





I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
219-35 (COR)	Joe S. San Agustin Tina Rose Muña Barnes William M. Castro Clynton E. Ridgell	AN ACT TO AMEND § 7120 OF CHAPTER 7 OF DIVISION 2, TITLE 17, GUAM CODE ANNOTATED; TO AMEND § 8502 OF ARTICLE 5, CHAPTER 8 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND § 5008.2 OF PART A, ARTICLE 1, CHAPTER 5 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE PURCHASE OR LEASE-BACK OF RENEWABLE ENERGY PURCHASE OF SERVICE FOR THE DEPARTMENT OF EDUCATION, GUAM ACADEMY CHARTER SCHOOLS, THE GUAM COMMUNITY COLLEGE AND THE UNIVERSITY OF GUAM.	10/15/19 3:46 p.m.						

**I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) REGULAR SESSION**

Bill No. 219 -35 (COR)

Introduced by:

Joe S. San Agustin 
Tina Rose Muña-Barnes 
William M. Castro 
Clynton Redbell 

AN ACT TO AMEND § 7120 OF CHAPTER 7 OF DIVISION 2, TITLE 17, GUAM CODE ANNOTATED; TO AMEND § 8502 OF ARTICLE 5, CHAPTER 8 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND § 5008.2 OF PART A, ARTICLE 1, CHAPTER 5 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE PURCHASE OR LEASE-BACK OF RENEWABLE ENERGY PURCHASE OF SERVICE FOR THE DEPARTMENT OF EDUCATION, GUAM ACADEMY CHARTER SCHOOLS, THE GUAM COMMUNITY COLLEGE AND THE UNIVERSITY OF GUAM.

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BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that the use of solar energy on Guam is both economical and beneficial to our island and Pacific community.

I Liheslaturan Guåhan further finds that the Guam Consolidated Commission on Utilities is working on building solar energy capacity but finds the need for over 3,000 acres of land and capital of over One Billion Dollars to achieve this.

It is the intent of *I Liheslaturan Guåhan* to move Guam toward cleaner energy production by utilizing rooftops of Guam's educational facilities at the Guam Department of Education, Guam Academy Charter Schools, Guam Community College and the University of Guam and their ancillary buildings as properties

1 eligible for the installation of solar panels to aid in attaining a lower cost for cleaner
2 electricity production and usage and to provide strengthened legislation to purchase
3 or lease-back renewal energy.

4 **Section 2.** § 7120 of Chapter 7 of Division 2, Title 17, Guam Code Annotated
5 is hereby *amended* to read:

6 **“§ 7120. Power Purchase or Sale Lease-back Agreement to**
7 **Purchase Solar Energy.**

8 (a) The Guam Department of Education (GDOE), Guam
9 Academy Charter Schools, Guam Community College and University
10 of Guam, hereinafter ‘Institution(s)’, may enter into one or more power
11 purchase or Sale Lease-back agreements to purchase solar energy from
12 qualified provider(s) which will be in the best financial interests of the
13 government of Guam for a period up to ~~and not exceeding~~ twenty-five
14 (25) years and not to exceed forty (40) years. Such qualified PPA or
15 Sale Lease-back provider(s) *shall* be selected by a Multi-Step Bid
16 conducted by ~~GSA~~ respective Institutions, in accordance with the
17 procurement law and regulations of Guam. The qualified PPA
18 provider(s) or Sale Lease-back will be responsible for providing PPA
19 or Sale Lease-back Agreement to cover *no more than* eighty percent
20 (80%) of the ~~school’s~~ Department’s power needs as calculated for the
21 immediately preceding twelve-month period from the date of the
22 execution of the PPA or Sale Lease-back Agreement, for all GDOE
23 owned Institutions, GDOE administrative, and GDOE ancillary
24 buildings. For ~~schools~~ Institutions occupied under a lease agreement
25 as of the enactment of this Section, ~~GDOE~~ the Institutions may amend
26 its lease agreements or otherwise directly enter into a PPA or Sale
27 Lease-back Agreement with a lessor for the purchase of solar power

1 produced with renewable energy directly from the lessor and without
2 application of the procurement law including Section 5004, Section
3 5006 and Section 5150 of Title 5 GCA. Such lease amendments or PPA
4 shall not have a term in excess of twenty-five (25) years and shall be
5 for no more than eighty percent (80%) of annual power needs of the
6 leased Institutions based on the 12-month period immediately
7 preceding the execution of the lease amendment or PPA.

8 (b) The qualified PPA or Sale Lease-back Agreement
9 provider(s) shall be considered responsive if accepted proposals have
10 been deemed technically acceptable and provide the best value to the
11 Institutions and the government of Guam.

12 (c) The qualified PPA or Sale Lease-back Agreement
13 providers may submit a single proposal without limitations or
14 discrimination on all proposals made in good faith. A qualified PPA or
15 Sale Lease-back Agreement provider(s) will be allowed to submit a
16 single proposal for one ~~GDOE~~ Institution facility or multiple ~~GDOE~~
17 Institution facilities in good faith.

18 (d) ~~GDOE and GSA shall~~ The ~~Schools~~ Institutions *may* seek
19 technical consultation from the Guam Power Authority in
20 implementing this Section, and the Guam Power Authority *shall*
21 provide the technical consultation upon request at *no cost to* ~~GDOE and~~
22 ~~GSA. GDOE and GSA~~ The Institutions *may* further seek technical
23 consultation from the Guam Energy Office, the Department of Public
24 Works, and/or a third party renewable energy consultant in
25 implementing this Section and the consultation *shall* be at *no cost to* the
26 Institutions ~~GDOE and GSA~~; any costs associated with a third party
27 consultant will be passed through in total to the qualified PPA or Sale

1 Lease-back Agreement provider(s) equally and in full who is awarded
2 the Multi-Step Bid.

3 (e) In concert with ~~GDOE~~ the Institutions, the selected PPA
4 or Sale Lease-back Agreement provider(s) *shall* review historical
5 power needs, such as the past twelve (12) months of power
6 consumption, of the selected schools and provide the maximum sized
7 photovoltaic safely allowed by roof size, building orientation and
8 location, and other physical conditions which may affect the safe and
9 effective size of the photovoltaic system. In case shall the system be
10 sized to produce power in excess of the needs of the specific building
11 or campus as recorded during the previous twelve (12) months,
12 exclusive of extraordinary circumstances, such as natural disasters, that
13 may result in power generation greater than consumption for the period.

14 (f) The qualified PPA or Sale Lease-back Agreement
15 provider(s) *shall* pay for the design, financing permitting, insurance,
16 installation, monitoring and maintenance of the system, and *shall* own
17 and operate the system located on ~~GDOE's~~ the Institution's facility for
18 the life of the contract at *no* cost to ~~GDOE~~ the Institutions or the
19 government of Guam.

20 (g) The qualified PPA or Sale Lease-back Agreement
21 provider(s) must possess a valid Guam Business license, for at least five
22 (5) years, prior to the award of the contract.

23 (h) The qualified PPA or Sale Lease-back Agreement
24 provider(s) *shall* be experienced in designing, implementing and
25 installing solar energy systems, and have a record of established
26 projects, demonstrate technical, operational, financial and managerial
27 capabilities to design and operate a solar energy system.

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

16 (j) The qualified PPA or Sale Lease-back Agreement
17 provider(s) *shall* work with ~~GDOE~~ the Schools Institutions concerning
18 any existing school roofing warranties to ensure said warranties are not
19 voided with the installation and operation of the solar energy systems.

20 (k) The qualified PPA or Sale Lease-back Agreement
21 provider(s) *shall* perform repairs to any portion of the roof damaged
22 during the installation and operation of the solar energy systems, and
23 *shall* maintain those repairs for the duration of the warranty or the
24 contract, whichever is the shortest.

25 (l) Every year, on the anniversary date of the commissioning
26 of the solar energy system, the qualified PPA or Sale Lease-back
27 Agreement provider(s) *shall* report to the ~~GDOE~~ Institutions on the

1 production for the previous year comparing rates charged by the
2 qualified provider against rates being charged by the utility detailing
3 the savings for the previous year. ~~GDOE~~ The Schools Institutions shall
4 transmit a copy of this report to the Speaker of *I Liheslaturan Guåhan*.

5 (m) The qualified PPA or Sale Lease-back Agreement
6 provider(s) shall not extinguish its obligations under the agreement by
7 assigning it to another company that has met the requirements set forth
8 in this Section without the approval of the respective school's
9 governing body: Guam Board of Education, the Guam Academy
10 Charter School Council, the Guam Community College Board of
11 Trustees and the University of Guam Board of Regents which will not
12 be unreasonably withheld.

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

22 (o) The agreement shall include a provision which will
23 impose a monetary fine per day for each day beyond the agreed date
24 that the qualified provider(s) promises to implement the solar energy
25 system. The provisions in this Section shall not apply in the case of
26 force majeure to the extent of delays caused by such force majeure. The
27 provisions of the Subsection cannot be waived. Said monetary fines

1 shall be deposited into ~~Y-Kuentan Salappe' Prinsepat~~ the following
2 funds respective to the School: the GDOE Energy Efficient Fund, the
3 Guam Academy Charter Schools Council Energy Efficient Fund, the
4 Guam Community College Energy Efficient Fund; and the University
5 of Guam Energy Efficient Fund, and shall be used for the schools where
6 the implementation of the solar energy system or any other renewable
7 energy sources is delayed.

8 (p) Qualified PPA or Sale Lease-back Agreement provider(s)
9 may be allowed to locate and or co-located the solar energy system on
10 private or government property at another site for the purposes of
11 achieving renewable energy power generation to satisfy the power
12 consumption under this Section. GPA, who has also recognized the
13 benefit of "off-site" power generation, will recognize an offsite net
14 metering for a qualified PPA providers, as long as the qualified PPA
15 provider of solar energy system is in compliance with the current cap
16 set forth for residential and commercial net metering, 25KW and
17 100KW per meter respectively. The following conditions must be met:

18 (1) If the qualified PPA or Sale Lease-back Agreement
19 provider(s), doing its due diligence, identifies that the
20 rooftop of any ~~GDOE~~ Institution owned schools, ~~GDOE~~
21 administrative, and ~~GDOE~~ ancillary buildings and for
22 schools occupied under a lease agreement may *not* be
23 financially feasible due to the age or quality of the
24 building's rooftop.

25 (2) In the event that the utility grid is unable to receive
26 the renewable energy source for the ~~GDOE~~ school, ~~GDOE~~
27 administrative, and ~~GDOE~~ ancillary buildings, and for

1 schools occupied under a lease agreement, being
2 interconnected with GPA's utility grid.

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

9 (4) The qualified PPA or Sale Lease-back Agreement
10 provider(s) *shall* apply for a meter, at their own expense,
11 to record the flow of power into the existing grid.

12 (5) If co-located, that each individual system be
13 metered for each specific qualified PPA or Sale Lease-
14 back Agreement provider(s).

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

17 (7) The qualified PPA or Sale Lease-back Agreement
18 provider(s) has submitted proof of land ownership and/or
19 legal lease of land used for the purposes of solar power
20 generation.

21 (8) The qualified PPA or Sale Lease-back Agreement
22 provider(s) will provide an interconnection study that
23 validates the ability of a photovoltaic system prior to
24 construction; if that photovoltaic system(s) is expected to
25 exceed 100KW du to co-location.

26 (9) An interconnection study that dictates an
27 improvement or an upgrade is required in order for a

1 customer generator's power to be accepted by GPA at grid
2 connection will the responsibility of the qualified PPA or
3 Sale Lease-back Agreement provider(s).

4 (q) Throughout the qualified PPA or Sale Lease-back
5 Agreement provider's management duration of any solar energy
6 system procured and installed under this Act, the qualified PPA or Sale
7 Lease-back Agreement provider *shall*, at *no* cost in excess of the
8 management agreement, remove and reinstall any such solar energy
9 system at the request of the ~~Superintendent of Education~~ Institution's
10 Director, Superintendent or President, if the facility that such system is
11 installed upon undergoes renovation or demolition that may affect the
12 usefulness of the solar energy system.

13 ~~(r) Each participating school will have access to fifty percent~~
14 ~~(50%) of the energy savings yielded from the PPA and GDOE the~~
15 ~~Schools for the respective schools. The savings shall be transferred~~
16 ~~from the utility pool and deposited in the Y Kuantan Salappe' Prinsepat~~
17 ~~Fund for each respective school from the energy savings produced from~~
18 ~~the lower cost of energy provided by PPA. The funds will be available~~
19 ~~within thirty (30) days from the close of each quarter.~~

20 (sr) Each participating school Institution will have access to
21 the remaining ~~fifty percent (50%)~~ One Hundred percent (100%) of the
22 energy savings yielded form the PPA or Sale Lease-back Agreement
23 for the respective schools. The savings *shall* be transferred to the
24 Maintenance Division for the maintenance, and repair, and/or any
25 Capital Improvement Projects of respective Institutions of all GDOE
26 schools from the utility pool and deposited into the Energy Efficient
27 Fund for each respective school from the energy savings produced from

1 the lower cost of energy provided by PPA or Sale Lease-back
2 Agreement. The funds can be leveraged as a source of payment for
3 GDOE to utilize any financing mechanism such as bonds or any federal
4 loan program to raise funds for the facilities maintenance or
5 construction of services. ~~will be available within thirty (30) days from~~
6 ~~the close of each quarter.~~

7 (s) ~~GDOE~~ The Institutions will have access to the annual
8 utility appropriation set forth in its ~~GDOE~~ budget for Power Purchase
9 Payment commitments or Sale Lease-back Agreement to its Qualified
10 Power Purchase Agreement or Sale Lease-back Agreement provider(s).
11 In addition, ~~GDOE~~ the Institutions will still be obligated from its utility
12 appropriation to pay for the utility from Guam Power Authority which
13 is *not* part of the Power Purchase Agreement.

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

16 **“§ 5008.2. Policy in Favor of Renewable Energy Purchase of**
17 **Service.**

18 (a) In procuring services as cited in §7120 of Title 17, Guam
19 Code Annotated, ~~GSA GDOE~~ the Institutions *shall*, subject to the
20 provisions of Title 5, and is exempted from Sections 5004, 5006 and
21 5150 of Chapter 5, Title 5, Guam Code Annotated, grant a preference
22 to a local business.

23 (b) In addition, five percent (5%) preference for contracts
24 under Five Hundred Thousand dollars (\$500,000) shall be given to a
25 local business that meets the following criteria:

26 (1) the qualified PPA or Sale Lease-back
27 Agreement provider(s) must be doing business on Guam with a

1 valid business license and with a local track record of at least five
2 (5) years in doing business as a solar energy provider on Guam,
3 and is in good standing with the Department of Revenue and
4 Taxation prior to the award of the contract; and

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

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