

I MINA'TRENTAI SINGKO NA LIHESLATORAN GUÅHAN
2019 (FIRST) Regular Session

Bill No. 219-35 (COR)

As amended by the Committee
on General Government Operations,
Appropriations and Housing; and Substituted on the floor.

Introduced by:

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AN ACT TO AMEND § 7116 OF CHAPTER 7, DIVISION 2, TITLE 17, GUAM CODE ANNOTATED; AND TO AMEND § 5008.2 OF SUBARTICLE A, ARTICLE 1, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE PURCHASE OR LEASE-BACK OF RENEWABLE ENERGY PURCHASE OF SERVICE FOR THE DEPARTMENT OF EDUCATION, THE GUAM ACADEMY CHARTER SCHOOLS, THE GUAM COMMUNITY COLLEGE, AND THE UNIVERSITY OF GUAM.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *ILiheslaturan Guåhan* finds that the
3 use of solar energy on Guam is both economical and beneficial to the island and the
4 Pacific community.

5 *ILiheslaturan Guåhan* further finds that the Guam Consolidated Commission
6 on Utilities is working on building solar energy capacity but that there is a need for
7 over three thousand (3,000) acres of land and capital of over One Billion Dollars
8 (\$1,000,000,000) to achieve this.

1 Therefore, it is the intent of *I Liheslaturan Guåhan* to move Guam toward
2 cleaner energy production by utilizing the rooftops and real property of Guam's
3 educational facilities at the Guam Department of Education, the Guam Academy
4 Charter Schools, the Guam Community College, and the University of Guam, and
5 their ancillary buildings, as properties eligible for the installation of solar panels to
6 aid in attaining a lower cost for cleaner electricity production and usage, and to
7 provide strengthened legislation to purchase or lease-back renewable energy.

8 **Section 2.** § 7116 of Chapter 7, Division 2, Title 17, Guam Code Annotated,
9 is hereby *amended* to read:

10 **“§ 7116. Power Purchase or Sale Lease-back Agreement to
11 Purchase Solar Energy.**

12 (a) The Guam Department of Education (GDOE), the Guam
13 Academy Charter Schools, the Guam Community College, and the University
14 of Guam (hereafter “Institution(s)”), may enter into one (1) or more Power
15 Purchase Agreements (PPA) or sale lease-back agreements to purchase solar
16 energy from qualified provider(s) which will be in the best financial interests
17 of the government of Guam for a period up to and not exceeding twenty-five
18 (25) years. Such qualified PPA or sale lease-back provider(s) *shall* be selected
19 by a Multi-Step Bid conducted by GDOE the respective Institutions, in
20 accordance with the procurement law and regulations of the government of
21 Guam. The qualified PPA provider(s) or sale lease-back will be responsible
22 for providing the PPA or sale lease-back agreement to cover *no more than*
23 eighty percent (80%) of the school's Institution's power needs, as calculated
24 for the immediately preceding twelve (12)thirty-six (36)-month period from
25 the date of the execution of the PPA or sale lease-back agreement, for all
26 GDOE owned schools Institutions, and GDOE administrative, and ancillary
27 buildings. For schools Institutions occupied under a lease agreement as of the

1 enactment of this Section, ~~GDOE~~ an Institution may amend its lease
2 agreements or otherwise directly enter into a PPA or sale lease-back
3 agreement with a lessor for the purchase of solar power produced with
4 renewable energy directly from the lessor. ~~and without application of the~~
5 ~~procurement law, Such lease amendments or PPA shall not have a term in~~
6 ~~excess of twenty-five (25) years and shall be for no more than eighty percent~~
7 ~~(80%) of annual power needs of the leased Institutions based on the twelve~~
8 ~~(12)thirty-six (36)-month period immediately preceding the execution of the~~
9 lease amendment or PPA. GDOE The Institutions ~~is~~ are encouraged to
10 participate in energy efficiency programs available through the Guam Power
11 Authority, and shall make every effort to secure federal funding opportunities
12 to augment any local appropriations authorized for Power Purchase
13 Agreements.

14 (b) The qualified PPA or sale lease-back agreement provider(s) *shall*
15 be considered responsive if accepted proposals have been deemed technically
16 acceptable and provide the best value to ~~GDOE~~ the Institutions and the
17 government of Guam.

18 (c) The qualified PPA or sale lease-back agreement providers may
19 submit a single proposal without limitations or discrimination on all proposals
20 made in good faith. A qualified PPA or sale lease-back agreement provider(s)
21 will be allowed to submit a single proposal for one (1) ~~GDOE~~ Institution
22 facility or multiple ~~GDOE~~ Institution facilities in good faith.

23 (d) The Guam Power Authority, under the direction of ~~GDOE~~ the
24 Institutions, shall provide bid specifications for the implementation of this
25 Section, and shall provide technical assistance during the bid selection process
26 as overseen by ~~GDOE~~ the Institutions. ~~GDOE~~ The Institutions shall seek
27 technical consultation from the Guam Power Authority in implementing this

1 Section, and the Guam Power Authority shall provide the technical
2 consultation upon request at no cost to ~~GDOE~~ the Institution's for the life of
3 the contract. Upon ~~GDOE~~'s the Institution's request, GPA shall provide a
4 cost-benefit analysis of a PPA to ~~GDOE~~ the Institution's and to *ILiheslaturan*
5 *Guahan* within ~~ninety~~ (90) forty-five (45) days of said request. ~~GDOE~~ The
6 institution's may further seek technical consultation from the Guam Energy
7 Office, the Department of Public Works, the Guam Renewable Energy
8 Association, and/or third party renewable energy consultant in implementing
9 this Section, and the consultation shall be at no cost to ~~GDOE~~ the Institutions.
10 Any costs associated with a third-party consultant will be passed through in
11 total to the qualified PPA provider(s) equally and in full who is awarded the
12 Multi-Step Bid.

13 (e) In concert with ~~GDOE~~ the Institutions, the selected PPA or sale
14 lease-back agreement provider(s) *shall* review historical power needs, such as
15 the past ~~twelve~~ (12)thirty-six (36) months of power consumption, of the
16 selected ~~sehools~~ Institutions, and provide the maximum sized photovoltaic
17 system safely allowed by roof size, building orientation and location, and
18 other physical conditions which may affect the safe and effective size of the
19 photovoltaic system. In no case shall the system be sized to produce power in
20 excess of the needs of the specific building or campus as recorded during the
21 previous ~~twelve~~ (12)thirty-six (36) months, exclusive of extraordinary
22 circumstances, such as natural disasters, that may result in power generation
23 greater than consumption for the period.

24 (f) The qualified PPA or sale lease-back agreement provider(s) *shall*
25 pay for the design, financing permitting, insurance, installation, monitoring
26 and maintenance of the system, and *shall* own and operate the system located

1 on GDOE's the Institution's facility for the life of the contract at no cost to
2 GDOE the Institutions or the government of Guam.

3 (g) The qualified PPA or sale lease-back agreement provider(s) must
4 possess a valid Guam business license prior to the awarding of the contract.

5 (h) The qualified PPA or sale lease-back agreement provider(s) *shall*
6 be experienced in designing, implementing and installing solar energy
7 systems, and have a record of established projects, demonstrate technical,
8 operational, financial and managerial capabilities to design and operate a solar
9 energy system.

10 (i) The qualified PPA or sale lease-back agreement provider(s) *shall*
11 warrant that the solar energy paid by GDOE the Institutions will *not exceed*
12 eighty percent (80%) of Guam Power Authority's current billing charges to
13 GDOE the respective Institutions, schools GDOE administrative, and GDOE
14 ancillary buildings, as determined by the most recent utility invoices for that
15 selected building, school or campus. Escalation of rates for years two (2)
16 through twenty-five (25) *shall* be determined and set in advance, and if it is a
17 sale lease-back agreement there will be no escalation rates applicable to this
18 type of sale lease-back agreement. At no time shall the qualified PPA or sale
19 lease-back agreement provider(s) produce power in excess of the needs of the
20 designated school/campus, based upon annual consumption of the designated
21 school/campus, exclusive of extraordinary circumstances, such as natural
22 disasters, that may result in power generation greater than consumption for
23 the period.

24 (j) The qualified PPA or sale lease-back agreement provider(s) *shall*
25 work with GDOE the Institutions concerning any existing school Institution's
26 roofing warranties to ensure said warranties are not voided with the
27 installation and operation of the solar energy systems.

(k) The qualified PPA or sale lease-back agreement provider(s) *shall* perform repairs to any portion of the roof damaged during the installation and operation of the solar energy systems and *shall* maintain those repairs for the duration of the warranty or the contract, whichever is the shortest.

(l) Every year, on the anniversary date of the commissioning of the solar energy system, the qualified PPA or sale lease-back agreement provider(s) *shall* report to the GDOE Institutions on the production for the previous year comparing rates charged by the qualified provider against rates being charged by the utility detailing the savings for the previous year. GDOE The Institutions *shall* transmit a copy of this report to the Speaker of *I
Liheislaturan Guåhan*.

(m) The qualified PPA or sale lease-back agreement provider(s) shall not extinguish its obligations under the agreement by assigning it to another company that has met the requirements set forth in this Section without the approval of the respective Institutions' governing body: the Guam Education Board, the Guam Academy Charter Schools Council, the Guam Community College Board of Trustees, and the University of Guam Board of Regents, which will not be unreasonably withheld.

(n) As described in Upon the expiration of the PPA or sale lease-back agreement, GDOE the Institutions may have the option to purchase the solar energy system at an agreed upon Fair Market Value (FMV). FMV will be determined collaboratively by the PPA provider(s), ~~GDOE~~The Institution, and a third party Subject Matter Expert (SME). ~~GDOE~~The Institution also reserves the right to purchase the system at any time after the seventh (7th) year of the PPA at a determined FMV, and recognizes that a qualified PPA provider(s) would face negative impact tax implications if bought out prior to the stated timeframe.

(o) The agreement *shall* include a provision which will impose a monetary fine per day for each day beyond the agreed date that the qualified provider(s) promises to implement the solar energy system. The provisions in this Section *shall not* apply in the case of force majeure to the extent of delays caused by such force majeure. The provisions of the Subsection cannot be waived. Said monetary fines *shall* be deposited in ~~Y Kuentan Salappe' Prinsepat Fund~~ the following Funds respective to the Institution: the GDOE Energy Efficient Fund, the Guam Academy Charter Schools Council Energy Efficient Fund, the Guam Community College Energy Efficient Fund; and the University of Guam Energy Efficient Fund, and *shall* be used for the Institution where the implementation of the solar energy system or any other renewable energy sources is delayed.

(p) Qualified PPA or sale lease-back agreement provider(s) may be allowed to locate and/or co-locate the solar energy system on private or government property at another site for the purposes of achieving renewable energy power generation to satisfy the power consumption under this Section. GPA, who has also recognized the benefit of “off-site” power generation, will recognize an offsite net metering for a qualified PPA or sale lease-back agreement providers, as long as the qualified PPA or sale lease-back agreement provider of solar energy system is in compliance with the current cap set forth for residential and commercial net metering, 25KW and 100KW per meter respectively. The following conditions must be met:

(1) If the qualified PPA or sale lease-back agreement provider(s), doing its due diligence, identifies that the rooftop of any GDOE Institution owned schools, GDOE administrative, and GDOE ancillary buildings, and for schools Institution's occupied under a lease

1 agreement may not be financially feasible due to the age or quality of
2 the building's rooftop.

3 (2) In the event that the utility grid is unable to receive the
4 renewable energy source for the respective Institution's owned ~~GDOE~~
5 schools, ~~GDOE~~ administrative, and ~~GDOE~~ ancillary buildings, and for
6 schools occupied under a lease agreement, being interconnected with
7 GPA's utility grid.

8 (3) In the event that there is no room to install the photovoltaic
9 solar energy system due to limited access of rooftops and real property
10 of all ~~GDOE~~ Institution owned schools, ~~GDOE~~ administrative, and
11 ~~GDOE~~ ancillary buildings, and for ~~schools~~ Institutions occupied under
12 a lease agreement.

13 (4) The qualified PPA or sale lease-back agreement
14 provider(s) *shall* apply for a meter, at their own expense, to record the
15 flow of power into the existing grid.

16 (5) If co-located, that each individual system be metered for
17 each specific qualified PPA or sale lease-back agreement provider(s).

18 (6) The location of the off-site power generation has met all
19 other building code and requirements.

20 (7) The qualified PPA or sale lease-back agreement
21 provider(s) has submitted proof of land ownership and/or legal lease of
22 land used for the purposes of solar power generation.

23 (8) The qualified PPA or sale lease-back agreement
24 provider(s) will provide an interconnection study that validates the
25 ability of a photovoltaic system prior to construction, if that
26 photovoltaic system(s) is expected to exceed 100KW due to co-
27 location.

(9) An interconnection study that dictates an improvement or an upgrade is required for a customer generator's power to be accepted by GPA at grid connection will be the responsibility of the qualified PPA or sale lease-back agreement provider(s).

(q) Throughout the qualified PPA or sale lease-back agreement provider's management duration of any solar energy system procured and installed under this Section, the qualified PPA or sale lease-back agreement provider *shall*, at *no* cost in excess of the management agreement, remove and reinstall any such solar energy system at the request of the Superintendent of Education Institution's Director, Superintendent, President, or similarly designated head, if the facility that such system is installed upon undergoes renovation or demolition that may affect the usefulness of the solar energy system.

(r) Each participating school will have access to fifty percent (50%) of the energy savings yielded from the PPA and GDOE the Schools for the respective schools. The savings *shall* be transferred from the utility pool and deposited in the *Y Kuentan Salappe' Prinsepat* Fund for each respective school from the energy savings produced from the lower cost of energy provided by PPA. The funds will be available within thirty (30) days from the close of each quarter.

(sr) Each participating school Institution will have access to the remaining fifty percent (50%) one hundred percent (100%) of the energy savings yielded from the PPA or sale lease-back agreement for the respective schoolsInstitution. The savings *shall* be transferred to the Institution's maintenance division for the maintenance, and repair, and/or any capital improvement projects of respective Institutions of all GDOE schools from the utility pool and deposited in the Energy Efficient Fund for each respective

schoolInstitution from the energy savings produced from the lower cost of energy provided by the PPA or sale lease-back agreement. The funds can be leveraged as a source of payment for GDOEthe Institution to utilize any financing mechanism such as bonds or any federal loan program to raise funds for the Institution's facilities maintenance or construction of services. The funds will be available within thirty (30) days from the close of each quarter.

(ts) ~~GDOE~~ The Institutions will have access to the annual utility appropriation set forth in its ~~GDOE~~ budget for Power Purchase Payment commitments or sale lease-back agreement to its qualified Power Purchase Agreement or sale lease-back agreement provider(s). In addition, ~~GDOE~~ The Institutions will still be obligated from its utility appropriation to pay for the utility from Guam Power Authority which is *not* part of the Power Purchase Agreement.

(t) Pursuant to its authority under 17 GCA § 7116, the Institutions shall submit a report on the status of its progress to enter into power purchase agreements to the Speaker of *I Liheslatura* within thirty (30) days of the enactment of this Act.”

Section 3. § 5008.2 of Subarticle A, Article 1, Chapter 5, Title 5, Guam Code Annotated, is hereby *amended* to read as follows:

“§ 5008.2. Policy in Favor of Renewable Energy Purchase of Service.

(a) In procuring services pursuant to 17 GCA § 7116, GDOE the Institutions shall, subject to the provisions of this Chapter, grant a preference to a local businesses;

(b) In addition, five percent (5%) preference of the lowest Multi-Step Bidder for contracts under Five Hundred Thousand dollars (\$500,000); or three percent (3%) preference of the lowest Multi-Step Bidder for

1 contracts of Five Hundred Thousand Dollars (\$500,000) or more, *shall* be
2 given to a local business that meets the following criteria:

3 (1) the qualified PPA or sale lease-back agreement provider(s)
4 must be doing business on Guam with a valid business license, and be
5 in good standing with the Department of Revenue and Taxation prior
6 to the award of the contract; and

7 (2) the qualified PPA or sale lease-back agreement provider(s)
8 *shall* be experienced in designing, implementing and installing solar
9 energy systems, have a record of established projects, demonstrate
10 technical, operational, financial and managerial capabilities to design
11 and operate the solar energy system.”

12 **Section 4. Effective Date.** This Act *shall* be effective upon enactment.