation Reduction Act," Pub.L.117-169,
32 was designed to further spur investment in the American clean
33 energy economy in the face of continuing macroeconomic
34 challenges.

35 g. The federal "2022 Inflation Reduction Act," Pub.L.117-169,
36 includes wage and apprenticeship requirements to receive the full
37 offshore wind investment tax credit and includes additional
38 investment tax credits for clean energy projects that source
39 components and materials manufactured in the United States.

40 h. In light of Congress' intention to provide tax credits to
41 support and bolster the offshore wind industry and the production of
42 offshore wind energy in the United States, and in light of the high
43 rates of inflation and unprecedented macroeconomic challenges
44 arising from the global pandemic and war in Ukraine, it is
45 appropriate to reexamine the allocation of tax benefits arising from

1 the “Taxpayer Certainty and Disaster Tax Relief Act of 2020,”
2 Pub.L.116-260, the Research and Development Tax Credit under 26
3 U.S.C. s.41, and the “2022 Inflation Reduction Act,” Pub.L.117-
4 169, and, for these specific federal statutes only, to allow qualified
5 offshore wind projects to elect to retain the benefit of the federal tax
6 credits that were not in existence at the time of a qualified offshore
7 wind project’s award in exchange for corporate commitments that
8 the projects will proceed to construction and make additional
9 investments in New Jersey offshore wind manufacturing facilities.

10

11 2. As used in P.L. , c. (C.) (pending before the
12 Legislature as this bill):

13 “Affiliated New Jersey offshore wind project” means any
14 qualified offshore wind project awarded prior to the effective date
15 of P.L. , c. (C.) (pending before the Legislature as this bill)
16 with at least 10 percent common upstream ownership as another
17 qualified offshore wind project.

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

20 “Enhanced area” means the same as that term is defined in
21 section 30 of P.L.2021, c.160 (C.34:1B-337).

22 “Incremental federal tax benefit” means a federal tax benefit that
23 was established or increased after a project was approved by the
24 board as a qualified offshore wind project and thus was not
25 estimated in the project’s original financial analysis and not
26 included in the calculation of the OREC price submitted to the
27 board.

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

32 "Qualified offshore wind project" means a wind turbine
33 electricity generation facility in the Atlantic Ocean and connected
34 to the electric transmission system in this State, and includes the
35 associated transmission-related interconnection facilities and
36 equipment, and approved by the board pursuant to section 3 of
37 P.L.2010, c.57 (C.48:3-87.1).

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

40

41 3. a. Notwithstanding the provisions of P.L.2010, c.57
42 (C.48:3-87.1 et al.) or of any other law, rule, or regulation, or board
43 regulation or order concerning the development of offshore wind
44 projects, to the contrary, a qualified offshore wind project awarded
45 prior to July 1, 2019 that satisfies the requirements enumerated in

1 section 4 of P.L. , c. (C.) (pending before the Legislature
2 as this bill) may elect to retain any incremental federal tax benefits
3 that the project receives pursuant to the “Taxpayer Certainty and
4 Disaster Tax Relief Act of 2020,” Pub.L.116-260, the “Inflation
5 Reduction Act of 2022,” Pub.L.117-169, and section 41 of the
6 federal Internal Revenue Code of 1986 (26 U.S.C. s.41).

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

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

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

18 c. Notwithstanding the provisions of P.L.2010, c.57 (C.48:3-
19 87.1 et al.) or of any other State law, rule, or regulation, or board
20 regulation or order concerning the development of offshore wind
21 projects, to the contrary, a qualified offshore wind project awarded
22 prior to July 1, 2019 that elects to retain incremental federal tax
23 benefits pursuant to subsection a. of this section and satisfies the
24 corporate commitment requirements in section 4 of
25 P.L. , c. (C.) (pending before the Legislature as this bill)
26 may additionally retain the portion of the federal tax credits
27 received by the project, calculated by multiplying the tax credit rate
28 identified in the project’s approved OREC pricing proposal by the
29 difference between the project’s total IRS-approved eligible costs
30 and the project’s estimated costs at bid.

31

32 4. a. Within 180 days of enactment of P.L. , c. (C.)
33 (pending before the Legislature as this bill), an eligible qualified
34 offshore wind project that elects to retain incremental federal tax
35 benefits pursuant to section 3 of P.L. , c. (C.) (pending
36 before the Legislature as this bill) shall file with the board, in a
37 form and manner reasonably acceptable to the board, a compliance
38 filing that includes the following information:

39 (1) an affidavit from a corporate officer with authority to bind
40 the project company affirming that the project company commits to
41 moving forward with the project and the investments in qualified
42 wind energy facilities identified pursuant to paragraph (2) of this
43 subsection;

44 (2) (a) a schedule by which the eligible project shall make:

- 1 (i) all outstanding investments in qualified wind energy
2 facilities included within the project's awarded solicitation
3 application; and
- 4 (ii) additional investments in qualified wind energy facilities,
5 including investments in one or more offshore wind component
6 manufacturing facilities located in an enhanced area.
- 7 (b) The schedule shall include the dates by which the project
8 will fulfill each commitment and the dollar amount of each
9 commitment. The schedule shall be approved by the board so long
10 as it is consistent with the project's, and any affiliated New Jersey
11 offshore wind project's, awarded solicitation application and will
12 not result in the delayed completion of any qualified wind energy
13 facility or any other qualified offshore wind project. Nothing in
14 this paragraph shall be construed as preventing the board and the
15 eligible project from agreeing to a schedule that diverges from that
16 set forth in the awarded solicitation applications. The schedule may
17 be adjusted with the board's approval for good cause shown;
- 18 (3) a commitment to post performance security in the amount of
19 \$200,000,000 for the eligible project's investments in qualified
20 wind energy facilities described in paragraph (2) of this subsection
21 in the form of a parent company guarantee or other financial
22 security in a form reasonably acceptable to the board. The
23 performance security shall be provided in a compliance filing made
24 with the board within 180 days of enactment of
25 P.L. , c. (C.) (pending before the Legislature as this bill).
26 The performance security shall be reduced by the corresponding
27 amount of investments in qualified wind energy facilities on a
28 dollar-for-dollar basis until the security is reduced to zero.
29 Reductions of the performance security shall be subject to approval
30 by the board, which shall not be unreasonably delayed or
31 conditioned. If the project fails to make the required investments
32 according to the schedule established pursuant to paragraph (2) of
33 this subsection, including any adjustments thereto, the board, in
34 consultation with the New Jersey Economic Development
35 Authority, is authorized to draw upon the qualified wind energy
36 facilities performance security to the extent necessary to provide
37 grants or other funding, post security, enter into contracts, or take
38 any other action necessary to ensure the achievement of the
39 required commitment. A decision by the board to call on the
40 qualified wind energy facilities performance security shall not, by
41 itself, constitute a default under paragraph (4) of this subsection;
42 and
- 43 (4) (a) a commitment to post performance security for the
44 completion of the eligible project in the form of a parent company
45 guarantee or other financial security reasonably acceptable to the

1 board in the amount of \$100,000,000. The performance security
2 under this paragraph shall be forfeited if the board determines that
3 the project failed to reach commercial operation within 12 months
4 of the date approved by the board, including any extensions to the
5 date specified in the initial order as may be approved by the board.
6 The performance security shall be provided in a compliance filing
7 made with the board within 180 days of enactment of
8 P.L. , c. (C.) (pending before the Legislature as this bill).
9 If the performance security is forfeited, the board may elect to
10 return the funds to ratepayers or may utilize the forfeited funds to
11 support infrastructure necessary to advance the offshore wind
12 industry.

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

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

26
27 5. a. Nothing in P.L. , c. (C.) (pending before the
28 Legislature as this bill) shall affect the allocation of any tax credits
29 or other governmental benefits available to a qualified offshore
30 wind project awarded prior to July 1, 2019 except as explicitly
31 provided in section 3 of P.L. , c. (C.) (pending before the
32 Legislature as this bill).

33 b. Nothing in P.L. , c. (C.) (pending before the
34 Legislature as this bill) shall affect the allocation of any tax credits
35 or other governmental benefits available to a qualified offshore
36 wind project awarded after July 1, 2019.

37
38 6. This act shall take effect immediately.

39
40

41 STATEMENT

42
43 This bill permits certain qualified offshore wind projects to
44 retain certain federal tax benefits that were established after project
45 approval. These federal tax benefits were established in order to

1 bolster and support the offshore wind industry in response to the
2 COVID-19 pandemic and the unique macroeconomic challenges the
3 pandemic posed.

4 This bill permits a qualified offshore wind project approved prior
5 to July 1, 2019 to elect to retain certain incremental federal tax
6 benefits. The bill defines “incremental federal tax benefit” to mean
7 a federal tax credit, subsidy, grant, or other funding source that was
8 established or increased after a qualified offshore wind project’s
9 approval and, therefore, was not previously identified in the
10 project’s awarded solicitation agreement. These incremental
11 federal tax benefits primarily include tax benefits established
12 pursuant to the federal “Taxpayer Certainty and Disaster Tax Relief
13 Act of 2022,” the federal “Inflation Reduction Act of 2022,” and
14 section 41 of the federal Internal Revenue Code of 1986.

15 For the calculation of each incremental federal tax benefit, the
16 project’s total approved eligible costs are multiplied by the
17 difference between the incremental federal tax benefit applicable to
18 the project and the corresponding benefit identified in each
19 qualified offshore wind project’s approved OREC pricing proposal.
20 Additionally, each qualified offshore wind project is permitted to
21 retain a portion of the federal tax credits received by the project,
22 calculated by multiplying (1) the tax credit rate identified in the
23 project’s approved pricing proposal by (2) the difference between
24 the project’s total approved eligible costs and the project’s
25 estimated costs at bid.

26 The bill requires a qualified offshore wind project to file a
27 compliance filing with the Board of Public Utilities within 180 days
28 of enactment of this bill if the project wishes to elect to retain
29 federal tax benefits. The compliance filing will include an affidavit
30 affirming that the eligible project will proceed with construction, a
31 schedule by which the eligible project will make all of its material
32 investments in qualified wind energy facilities, a schedule of project
33 development and construction milestones, a commitment to post a
34 performance security for investments in qualified wind energy
35 facilities, and a commitment to post a performance security for the
36 eligible project itself. Failure to comply with portions of this
37 compliance filing will permit the Board of Public Utilities to reduce
38 the amount of the performance securities up until the point of total
39 forfeiture of the securities by the project.