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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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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     SOLAR POWERED ELECTRICITY GENERATING SYSTEMS OR EQUIPMENT ON REAL PROP-  
7     erty OF AN AGENCY, MUNICIPALITY OR PUBLIC AUTHORITY, TO PRODUCE SUCH  
8     ELECTRICITY WITH NO CAPITAL OUTLAY OR INVESTMENT BY THE AGENCY, MUNICI-  
9     PALITY OR PUBLIC AUTHORITY, IN EXCHANGE FOR A LONG TERM AGREEMENT BY  
10    SUCH AGENCY, MUNICIPALITY OR PUBLIC AUTHORITY TO PURCHASE THE ELECTRIC-  
11    ITY PRODUCED BY SUCH SOLAR POWERED ELECTRICITY GENERATING SYSTEMS OR  
12    EQUIPMENT AT A CURRENT COST PER KILOWATT HOUR LESS THAN THAT OFFERED BY  
13    THE UTILITY COMPANY SERVICING SUCH AGENCY, MUNICIPALITY OR PUBLIC  
14    AUTHORITY AND AT A TOTAL COST OVER THE LIFE OF THE AGREEMENT THAT IS  
15    REASONABLY DETERMINED BY THE GOVERNING BOARD OF SUCH AGENCY, MUNICI-  
16    PALITY OR PUBLIC AUTHORITY TO BE LESS THAN IT WOULD OTHERWISE PAY TO THE  
17    UTILITY SERVICING ITS LOCATION.  
18    S 2. Section 9-103 of the energy law, as added by chapter 733 of the  
19    laws of 1985, subdivision 1 as amended and subdivision 5 as added by  
20    chapter 638 of the laws of 1989, subdivision 3 as amended and subdivi-  
21    sions 6 and 7 as added by chapter 368 of the laws of 1994, subdivision 4  
22    as amended by chapter 83 of the laws of 1995 and subdivision 8 as added  
23    by section 78 of part A of chapter 436 of the laws of 1997, is amended  
24    to read as follows:

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

LBD14485-02-4

1 S 9-103. Energy performance contracts AND SOLAR POWER PURCHASE AGREE-  
2 MENTS. 1. Notwithstanding any other provision of law, any agency, muni-  
3 cipality, or public authority, in addition to existing powers, is  
4 authorized to enter into energy performance contracts of up to thirty-  
5 five years duration OR SOLAR POWER PURCHASE AGREEMENTS OF UP TO TWENTY  
6 YEARS DURATION, provided, that the duration of any such contract OR  
7 AGREEMENT shall not exceed the reasonably expected useful life of the  
8 energy facilities, SOLAR POWERED ELECTRICITY GENERATING SYSTEMS or  
9 equipment subject to such contract; AND PROVIDED FURTHER THAT WITH  
10 RESPECT TO SOLAR POWER PURCHASE AGREEMENTS, SUCH AGENCY, MUNICIPALITY OR  
11 PUBLIC AUTHORITY IS AUTHORIZED TO RESELL ANY EXCESS ELECTRICITY GENER-  
12 ATED BY SUCH SOLAR POWERED ELECTRICITY GENERATING SYSTEMS OR EQUIPMENT  
13 THROUGH THE USE OF A NET METERING SYSTEM, ELECTRICITY CREDITS OR OTHER  
14 MEANS APPROVED BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT  
15 AUTHORITY, THE NEW YORK INDEPENDENT SYSTEM OPERATORS OR THE PUBLIC  
16 SERVICE COMMISSION.

17 2. Any energy performance contract entered into by any agency or muni-  
18 cipality shall contain the following clause: "This contract shall be  
19 deemed executory only to the extent of the monies appropriated and  
20 available for the purpose of the contract, and no liability on account  
21 therefor shall be incurred beyond the amount of such monies. It is  
22 understood that neither this contract nor any representation by any  
23 public employee or officer creates any legal or moral obligation to  
24 request, appropriate or make available monies for the purpose of the  
25 contract."

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

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

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

50 6. In lieu of any other competitive procurement or acquisition process  
51 that may apply pursuant to any other provision of law, an agency, muni-  
52 cipality, or public authority may procure an energy performance OR SOLAR  
53 POWER PURCHASE contractor by issuing and advertising a written request  
54 for proposals in accordance with procurement or internal control poli-  
55 cies, procedures, or guidelines that the agency, municipality, or public  
56 authority has adopted pursuant to applicable provisions of the state

1 finance law, the executive law, the general municipal law, or the public  
2 authorities law, as the case may be.

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

7 8. In the case of a school district or a board of cooperative educa-  
8 tional services, an energy performance contract shall be developed and  
9 approved pursuant to the requirements of this section and pursuant to  
10 regulations promulgated by the commissioner of education in consultation  
11 with the New York state energy research and development authority. Such  
12 regulations shall include, but shall not be limited to: a list of the  
13 appropriate type of projects that qualify as energy performance  
14 contracts; an approval process that includes review of the type and  
15 nature of the proposed project, the scope and nature of the work to be  
16 performed, and a detailed breakdown of the energy savings to be derived  
17 each year and for the duration of the energy performance contract; and a  
18 process for ensuring that districts have obtained financing at the  
19 lowest cost possible. Such regulations shall require that all energy  
20 performance contracts which contain maintenance and monitoring charges  
21 as part of the energy performance contract price state such maintenance  
22 and monitoring charges separately in the contract in a clear and  
23 conspicuous manner. Such regulations shall not apply to energy perform-  
24 ance contracts entered into prior to the effective date of such regu-  
25 lations, nor shall they apply to energy performance contracts for which  
26 a request for proposals was issued prior to such effective date.

27 9. IN THE CASE OF A SCHOOL DISTRICT OR A BOARD OF COOPERATIVE EDUCA-  
28 TIONAL SERVICES, A SOLAR POWER PURCHASE AGREEMENT SHALL BE DEVELOPED AND  
29 APPROVED PURSUANT TO THE REQUIREMENTS OF THIS SECTION. THE COMMISSIONER  
30 OF EDUCATION IN CONSULTATION WITH THE NEW YORK STATE ENERGY RESEARCH AND  
31 DEVELOPMENT AUTHORITY SHALL PROMULGATE SUCH REGULATIONS AS DETERMINED TO  
32 BE NECESSARY TO REGULATE THE CONSTRUCTION, INSTALLATION AND MAINTENANCE  
33 OF SOLAR POWERED ELECTRICITY GENERATING SYSTEMS OR EQUIPMENT AND TO  
34 REQUIRE THAT ALL SOLAR POWER PURCHASE AGREEMENTS WHICH CONTAIN MAINTE-  
35 NANCE AND MONITORING CHARGES STATE SUCH MAINTENANCE AND MONITORING  
36 CHARGES SEPARATELY IN THE AGREEMENT IN A CLEAR AND CONSPICUOUS MANNER.  
37 SUCH REGULATIONS SHALL NOT APPLY TO SOLAR POWER PURCHASE AGREEMENTS  
38 ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF SUCH REGULATIONS, NOR SHALL  
39 THEY APPLY TO SOLAR POWER PURCHASE AGREEMENTS FOR WHICH A REQUEST FOR  
40 PROPOSALS WAS ISSUED PRIOR TO SUCH EFFECTIVE DATE.

41 S 3. This act shall take effect immediately.