

36--A

2015-2016 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2015

Introduced by M. of A. PAULIN, BRINDISI, BARRETT, BUCHWALD, GUNTHER, LIFTON, MOSLEY, OTIS, SKARTADOS, STECK, ZEBROWSKI, GALEF, RYAN, ENGLE-BRIGHT, SKOUFIS, ROSENTHAL, SEPULVEDA, LUPARDO, SCHIMEL, QUART, FAHY -- Multi-Sponsored by -- M. of A. BRENNAN, CLARK, 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, ANY AGENCY, MUNICIPALITY, OR PUBLIC AUTHORITY, IN  
16 ADDITION TO EXISTING POWERS, IS AUTHORIZED TO ENTER INTO POWER PURCHASE  
17 AGREEMENTS, PROVIDED THAT THE DURATION OF ANY SUCH CONTRACT SHALL NOT

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

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1 EXCEED THE REASONABLY EXPECTED USEFUL LIFE OF THE ENERGY FACILITIES OR  
2 EQUIPMENT SUBJECT TO SUCH AGREEMENT.

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

5 3. NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, POWER PURCHASE AGREE-  
6 MENTS SHALL ONLY BE VOID, VOIDABLE OR TERMINABLE BY EITHER THE THIRD  
7 PARTY OWNER OR THE AGENCY, MUNICIPALITY OR PUBLIC AUTHORITY FOR NON-PER-  
8 FORMANCE BY THE OTHER PARTY, AS SET FORTH IN THE POWER PURCHASE AGREE-  
9 MENT.

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.