

[First Reprint]

**ASSEMBLY, No. 5651**

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

INTRODUCED JUNE 20, 2023

**Sponsored by:**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Burlington and Camden)**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**Assemblywoman CAROL A. MURPHY**

**District 7 (Burlington)**

**Assemblyman JOHN F. MCKEON**

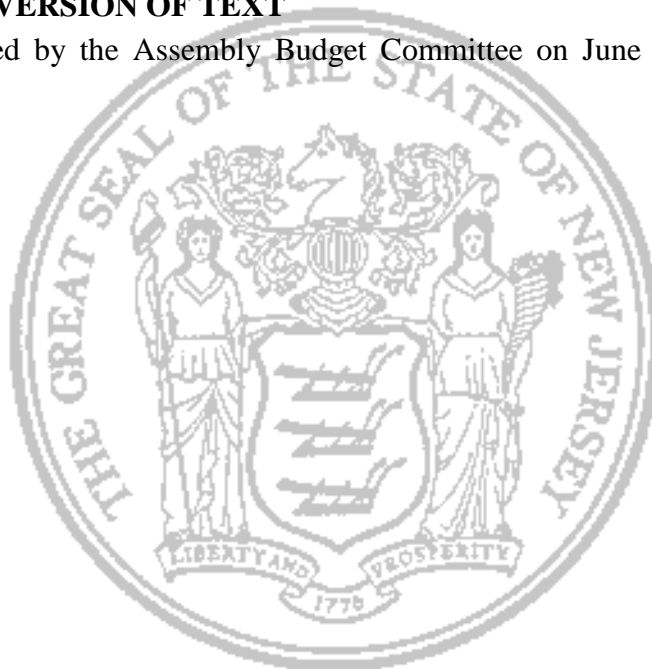
**District 27 (Essex and Morris)**

**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 27, 2023, with amendments.



**(Sponsorship Updated As Of: 6/29/2023)**

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

**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.

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 <sup>1</sup>for a<sup>1</sup>  
5 qualified offshore wind <sup>1</sup>【projects】 project<sup>1</sup> to elect to retain the  
6 benefit of the federal tax credits that were not in existence at the  
7 time of a qualified offshore wind project's award in exchange for  
8 <sup>1</sup>【corporate commitments】 pledged assurances<sup>1</sup> that the <sup>1</sup>【projects】  
9 qualified offshore wind project<sup>1</sup> will proceed to construction and  
10 that it will<sup>1</sup> make additional investments in New Jersey offshore  
11 wind manufacturing facilities.

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

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

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

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

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

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

34 "Qualified offshore wind project" <sup>1</sup>or "project"<sup>1</sup> means a wind  
35 turbine electricity generation facility in the Atlantic Ocean and  
36 connected to the electric transmission system in this State, and  
37 includes the associated transmission-related interconnection  
38 facilities and equipment, and approved by the board pursuant to  
39 section 3 of P.L.2010, c.57 (C.48:3-87.1).

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

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

1 prior to July 1, 2019 that satisfies the requirements <sup>1</sup>**["enumerated"]**<sup>1</sup>  
 2 in section 4 of P.L. , c. (C. ) (pending before the Legislature  
 3 as this bill) <sup>1</sup>, as determined by the board,<sup>1</sup> may elect to retain any  
 4 incremental federal tax benefits that the project receives pursuant to  
 5 the "Taxpayer Certainty and Disaster Tax Relief Act of 2020,"  
 6 Pub.L.116-260, the "Inflation Reduction Act of 2022," Pub.L.117-  
 7 169, and section 41 of the federal Internal Revenue Code of 1986  
 8 (26 U.S.C. s.41).

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

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

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

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

33  
 34 4. a. Within <sup>1</sup>**["180"]** 30<sup>1</sup> days of enactment of  
 35 P.L. , c. (C. ) (pending before the Legislature as this bill),  
 36 an eligible qualified offshore wind project that elects to retain  
 37 incremental federal tax benefits pursuant to section 3 of P.L. , c.  
 38 (C. ) (pending before the Legislature as this bill) shall file with  
 39 the board, in a form and manner <sup>1</sup>**["reasonably acceptable to"]** as  
 40 determined by<sup>1</sup> the board, a compliance filing that includes the  
 41 following information:

42 (1) an affidavit from a corporate officer with authority to  
 43 <sup>1</sup>legally<sup>1</sup> bind the project company affirming that the project  
 44 company <sup>1</sup>**["commits to moving forward with the"]** shall complete  
 45 the qualified offshore wind<sup>1</sup> project and <sup>1</sup>**["the"]** any<sup>1</sup> investments in

1 qualified wind energy facilities identified pursuant to paragraph (2)  
2 of this subsection;

3 (2) (a) a schedule by which the <sup>1</sup>**eligible** qualified offshore  
4 wind<sup>1</sup> project shall make:

5 (i) all <sup>1</sup>**required**<sup>1</sup> outstanding investments in qualified wind  
6 energy facilities included within the project's awarded solicitation  
7 application; and

8 (ii) <sup>1</sup>**required**<sup>1</sup> additional investments in qualified wind energy  
9 facilities, including investments in one or more offshore wind  
10 component manufacturing facilities located in an enhanced area.

11 (b) The schedule shall include the dates by which the project  
12 <sup>1</sup>**will fulfill each commitment** company shall complete the  
13 necessary investments described in this subsection<sup>1</sup> and the dollar  
14 amount of each <sup>1</sup>**commitment** investment<sup>1</sup>. The schedule shall be  
15 approved by the board so long as it is consistent with the project's,  
16 and any affiliated New Jersey offshore wind project's, awarded  
17 solicitation application and will not result in the delayed completion  
18 of any qualified wind energy facility or any other qualified offshore  
19 wind project. Nothing in this paragraph shall be construed as  
20 preventing the board and the <sup>1</sup>**eligible** qualified offshore wind<sup>1</sup>  
21 project from agreeing to a schedule that diverges from that set forth  
22 in the awarded solicitation applications. The schedule may be  
23 adjusted with the board's approval for good cause shown;

24 (3) <sup>1</sup>**a commitment** an obligation<sup>1</sup> to post <sup>1</sup>**a**<sup>1</sup> performance  
25 security in the amount of \$200,000,000 for the <sup>1</sup>**eligible** qualified  
26 offshore wind<sup>1</sup> project's investments in qualified wind energy  
27 facilities described in paragraph (2) of this subsection in the form of  
28 a parent company guarantee or other financial security in a form  
29 reasonably acceptable to the board. The performance security shall  
30 be provided in a compliance filing made with the board within  
31 <sup>1</sup>**180** 90<sup>1</sup> days of enactment of P.L. , c. (C. ) (pending  
32 before the Legislature as this bill). The performance security shall  
33 be reduced by the corresponding amount of investments in qualified  
34 wind energy facilities on a dollar-for-dollar basis until the security  
35 is reduced to zero. Reductions of the performance security shall be  
36 subject to approval by the board, which shall not be unreasonably  
37 delayed or conditioned. If the project fails to make the required  
38 investments according to the schedule established pursuant to  
39 paragraph (2) of this subsection, including any adjustments thereto,  
40 the board, in consultation with the New Jersey Economic  
41 Development Authority, is authorized to draw upon the qualified  
42 wind energy facilities performance security to the extent necessary  
43 to provide grants or other funding, post security, enter into  
44 contracts, or take any other action necessary to ensure the  
45 achievement of the required <sup>1</sup>**commitment** investments described

1 in subsection a. of this section<sup>1</sup>. A decision by the board to call on  
2 the qualified wind energy facilities performance security shall not,  
3 by itself, constitute a default under paragraph (4) of this subsection;  
4 and

5 (4) (a) <sup>1</sup>~~【a commitment】~~ an obligation<sup>1</sup> to post <sup>1</sup>a<sup>1</sup> performance  
6 security <sup>1</sup>in the amount of \$100,000,000<sup>1</sup> for the completion of the  
7 <sup>1</sup>~~【eligible】~~ qualified offshore wind<sup>1</sup> project in the form of a parent  
8 company guarantee or other financial security reasonably  
9 acceptable to the board <sup>1</sup>~~【in the amount of \$100,000,000】~~<sup>1</sup>. The  
10 performance security under this paragraph shall be forfeited if the  
11 board determines that the project failed to reach commercial  
12 operation within 12 months of the date approved by the board,  
13 including any extensions to the date specified in the initial order as  
14 may be approved by the board. The performance security shall be  
15 provided in a compliance filing made with the board within <sup>1</sup>~~【180】~~  
16 90<sup>1</sup> days of enactment of P.L. , c. (C. ) (pending before the  
17 Legislature as this bill). If the performance security is forfeited, the  
18 board may elect to return the funds to ratepayers or may utilize the  
19 forfeited funds to support infrastructure necessary to advance the  
20 offshore wind industry.

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

30 b. The board shall consult with the New Jersey Economic  
31 Development Authority in its review of the compliance filings made  
32 pursuant to this section but shall not unreasonably delay or  
33 condition its acceptance of the compliance filings.

34  
35 5. a. Nothing in P.L. , c. (C. ) (pending before the  
36 Legislature as this bill) shall affect the allocation of any tax credits  
37 or other governmental benefits available to a qualified offshore  
38 wind project awarded prior to July 1, 2019 except as explicitly  
39 provided in section 3 of P.L. , c. (C. ) (pending before the  
40 Legislature as this bill).

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

45  
46 6. This act shall take effect immediately.