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I N   S E N A T E

April 7, 2014

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Introduced by Sen. MARCHIONE -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the energy law, in relation to permitting agencies, municipalities and public authorities to enter into power purchase agreements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 9-102 of the energy law is amended by adding a new  
2     subdivision 5 to read as follows:  
3     5. "SOLAR POWER PURCHASE AGREEMENT" MEANS AN AGREEMENT FOR THE  
4     PURCHASE OF ELECTRICITY, PRODUCED BY SOLAR POWERED ELECTRICITY GENERAT-  
5     ING SYSTEMS, IN WHICH A PERSON AGREES TO INSTALL, MAINTAIN AND MANAGE  
6     ELECTRICITY GENERATING SYSTEMS OR EQUIPMENT TO PRODUCE SUCH ELECTRICITY  
7     WITH NO CAPITAL OUTLAY OR INVESTMENT BY THE AGENCY, MUNICIPALITY OR  
8     PUBLIC AUTHORITY, IN EXCHANGE FOR A LONG TERM AGREEMENT TO PURCHASE THE  
9     ELECTRICITY PRODUCED BY SUCH SOLAR POWERED ELECTRICITY GENERATING  
10    SYSTEMS OR EQUIPMENT AT A CURRENT COST PER KILOWATT HOUR LESS THAN THAT  
11    OFFERED BY THE UTILITY COMPANY SERVICING THE AREA OF SUCH AGENCY, MUNI-  
12    CIPALITY OR PUBLIC AUTHORITY AND AT A TOTAL COST OVER THE LIFE OF THE  
13    AGREEMENT THAT IS REASONABLY DETERMINED BY THE GOVERNING BOARD OF SUCH  
14    AGENCY, MUNICIPALITY OR PUBLIC AUTHORITY TO BE LESS THAN IT WOULD OTHER-  
15    WISE PAY TO THE UTILITY SERVICING ITS LOCATION.  
16    S 2. Section 9-103 of the energy law, as added by chapter 733 of the  
17    laws of 1985, subdivision 1 as amended and subdivision 5 as added by  
18    chapter 638 of the laws of 1989, subdivision 3 as amended and subdivi-  
19    sions 6 and 7 as added by chapter 368 of the laws of 1994, subdivision 4  
20    as amended by chapter 83 of the laws of 1995 and subdivision 8 as added  
21    by section 78 of part A of chapter 436 of the laws of 1997, is amended  
22    to read as follows:  
23    S 9-103. Energy performance contracts AND SOLAR POWER PURCHASE AGREE-  
24    MENTS. 1. Notwithstanding any other provision of law, any agency, muni-  
25    cipality, or public authority, in addition to existing powers, is  
26    authorized to enter into energy performance contracts of up to thirty-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 five years duration OR SOLAR POWER PURCHASE AGREEMENTS OF UP TO TWENTY  
2 YEARS DURATION, provided, that the duration of any such contract shall  
3 not exceed the reasonably expected useful life of the energy facilities  
4 or equipment subject to such contract. PROVIDING FURTHER THAT WITH  
5 RESPECT TO SOLAR POWER PURCHASE AGREEMENTS, SUCH AGENCY, MUNICIPALITY OR  
6 PUBLIC AUTHORITY IS AUTHORIZED TO RESELL ANY EXCESS ELECTRICITY GENER-  
7 ATED BY SUCH SOLAR POWERED ELECTRICITY GENERATING SYSTEMS OR EQUIPMENT  
8 THROUGH THE USE OF A NET METERING SYSTEM, ELECTRICITY CREDITS OR OTHER  
9 MEANS APPROVED BY NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHOR-  
10 ITY, THE NEW YORK INDEPENDENT SYSTEM OPERATORS OR THE PUBLIC SERVICE  
11 COMMISSION.

12 2. Any energy performance contract OR SOLAR POWER PURCHASE AGREEMENT  
13 entered into by any agency or municipality shall contain the following  
14 clause: "This contract shall be deemed executory only to the extent of  
15 the monies appropriated and available for the purpose of the contract,  
16 and no liability on account therefor shall be incurred beyond the amount  
17 of such monies. It is understood that neither this contract nor any  
18 representation by any public employee or officer creates any legal or  
19 moral obligation to request, appropriate or make available monies for  
20 the purpose of the contract."

21 3. In the case of a school district or a board of cooperative educa-  
22 tional services, an energy performance contract OR SOLAR POWER PURCHASE  
23 AGREEMENT shall be an ordinary contingent expense, and shall in no event  
24 be construed as or deemed a lease or lease-purchase of a building or  
25 facility, for purposes of the education law.

26 4. Agencies, municipalities, and public authorities are encouraged to  
27 consult with and seek advice and assistance from the New York state  
28 energy research and development authority concerning energy performance  
29 contracts AND/OR SOLAR POWER PURCHASE AGREEMENTS.

30 5. Notwithstanding any other provision of law, in order to convey an  
31 interest in real property necessary for the construction of facilities  
32 or the operation of equipment provided for in an energy performance  
33 contract OR SOLAR POWER PURCHASE AGREEMENT, any agency, municipality or  
34 public authority may enter into a lease of such real property to which  
35 it holds title or which is under its administrative jurisdiction as is  
36 necessary for such construction or operation, with an energy performance  
37 contractor, for the same length of time as the term of such energy  
38 performance contract OR SOLAR POWER PURCHASE AGREEMENT, and on such  
39 terms and conditions as may be agreeable to the parties thereto and are  
40 not otherwise inconsistent with law, and notwithstanding that such real  
41 property may remain useful to such agency, municipality or public  
42 authority for the purpose for which such real property was originally  
43 acquired or devoted or for which such real property is being used.

44 6. In lieu of any other competitive procurement or acquisition process  
45 that may apply pursuant to any other provision of law, an agency, muni-  
46 cipality, or public authority may procure an energy performance OR SOLAR  
47 POWER PURCHASE contractor by issuing and advertising a written request  
48 for proposals in accordance with procurement or internal control poli-  
49 cies, procedures, or guidelines that the agency, municipality, or public  
50 authority has adopted pursuant to applicable provisions of the state  
51 finance law, the executive law, the general municipal law, or the public  
52 authorities law, as the case may be.

53 7. Sections one hundred three and one hundred nine-b of the general  
54 municipal law shall not apply to an energy performance contract OR SOLAR  
55 POWER PURCHASE AGREEMENT for which a written request for proposals is  
56 issued pursuant to subdivision six of this section.

1       8.     In the case of a school district or a board of cooperative educa-  
2     tional services, an energy performance contract OR SOLAR POWER PURCHASE  
3     AGREEMENT shall be developed and approved pursuant to the requirements  
4     of this section and pursuant to regulations promulgated by the commis-  
5     sioner of education in consultation with the New York state energy  
6     research and development authority. Such regulations shall include, but  
7     shall not be limited to: a list of the appropriate type of projects that  
8     qualify as energy performance contracts OR SOLAR POWER PURCHASE AGREE-  
9     MENTS; an approval process that includes review of the type and nature  
10    of the proposed project, the scope and nature of the work to be  
11    performed, and a detailed breakdown of the energy savings to be derived  
12    each year and for the duration of the energy performance contract; and  
13    IN THE CASE OF ENERGY PERFORMANCE CONTRACTS, a process for ensuring that  
14    districts have obtained financing at the lowest cost possible. Such  
15    regulations shall require that all energy performance contracts which  
16    contain maintenance and monitoring charges as part of the energy  
17    performance contract price state such maintenance and monitoring charges  
18    separately in the contract in a clear and conspicuous manner. Such  
19    regulations shall not apply to energy performance contracts entered into  
20    prior to the effective date of such regulations, nor shall they apply to  
21    energy performance contracts for which a request for proposals was  
22    issued prior to such effective date. SOLAR POWER PURCHASE AGREEMENTS MAY  
23    NOT CONTAIN MAINTENANCE AND MONITORING CHARGES UNLESS THE DISTRICT  
24    SPECIFICALLY REQUESTS SPECIAL MONITORING AND DISPLAY OF THE FUNCTIONING  
25    OF THE ENERGY SYSTEMS OR EQUIPMENT FOR EDUCATIONAL OR PUBLIC INFORMATION  
26    PURPOSES AND THEN, THE MAINTENANCE AND MONITORING CHARGES CAN ONLY APPLY  
27    TO SUCH EQUIPMENT AS IS NECESSARY FOR THE ADDITIONAL MONITORING OR  
28    DISPLAY.

29       S 3. This act shall take effect immediately.