

# SENATE, No. 4019

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 20, 2023

**Sponsored by:**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**Senator GORDON M. JOHNSON**

**District 37 (Bergen)**

**SYNOPSIS**

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

**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  
46 the "Taxpayer Certainty and Disaster Tax Relief Act of 2020,"  
47 Pub.L.116-260, the Research and Development Tax Credit under 26  
48 U.S.C. s.41, and the "2022 Inflation Reduction Act," Pub.L.117-

1 169, and, for these specific federal statutes only, to allow for a  
2 qualified offshore wind project to elect to retain the benefit of the  
3 federal tax credits that were not in existence at the time of a  
4 qualified offshore wind project's award in exchange for pledged  
5 assurances that the qualified offshore wind project will proceed to  
6 construction and that it will make additional investments in New  
7 Jersey offshore wind manufacturing facilities.

8  
9 2. As used in P.L. , c. (C. ) (pending before the  
10 Legislature as this bill):

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

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

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

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

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

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

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

38  
39 3. a. Notwithstanding the provisions of P.L.2010, c.57  
40 (C.48:3-87.1 et al.) or of any other law, rule, or regulation, or board  
41 regulation or order concerning the development of offshore wind  
42 projects, to the contrary, a qualified offshore wind project awarded  
43 prior to July 1, 2019 that satisfies the requirements in section 4 of  
44 P.L. , c. (C. ) (pending before the Legislature as this bill),  
45 as determined by the board, may elect to retain any incremental  
46 federal tax benefits that the project receives pursuant to the  
47 "Taxpayer Certainty and Disaster Tax Relief Act of 2020,"  
48 Pub.L.116-260, the "Inflation Reduction Act of 2022," Pub.L.117-

1 169, and section 41 of the federal Internal Revenue Code of 1986  
2 (26 U.S.C. s.41).

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

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

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

14 c. Notwithstanding the provisions of P.L.2010, c.57 (C.48:3-  
15 87.1 et al.) or of any other State law, rule, or regulation, or board  
16 regulation or order concerning the development of offshore wind  
17 projects, to the contrary, a qualified offshore wind project awarded  
18 prior to July 1, 2019 that elects to retain incremental federal tax  
19 benefits pursuant to subsection a. of this section and that satisfies  
20 the requirements in section 4 of P.L. , c. (C. ) (pending  
21 before the Legislature as this bill) may additionally retain the  
22 portion of the federal tax credits received by the project, calculated  
23 by multiplying the tax credit rate identified in the project's  
24 approved OREC pricing proposal by the difference between the  
25 project's total IRS-approved eligible costs and the project's  
26 estimated costs at bid.

27  
28 4. a. Within 30 days of enactment of P.L. , c. (C. )  
29 (pending before the Legislature as this bill), an eligible qualified  
30 offshore wind project that elects to retain incremental federal tax  
31 benefits pursuant to section 3 of P.L. , c. (C. ) (pending  
32 before the Legislature as this bill) shall file with the board, in a  
33 form and manner as determined by the board, a compliance filing  
34 that includes the following information:

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

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

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

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

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

13 (3) an obligation to post a performance security in the amount of  
14 \$200,000,000 for the qualified offshore wind project's investments  
15 in qualified wind energy facilities described in paragraph (2) of this  
16 subsection in the form of a parent company guarantee or other  
17 financial security in a form reasonably acceptable to the board. The  
18 performance security shall be provided in a compliance filing made  
19 with the board within 90 days of enactment of P.L. , c. (C. )  
20 (pending before the Legislature as this bill). The performance  
21 security shall be reduced by the corresponding amount of  
22 investments in qualified wind energy facilities on a dollar-for-dollar  
23 basis until the security is reduced to zero. Reductions of the  
24 performance security shall be subject to approval by the board,  
25 which shall not be unreasonably delayed or conditioned. If the  
26 project fails to make the required investments according to the  
27 schedule established pursuant to paragraph (2) of this subsection,  
28 including any adjustments thereto, the board, in consultation with  
29 the New Jersey Economic Development Authority, is authorized to  
30 draw upon the qualified wind energy facilities performance security  
31 to the extent necessary to provide grants or other funding, post  
32 security, enter into contracts, or take any other action necessary to  
33 ensure the achievement of the required investments described in  
34 subsection a. of this section. A decision by the board to call on the  
35 qualified wind energy facilities performance security shall not, by  
36 itself, constitute a default under paragraph (4) of this subsection;  
37 and

38 (4) (a) an obligation to post a performance security in the  
39 amount of \$100,000,000 for the completion of the qualified  
40 offshore wind project in the form of a parent company guarantee or  
41 other financial security reasonably acceptable to the board. The  
42 performance security under this paragraph shall be forfeited if the  
43 board determines that the project failed to reach commercial  
44 operation within 12 months of the date approved by the board,  
45 including any extensions to the date specified in the initial order as  
46 may be approved by the board. The performance security shall be  
47 provided in a compliance filing made with the board within 90 days  
48 of enactment of P.L. , c. (C. ) (pending before the

1 Legislature as this bill). If the performance security is forfeited, the  
2 board may elect to return the funds to ratepayers or may utilize the  
3 forfeited funds to support infrastructure necessary to advance the  
4 offshore wind industry.

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

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

18  
19 5. a. Nothing in P.L. , c. (C. ) (pending before the  
20 Legislature as this bill) shall affect the allocation of any tax credits  
21 or other governmental benefits available to a qualified offshore  
22 wind project awarded prior to July 1, 2019 except as explicitly  
23 provided in section 3 of P.L. , c. (C. ) (pending before the  
24 Legislature as this bill).

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

29  
30 6. This act shall take effect immediately.

31  
32

33 STATEMENT

34  
35 This bill permits certain qualified offshore wind projects to  
36 retain certain federal tax benefits that were established after project  
37 approval. These federal tax benefits were established in order to  
38 bolster and support the offshore wind industry in response to the  
39 COVID-19 pandemic and the unique macroeconomic challenges the  
40 pandemic posed.

41 This bill permits a qualified offshore wind project approved prior  
42 to July 1, 2019 to elect to retain certain incremental federal tax  
43 benefits. The bill defines "incremental federal tax benefit" to mean  
44 a federal tax credit, subsidy, grant, or other funding source that was  
45 established or increased after a qualified offshore wind project's  
46 approval and, therefore, was not previously identified in the  
47 project's awarded solicitation agreement. These incremental  
48 federal tax benefits primarily include tax benefits established

1 pursuant to the federal “Taxpayer Certainty and Disaster Tax Relief  
2 Act of 2022,” the federal “Inflation Reduction Act of 2022,” and  
3 section 41 of the federal Internal Revenue Code of 1986.

4 For the calculation of each incremental federal tax benefit, the  
5 project’s total approved eligible costs are multiplied by the  
6 difference between the incremental federal tax benefit applicable to  
7 the project and the corresponding benefit identified in each  
8 qualified offshore wind project’s approved OREC pricing proposal.  
9 Additionally, each qualified offshore wind project is permitted to  
10 retain a portion of the federal tax credits received by the project,  
11 calculated by multiplying (1) the tax credit rate identified in the  
12 project’s approved pricing proposal by (2) the difference between  
13 the project’s total approved eligible costs and the project’s  
14 estimated costs at bid.

15 The bill requires a qualified offshore wind project to file a  
16 compliance filing with the Board of Public Utilities within 30 days  
17 of enactment of this bill if the project wishes to elect to retain  
18 federal tax benefits. The compliance filing will include an affidavit  
19 affirming that the qualified offshore wind project will proceed with  
20 construction, a schedule by which the qualified offshore wind  
21 project will make all of its material investments in qualified wind  
22 energy facilities, a pledge to post a performance security for  
23 investments in qualified wind energy facilities, and a pledge to post  
24 a performance security for the qualified offshore wind project itself.  
25 Failure to comply with portions of this compliance filing will  
26 permit the Board of Public Utilities to reduce the amount of the  
27 performance securities up until the point of total forfeiture of the  
28 securities by the project.