

[Second Reprint]

**ASSEMBLY, No. 5651**

**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

INTRODUCED JUNE 20, 2023

**Sponsored by:**

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**Co-Sponsored by:**

**Assemblyman Giblin**

**SYNOPSIS**

Concerns qualified offshore wind projects and federal tax benefits for certain offshore wind investments.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Budget Committee on June 28, 2023, with amendments.



**(Sponsorship Updated As Of: 6/30/2023)**

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

**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>Assembly ABU committee amendments adopted June 27, 2023.

<sup>2</sup>Assembly ABU committee amendments adopted June 28, 2023.

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

13

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

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

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

23 "Enhanced area" means the same as that term is defined in  
24 section <sup>2</sup>【30 of P.L.2021, c.160】 69 of P.L.2020, c.156<sup>2</sup>  
25 (C.34:1B-337).

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

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

36 "Qualified offshore wind project" <sup>1</sup>or "project"<sup>1</sup> means a wind  
37 turbine electricity generation facility in the Atlantic Ocean <sup>2</sup>in the  
38 Bureau of Ocean Energy Management Lease Area OCS-A 0498,  
39 awarded by the board prior to July 1, 2019,<sup>2</sup> and connected to the  
40 electric transmission system in this State, and includes the  
41 associated transmission-related interconnection facilities and  
42 equipment, and approved by the board pursuant to section 3 of  
43 P.L.2010, c.57 (C.48:3-87.1).

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

1 3. a. Notwithstanding the provisions of P.L.2010, c.57  
2 (C.48:3-87.1 et al.) or of any other law, rule, or regulation, or board  
3 regulation or order concerning the development of offshore wind  
4 projects, to the contrary, a qualified offshore wind project awarded  
5 prior to July 1, 2019 that satisfies the requirements <sup>1</sup>**[enumerated]**<sup>1</sup>  
6 in section 4 of P.L. , c. (C. ) (pending before the Legislature  
7 as this bill) <sup>1</sup>, as determined by the board,<sup>1</sup> may elect to retain any  
8 incremental federal tax benefits that the project receives pursuant to  
9 the “Taxpayer Certainty and Disaster Tax Relief Act of 2020,”  
10 Pub.L.116-260, the “Inflation Reduction Act of 2022,”  
11 Pub.L.117-169, and section 41 of the federal Internal Revenue Code  
12 of 1986 (26 U.S.C. s.41).

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

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

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

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

37

38 4. a. Within <sup>1</sup>**[180]** <sup>2</sup>**[30<sup>1</sup>]** 60<sup>2</sup> days of <sup>2</sup>the date of<sup>2</sup>  
39 enactment of P.L. , c. (C. ) (pending before the Legislature  
40 as this bill), an eligible qualified offshore wind project that elects to  
41 retain incremental federal tax benefits pursuant to section 3 of  
42 P.L. , c. (C. ) (pending before the Legislature as this bill)  
43 shall file with the board, in a form and manner <sup>1</sup>**[reasonably**  
44 **acceptable to]** as determined by<sup>1</sup> the board, a compliance filing that  
45 includes the following information:

1 (1) an affidavit from a corporate officer with authority to  
2 'legally' bind the project company affirming that the project  
3 company '[commits to moving forward with the] shall complete  
4 the qualified offshore wind' project and '[the] any' investments in  
5 qualified wind energy facilities identified pursuant to paragraph (2)  
6 of this subsection;

7 (2) (a) a schedule by which the '[eligible] qualified offshore  
8 wind' project shall make:

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

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

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

28 (3) '[a commitment] an obligation' to post 'a' performance  
29 security in the amount of \$200,000,000 for the '[eligible] qualified  
30 offshore wind' project's investments in qualified wind energy  
31 facilities described in paragraph (2) of this subsection in the form of  
32 a parent company guarantee or other financial security in a form  
33 reasonably acceptable to the board. The performance security shall  
34 be provided in a compliance filing made with the board within  
35 '[180] 90' days of enactment of P.L. , c. (C. ) (pending  
36 before the Legislature as this bill). The performance security shall  
37 be reduced by the corresponding amount of investments in qualified  
38 wind energy facilities on a dollar-for-dollar basis until the security  
39 is reduced to zero. Reductions of the performance security shall be  
40 subject to approval by the board, which shall not be unreasonably  
41 delayed or conditioned. If the project fails to make the required  
42 investments according to the schedule established pursuant to  
43 paragraph (2) of this subsection, including any adjustments thereto,  
44 the board, in consultation with the New Jersey Economic  
45 Development Authority, is authorized to draw upon the qualified

1 wind energy facilities performance security to the extent necessary  
2 to provide grants or other funding, post security, enter into  
3 contracts, or take any other action necessary to ensure the  
4 achievement of the required **1**commitment **1**investments described  
5 in subsection a. of this section**1**. A decision by the board to call on  
6 the qualified wind energy facilities performance security shall not,  
7 by itself, constitute a default under paragraph (4) of this subsection **1**  
8 in support of the investments enumerated in the schedule filed with  
9 the board pursuant to paragraph (2) of this subsection, no later than  
10 90 days after the date of enactment of P.L. , c. (C. ) (pending  
11 before the Legislature as this bill), the qualified offshore wind  
12 project shall deposit of \$200,000,000 into an escrow account, which  
13 shall be available to qualified wind energy facilities described in  
14 paragraph (2) of this subsection in accordance with milestones and  
15 commercial terms agreed to by the qualified offshore wind project  
16 and the qualified offshore wind energy facilities and the board**2**; and

17 (4) (a) **1**a commitment **1**an obligation**1** to post **1**a**1** performance  
18 security **1**in the amount of \$100,000,000**1** for the completion of the  
19 **1**eligible **1**qualified offshore wind**1** project in the form of a parent  
20 company guarantee or other financial security reasonably  
21 acceptable to the board **1**in the amount of \$100,000,000**1**. The  
22 performance security under this paragraph shall be forfeited if the  
23 board determines that the project failed to reach commercial  
24 operation within 12 months of the date approved by the board,  
25 including any extensions to the date specified in the initial order as  
26 may be approved by the board. The performance security shall be  
27 provided in a compliance filing made with the board within **1**180  
28 90**1** days of enactment of P.L. , c. (C. ) (pending before the  
29 Legislature as this bill). If the performance security is forfeited, the  
30 board may elect to return the funds to ratepayers or may utilize the  
31 forfeited funds to support infrastructure necessary to advance the  
32 offshore wind industry.

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

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

1       5. a. Nothing in P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the  
2 Legislature as this bill) shall affect the allocation of any tax credits  
3 or other governmental benefits available to a qualified offshore  
4 wind project awarded prior to July 1, 2019 except as explicitly  
5 provided in section 3 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the  
6 Legislature as this bill).  
7       b. Nothing in P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the  
8 Legislature as this bill) shall affect the allocation of any tax credits  
9 or other governmental benefits available to a qualified offshore  
10 wind project awarded after July 1, 2019.

11  
12       <sup>2</sup>6. No later than one year after the date of enactment of P.L. \_\_\_\_\_,  
13 c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the Legislature as this bill), an  
14 eligible qualified offshore wind project that elects to retain  
15 incremental federal tax benefits pursuant to section 3 of P.L. \_\_\_\_\_,  
16 c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the Legislature as this bill) shall  
17 submit to the board a report on the anticipated environmental  
18 impacts of the project, the anticipated economic benefits of the  
19 project, the financial viability of the project, and the feasibility of  
20 completing the project by the commercial operation date approved  
21 by the board, including any extensions thereto.<sup>2</sup>

22  
23       <sup>2</sup>[6.] 7.<sup>2</sup> This act shall take effect immediately.