

3613

2015-2016 Regular Sessions

I N   S E N A T E

February 13, 2015

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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:

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-A-  
7     GENCY 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.  
23    2. POWER PURCHASE AGREEMENTS SHALL NOT BE REQUIRED TO INCLUDE THE  
24    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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1 3. NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW OR JUDICIAL DECISION  
2 (INCLUDING ANY THAT RESTRICT THE AUTHORITY OF A GOVERNING BODY OF AN  
3 AGENCY OR MUNICIPALITY TO BIND SUBSEQUENT GOVERNING BODIES OF SUCH AGEN-  
4 CY OR MUNICIPALITY), POWER PURCHASE AGREEMENTS SHALL ONLY BE VOID, VOID-  
5 ABLE OR TERMINABLE BY EITHER THE THIRD PARTY OWNER OR THE AGENCY, MUNI-  
6 CIPALITY OR PUBLIC AUTHORITY FOR NON-PERFORMANCE BY THE OTHER PARTY, AS  
7 SET FORTH IN THE POWER PURCHASE AGREEMENT.

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

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

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

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

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

41 S 3. This act shall take effect immediately.