S T A T E O F N E W Y O R K

3613

2015-2016 Regular Sessions

I N S E N A T E

February 13, 2015

Introduced by Sen. GRIFFO -- 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 energy technologies eligible for net metering

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

Section 1. Section 9-102 of the energy law is amended by adding a new subdivision 5 to read as follows:

5. "POWER PURCHASE AGREEMENT" MEANS AN AGREEMENT IN CONNECTION WITH THE INSTALLATION, MAINTENANCE AND MANAGEMENT OF AN ENERGY TECHNOLOGY ELIGIBLE FOR NET ENERGY METERING PURSUANT TO SECTION SIXTY-SIX-J OR SIXTY-SIX-L OF THE PUBLIC SERVICE LAW, WHERE A THIRD PARTY OWNER (NON-AGENCY OR NON-MUNICIPAL OWNER) GENERATES ELECTRICITY FROM SUCH ENERGY TECHNOLOGY (WHETHER OR NOT SUCH ENERGY TECHNOLOGY IS LOCATED AT THE POINT OF CONSUMPTION) AND SELLS THE RESULTING ELECTRICITY TO AN AGENCY OR MUNICIPALITY FOR A PRICE, VOLUME AND DURATION AS SET FORTH IN THE AGREEMENT.

S 2. The energy law is amended by adding a new section 9-104 to read as follows:

S 9-104. POWER PURCHASE AGREEMENTS. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR JUDICIAL DECISION (INCLUDING ANY THAT RESTRICT THE AUTHORITY OF A GOVERNING BODY OF AN AGENCY OR MUNICIPALITY TO BIND SUBSEQUENT GOVERNING BODIES OF SUCH AGENCY OR MUNICIPALITY), ANY AGENCY, MUNICIPALITY, OR PUBLIC AUTHORITY, IN ADDITION TO EXISTING POWERS, IS AUTHORIZED TO ENTER INTO POWER PURCHASE AGREEMENTS OF UP TO THIRTY-FIVE YEARS DURATION, PROVIDED THAT THE DURATION OF ANY SUCH CONTRACT SHALL NOT EXCEED THE REASONABLY EXPECTED USEFUL LIFE OF THE ENERGY FACILITIES OR EQUIPMENT SUBJECT TO SUCH AGREEMENT.

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

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

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

4. IN THE CASE OF A SCHOOL DISTRICT OR A BOARD OF COOPERATIVE EDUCATIONAL SERVICES, A POWER PURCHASE AGREEMENT SHALL BE AN ORDINARY CONTINGENT EXPENSE, AND SHALL IN NO EVENT BE CONSTRUED AS OR DEEMED A LEASE OR LEASE-PURCHASE OF A BUILDING OR FACILITY, FOR PURPOSES OF THE EDUCATION LAW.

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

6. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN ORDER TO CONVEY AN INTEREST IN REAL PROPERTY NECESSARY FOR THE CONSTRUCTION OF FACILITIES OR THE OPERATION OF EQUIPMENT PROVIDED FOR IN A POWER PURCHASE AGREEMENT, ANY AGENCY, MUNICIPALITY OR PUBLIC AUTHORITY MAY ENTER INTO A LEASE OR LICENSE OF SUCH REAL PROPERTY TO WHICH IT HOLDS TITLE OR WHICH IS UNDER ITS ADMINISTRATIVE JURISDICTION AS IS NECESSARY FOR SUCH CONSTRUCTION OR OPERATION, WITH A POWER PURCHASE AGREEMENT, FOR THE SAME LENGTH OF TIME AS THE TERM OF SUCH POWER PURCHASE AGREEMENT, AND ON SUCH TERMS AND CONDITIONS AS MAY BE AGREEABLE TO THE PARTIES THERETO, AND NOTWITHSTANDING THAT SUCH REAL PROPERTY MAY REMAIN USEFUL TO SUCH AGENCY, MUNICIPALITY OR PUBLIC AUTHORITY FOR THE PURPOSE FOR WHICH SUCH REAL PROPERTY WAS ORIGINALLY ACQUIRED OR DEVOTED OR FOR WHICH SUCH REAL PROPERTY IS BEING USED.

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

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

S 3. This act shall take effect immediately.