Louisiana updates offshore wind energy legislation

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State rep. Jerome “Zee” Zeringue, R-Houma, views the recent updates to Louisiana’s offshore wind energy legislation as an important step in securing new investments and new jobs through the state’s developing offshore wind energy business.

He expects Louisiana to be the first state bordering the Gulf of Mexico to have a lease sale for offshore wind — which, according to Zeringue, “should occur in the next 18 months.” House Bill 165, co-sponsored by Zeringue and state Rep. Joseph Orgeron, R-Larose, easily passed the House and Senate in the regular session ending June 6. The bill was signed by Gov. John Bel Edwards on June 21, becoming Act 443 (the “Act”). The legislation governs only wind leases in Louisiana waters which extend three nautical miles from its coastline. Beyond three nautical miles and extending out to 200 nautical miles are federal waters governed by the Bureau of Ocean Energy Management (BOEM) and their rules and regulations.

The Act amends La. R.S. 30: 209(4)(A) to provide that the State Mineral and Energy Board may “enter into operating agreements whereby the state receives a share of revenues from the production of …wind energy” after deduction of costs. The legislation does not appear to require the Board to enter into revenue sharing operating agreements, but only provides that they “may” do so. While such revenue sharing agreements are the norm in the oil and gas context, the contours of revenue sharing in the offshore wind space are less defined as the industry is still in its developmental phase. U.S. government websites and BOEM regulations appear to anticipate that BOEM through the Office of Natural Resources Revenue (ONNR) will eventually collect operating fees based on the value (taking into consideration such things as the wind farm’s capacity and wholesale electric prices) of wind energy produced on federal waters. However, BOEM also seems to have great flexibility over the amount to be charged to wind farm lessees. The BOEM director has the ability to waive rent or the operating fee if it is deemed “necessary to encourage continued or additional activities.”

The Act’s amendment of La. R.S. 41: 1733(D) governing the award of Louisiana state wind leases provides that the Board “has authority to accept the bid it finds most advantageous to the state and may lease upon whatever terms it considers proper.” It goes on to provide that the “lease shall include a provision permitting the state, at its option, to take in kind all or any portion due it as royalty.” The Act’s amendment of La. R.S. 41: 1734 gives the secretary of the Louisiana Department of Natural Resources (the “Secretary”) the authority to promulgate rules and regulations relating to such wind energy leases, including setting the “[c]riteria for setting the annual rent or royalty amounts for leases executed pursuant to this Chapter.” La. R.S. 41: 1734 (A)(1). The rules and regulations are required by the Act to be promulgated by the Secretary on or before January 1, 2023.

On the federal level, no one knows now exactly what fees will be charged when leasing does occur on federal waters in the Gulf of Mexico, but payment and performance requirements will be set out in BOEM's Final Sale Notice that will be published in advance of the bidding.

A prior version of Louisiana's offshore wind legislation contemplated that the Board would establish and advertise a minimum percentage of revenue to be produced by each wind turbine to be known as an "electrical power production royalty" as a minimum requirement for granting the lease. This language was scrapped by the Act and substituted with a broad grant of authority to the Board to accept the bid it finds most advantageous to the State. The legislation also made offshore wind farms more economically viable by increasing the maximum acreage for offshore wind leases to 25,000 acres instead of the 5,000 acre limit for oil and gas leases.

The amendments to La. R.S. 41:1732(C) and 1734(A) will result in wind farm operators having to draft a decommissioning plan for the end of the facility's life and to provide "financial security to ensure closure of the site pursuant to the decommissioning plan." Restoration of the leased areas once the useful life of the projects has ended "includes removing the wind energy production facility along with any necessary infrastructure facilities and restoring the property to as near as reasonably possible to the condition of the property prior to the commencement of the construction of the facility. BOEM has similar decommissioning requirements for wind leases on federal waters.

We asked Zeringue about potential snags in the implementation of offshore wind farms caused by objections from persons in the fisheries business. Some fishermen on the East Coast have complained about snagging their nets on transmission lines. Louisiana shrimpers have similar concerns.

"The last thing I want to do is to cause a problem with the fisheries," said Zeringue, who has a master's degree in fisheries science from LSU. He believes that, like the oil rigs currently in Louisiana waters, the wind farms will provide structure for fish that may actually improve fishing in the state.

In sum, it appears the Board can, using criteria established by the Secretary, set annual rent or royalty requirements on leases advertised for bidding in Louisiana waters and accept bids they find most advantageous. The process seems largely in line with the policy and procedure governing federal waters. Consequently, fears that the Act would discourage investment in Louisiana's offshore wind energy as compared to other potential jurisdictions seem overblown. Whether Louisiana will ultimately be viewed as friendly towards wind energy companies wanting to do business here will depend more on the more specific rules and regulations promulgated and how they are interpreted and enforced.

The above article received assistance from McGlinchey's Jason Redmond (government relations and issues management) and Thomas Taylor (2022 Summer Associate).

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