

9516--A

I N A S S E M B L Y

May 6, 2014

Introduced by M. of A. PAULIN, BRINDISI, BARRETT, BUCHWALD, GUNTHER, LIFTON, MOSLEY, OTIS, SKARTADOS, STECK, ZEBROWSKI, GALEF, RYAN, ENGLE-BRIGHT, SKOUFIS, ROSENTHAL, SEPULVEDA -- Multi-Sponsored by -- M. of A. BRENNAN, CAMARA, COOK, MAGEE, RIVERA, SIMANOWITZ, THIELE -- read once and referred to the Committee on Energy -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the energy law, in relation to energy technologies eligible for net metering

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. "POWER PURCHASE AGREEMENT" MEANS AN AGREEMENT IN CONNECTION WITH
4 THE INSTALLATION, MAINTENANCE AND MANAGEMENT OF AN ENERGY TECHNOLOGY
5 ELIGIBLE FOR NET ENERGY METERING PURSUANT TO SECTION SIXTY-SIX-J OR
6 SIXTY-SIX-L OF THE PUBLIC SERVICE LAW, WHERE A THIRD PARTY OWNER (NON-
7 AGENCY OR NON-MUNICIPAL OWNER) GENERATES ELECTRICITY FROM SUCH ENERGY
8 TECHNOLOGY (WHETHER OR NOT SUCH ENERGY TECHNOLOGY IS LOCATED AT THE
9 POINT OF CONSUMPTION) AND SELLS THE RESULTING ELECTRICITY TO AN AGENCY
10 OR MUNICIPALITY FOR A PRICE, VOLUME AND DURATION AS SET FORTH IN THE
11 AGREEMENT.
12 S 2. The energy law is amended by adding a new section 9-104 to read
13 as follows:
14 S 9-104. POWER PURCHASE AGREEMENTS. 1. NOTWITHSTANDING ANY OTHER
15 PROVISION OF LAW OR JUDICIAL DECISION (INCLUDING ANY THAT RESTRICT THE
16 AUTHORITY OF A GOVERNING BODY OF AN AGENCY OR MUNICIPALITY TO BIND
17 SUBSEQUENT GOVERNING BODIES OF SUCH AGENCY OR MUNICIPALITY), ANY AGENCY,
18 MUNICIPALITY, OR PUBLIC AUTHORITY, IN ADDITION TO EXISTING POWERS, IS
19 AUTHORIZED TO ENTER INTO POWER PURCHASE AGREEMENTS OF UP TO THIRTY-FIVE
20 YEARS DURATION, PROVIDED THAT THE DURATION OF ANY SUCH CONTRACT SHALL
21 NOT EXCEED THE REASONABLY EXPECTED USEFUL LIFE OF THE ENERGY FACILITIES
22 OR EQUIPMENT SUBJECT TO SUCH AGREEMENT.

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

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1 2. POWER PURCHASE AGREEMENTS SHALL NOT BE REQUIRED TO INCLUDE THE
2 CLAUSE SET FORTH IN SUBDIVISION TWO OF SECTION 9-103 OF THIS ARTICLE.

3 3. NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW OR JUDICIAL DECISION
4 (INCLUDING ANY THAT RESTRICT THE AUTHORITY OF A GOVERNING BODY OF AN
5 AGENCY OR MUNICIPALITY TO BIND SUBSEQUENT GOVERNING BODIES OF SUCH AGEN-
6 CY OR MUNICIPALITY), POWER PURCHASE AGREEMENTS SHALL ONLY BE VOID, VOID-
7 ABLE OR TERMINABLE BY EITHER THE THIRD PARTY OWNER OR THE AGENCY, MUNI-
8 CIPALITY OR PUBLIC AUTHORITY FOR NON-PERFORMANCE BY THE OTHER PARTY, AS
9 SET FORTH IN THE POWER PURCHASE AGREEMENT.

10 4. IN THE CASE OF A SCHOOL DISTRICT OR A BOARD OF COOPERATIVE EDUCA-
11 TIONAL SERVICES, A POWER PURCHASE AGREEMENT SHALL BE AN ORDINARY CONTIN-
12 GENT EXPENSE, AND SHALL IN NO EVENT BE CONSTRUED AS OR DEEMED A LEASE OR
13 LEASE-PURCHASE OF A BUILDING OR FACILITY, FOR PURPOSES OF THE EDUCATION
14 LAW.

15 5. AGENCIES, MUNICIPALITIES, AND PUBLIC AUTHORITIES ARE ENCOURAGED TO
16 CONSULT WITH AND SEEK ADVICE AND ASSISTANCE FROM THE NEW YORK STATE
17 ENERGY RESEARCH AND DEVELOPMENT AUTHORITY CONCERNING POWER PURCHASE
18 AGREEMENTS.

19 6. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN ORDER TO CONVEY AN
20 INTEREST IN REAL PROPERTY NECESSARY FOR THE CONSTRUCTION OF FACILITIES
21 OR THE OPERATION OF EQUIPMENT PROVIDED FOR IN A POWER PURCHASE AGREE-
22 MENT, ANY AGENCY, MUNICIPALITY OR PUBLIC AUTHORITY MAY ENTER INTO A
23 LEASE OR LICENSE OF SUCH REAL PROPERTY TO WHICH IT HOLDS TITLE OR WHICH
24 IS UNDER ITS ADMINISTRATIVE JURISDICTION AS IS NECESSARY FOR SUCH
25 CONSTRUCTION OR OPERATION, WITH A POWER PURCHASE AGREEMENT, FOR THE SAME
26 LENGTH OF TIME AS THE TERM OF SUCH POWER PURCHASE AGREEMENT, AND ON SUCH
27 TERMS AND CONDITIONS AS MAY BE AGREEABLE TO THE PARTIES THERETO, AND
28 NOTWITHSTANDING THAT SUCH REAL PROPERTY MAY REMAIN USEFUL TO SUCH AGEN-
29 CY, MUNICIPALITY OR PUBLIC AUTHORITY FOR THE PURPOSE FOR WHICH SUCH REAL
30 PROPERTY WAS ORIGINALLY ACQUIRED OR DEVOTED OR FOR WHICH SUCH REAL PROP-
31 erty IS BEING USED.

32 7. SECTIONS ONE HUNDRED THREE AND ONE HUNDRED NINE-B OF THE GENERAL
33 MUNICIPAL LAW SHALL APPLY TO THE PROCUREMENT OR ACQUISITION OF A POWER
34 PURCHASE AGREEMENT AS CONTEMPLATED BY THIS SECTION.

35 8. THE COMMISSIONER OF EDUCATION SHALL NOT BE REQUIRED TO DEVELOP A
36 FORM OF PRE-APPROVED POWER PURCHASE AGREEMENT OR BE REQUIRED TO APPROVE
37 ANY POWER PURCHASE AGREEMENTS TO BE EXECUTED BY A PARTY IN CONNECTION
38 WITH THIS, BUT IS AUTHORIZED TO DEVELOP RULES AND REGULATIONS CONCERNING
39 THE PROCESS FOR ISSUING BUILDING PERMITS AND OPERATIONAL SAFETY IN
40 RELATION TO THE INSTALLATION AND OPERATION OF ENERGY TECHNOLOGIES ELIGI-
41 BLE FOR NET ENERGY METERING PURSUANT TO SECTION SIXTY-SIX-J OR
42 SIXTY-SIX-L OF THE PUBLIC SERVICE LAW.

43 S 3. This act shall take effect immediately.