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I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
THIRTY-SECOND GUAM LEGISLATURE
155 Hesler Place, Hagåtña, Guam 96910

November 13, 2013

The Honorable Edward J.B. Calvo
I Maga'lahen Guåhan
Ufisinan I Maga'lahi
***Hagåtña,* Guam 96910**

OFFICE OF THE GOVERNOR
CENTRAL FILES
RECEIVED BY: L. Dela Rosa
TIME: 11:28 a.m. DATE: 11/15/13

Dear *Maga'lahi* Calvo:

Transmitted herewith are Bill and Substitute Bill Nos. 35-32(COR), 74-32(LS), 75-32(LS), 91-32(COR), 94-32(COR), 98-32(LS), 99-32(LS), 108-32(COR), 112-32(COR), 116-32(COR), 133-32(COR), 134-32(COR), 140-32(COR), 141-32(COR), 143-32(COR), 145-32(LS), 150-32(COR), 153-32(COR), 154-32(COR), 156-32(COR), 157-32(COR), 158-32(COR), 160-32(COR), 161-32(COR), 162-32(LS), 165-32(COR), 170-32(LS), 176-32(COR), 189-32(COR), 193-32(COR), 194-32(COR), 195-32(COR), 196-32(COR), 200-32(COR), 205-32(COR), 210-32(COR), 211-32(COR) and 217-32(LS) which were passed by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on November 12, 2013.

Sincerely,

Tina Rose Muña Barnes
Legislative Secretary

Enclosures (38)

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I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **substitute Bill No. 74-32 (LS), "AN ACT TO *ADD* A NEW § 7120 TO CHAPTER 7 OF DIVISION 2, TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GUAM DEPARTMENT OF EDUCATION TO ENTER INTO A POWER PURCHASE AGREEMENT TO PURCHASE SOLAR ENERGY FROM A QUALIFIED PROVIDER(S); TO *ADD* A NEW § 8502 (2)(c) TO ARTICLE 5, CHAPTER 8 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO RAISING THE NET METERING CAP FOR GUAM POWER AUTHORITY PUBLIC SCHOOL CUSTOMERS UNDER A THIRD PARTY OWNED SOLAR ENERGY SYSTEM; AND TO *ADD* A NEW § 5008.2 TO PART A OF ARTICLE 1, CHAPTER 5 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE POLICY IN FAVOR OF RENEWABLE ENERGY PURCHASE OF SERVICE,"** was on the 12th day of November, 2013, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 15th day of Nov, 2013, at 11:28 o'clock A.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 74-32 (LS)
As substituted by the Committee on General Government Operations and Cultural Affairs; and further substituted and amended on the Floor.

Introduced by:

Judith T. Won Pat, Ed.D.
Aline A. Yamashita, Ph.D.
T. R. Muña Barnes
Chris M. Dueñas
Tommy Morrison
Michael F. Q. San Nicolas
FRANK B. AGUON, JR.
Vicente (ben) C. Pangelinan
Brant T. McCreadie
T. C. Ada
V. Anthony Ada
B. J.F. Cruz
Michael T. Limtiaco
R. J. Respicio
Dennis G. Rodriguez, Jr.

AN ACT TO *ADD* A NEW § 7120 TO CHAPTER 7 OF DIVISION 2, TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GUAM DEPARTMENT OF EDUCATION TO ENTER INTO A POWER PURCHASE AGREEMENT TO PURCHASE SOLAR ENERGY FROM A QUALIFIED PROVIDER(S); TO *ADD* A NEW § 8502 (2)(c) TO ARTICLE 5, CHAPTER 8 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO RAISING THE NET METERING CAP FOR GUAM POWER AUTHORITY PUBLIC SCHOOL CUSTOMERS UNDER A THIRD PARTY OWNED SOLAR ENERGY SYSTEM; AND TO *ADD* A NEW § 5008.2 TO PART A OF ARTICLE 1, CHAPTER 5 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE POLICY IN FAVOR OF RENEWABLE ENERGY PURCHASE OF SERVICE.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the cost of electricity provided by the Guam Power Authority (GPA) continues to rise as the price of oil, worldwide, correspondingly increases. GPA is totally dependent on oil for the production of electricity for consumers. Such dependence has resulted in rate increases in the form of increased fuel surcharges.

I Liheslatura finds that although GPA is currently only able to produce electricity using oil-powered generators, the agency entered into a public-private renewable energy purchase agreement with a qualified renewable energy provider. Local media report that the provider is expected to develop a renewable resource with a capacity of 25 megawatts in photovoltaic electrical power under a 25-year contract with guaranteed energy production and a fixed price per contract year. The output of renewable power onto GPA's power grid will serve nearly 2,200 homes.

I Liheslaturan Guåhan finds that a private school on Guam recently entered into a 25-year agreement with a renewable energy provider. The school expects to pay 23 cents per kilowatt-hour for the first year. GPA currently charges 29 cents per kilowatt-hour for residential customers, 32 cents per kilowatt-hour for mid-size commercial customers, and 34 cents per kilowatt-hour for large commercial customers. *No more than* eighty percent (80%) of the school's power needs will be generated by new solar panels that were paid for, and installed by a renewable energy provider through a power purchase agreement.

I Liheslatura finds that on December 29, 2008, the PUC approved the current Interim Net Metering Rider for Customer-Generator Energy Facilities, developed by both GPA and the Georgetown Consulting Group, Inc. (Georgetown), the PUC's consultant. Pursuant to this order, the PUC indicated that "at such time as the number of customers-generators avail themselves to the

'net metering' tariff approaches one thousand (1000) customers, the issue of whether a limitation should be imposed by Guam on the aggregate capacity eligible for 'net metering' treatment will be reviewed and examined by the PUC. In addition, the Net Metering Rider requires GPA to "submit an annual 'net-metering' report to the PUC" to be submitted by April 1st of each year, and which *shall* include the following information for the previous compliance year: (1) total number of Customer-Generator Facilities; (2) total estimated generating estimated capacity of its 'net-metered' Customer-Generators; (3) total net Kilowatt-hours received from Customer Generators; and (4) total estimated amount of energy produced by Customer Generators." On February 27, 2009, the PUC approved and adopted GPA's Interconnection Agreement for Net Metering Facilities, as well as GPA's Net Metering Program Interconnection Policy.

I Liheslatura further finds that the Superintendent of Education has publicly stated in recent media interviews that the Department of Education (DOE) projects an approximately 5 Million Dollars shortfall in its FY 2013 budget due to rate increases for electricity. It is, therefore, the intent of *I Liheslaturan Guåhan* to assist DOE in addressing the rising cost of electricity. *I Liheslatura* intends for DOE, which is made up of 41 schools, to enter into solar power purchase agreement(s) with qualified provider(s), by adding a new §7120 to Chapter 7 of Division 2, Title 17, Guam Code Annotated.

I Liheslatura further intends to increase the net metering cap, which allows public schools under third party solar power system ownership(s) to feed electricity into the grid and to enhance contracting opportunities for local businesses to provide solar energy to GDOE facilities.

Section 2. A new §7120 is hereby *added* to Chapter 7 of Division 2, Title 17, Guam Code Annotated, to read:

"**§ 7120. Power Purchase Agreement to Purchase Solar Energy.**

(a) The Guam Department of Education (GDOE) may enter into one or more power purchase agreements to purchase solar energy from qualified provider(s) which will be in the best financial interests of the government of Guam for a period up to and *not* exceeding twenty-five (25) years. Such qualified PPA provider(s) *shall* be selected by a Multi-Step Bid conducted by GSA, in accordance with the procurement law and regulations of Guam. The qualified PPA provider(s) will be responsible for providing a PPA to cover *no more than* eighty percent (80%) of the school's power needs, all GDOE owned schools, GDOE administrative, and GDOE ancillary buildings. For schools occupied under a lease agreement as of the enactment of this Section, GDOE may amend its lease agreements or otherwise directly enter into a PPA with a lessor for the purchase of solar power produced with renewable energy directly from the lessor and without application of the procurement law.

(b) The qualified PPA provider(s) *shall* be considered responsive if accepted proposals have been deemed technically acceptable and provide the best value to GDOE and the government of Guam.

(c) The qualified PPA providers may submit a single proposal without limitation or discrimination on all proposals made in good faith. A qualified PPA provider(s) will be allowed to submit a single proposal for one GDOE facility or multiple GDOE facilities in good faith.

(d) GDOE and GSA *shall* seek technical consultation from the Guam Power Authority in implementing this Section, and the Guam Power Authority *shall* provide the technical consultation upon request at *no* cost to GDOE and GSA. GDOE and GSA *may* further seek technical consultation from the Guam Energy Office, the Department of Public Works, the Guam Renewable Energy Association, and/or a third party renewable energy consultant in implementing this Section, and the consultation *shall* be at *no* cost to GDOE and GSA; any costs associated with a third party consultant will be passed through in total to the qualified PPA provider(s) equally and in full who is awarded the Multi-Step Bid.

(e) In concert with GDOE, the selected qualified PPA providers *shall* review historical power needs, such as the past twelve (12) months of power consumption, of the selected schools and provide the maximum sized photovoltaic safely allowed by roof size, building orientation and location, and other physical conditions which may affect the safe and effective size of the photovoltaic system. In no case shall the system be sized to produce power in excess of the needs of the specific building or campus as recorded during the previous twelve (12) months, exclusive of extraordinary circumstances, such as natural disasters, that may result in power generation greater than consumption for the period.

(f) The qualified PPA provider(s) *shall* pay for the design, financing, permitting, insurance, installation, monitoring and maintenance of the system, and *shall* own and operate the system located on GDOE's facility for the life of the contract at *no* cost to GDOE or the government of Guam.

(g) The qualified PPA provider(s) must possess a valid Guam business license prior to the award of the contract.

(h) The qualified PPA provider(s) *shall* be experienced in designing, implementing and installing solar energy systems, and have a record of established projects, demonstrate technical, operational, financial and managerial capabilities to design and operate a solar energy system.

(i) The qualified PPA provider(s) *shall* warrant that the solar energy paid by GDOE will *not exceed* eighty percent (80%) of Guam Power Authority's current billing charges to GDOE schools, GDOE administrative, and GDOE ancillary buildings, as determined by the most recent utility invoices for that selected building, school or campus. Escalation of rates for years two (2) through twenty-five (25) *shall* be determined and set in advance. At no time shall the qualified PPA providers produce power in excess of the needs of the designated school/campus, based upon annual consumption of the designated school/campus, exclusive of extraordinary circumstances, such as natural disasters, that may result in power generation greater than consumption for the period.

(j) The qualified PPA provider(s) *shall* work with GDOE concerning any existing school roofing warranties to ensure said warranties are *not* voided with the installation and operation of the solar energy systems.

(k) The qualified PPA 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 of the date of the commissioning of the solar energy system, the qualified PPA provider(s) *shall* report to the GDOE 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 *shall* transmit a copy of this report to the Speaker of *I Liheslaturan Guahan.*

(m) The qualified PPA 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 Guam Board of Education, which will *not* be unreasonably withheld.

(n) Upon the expiration of the PPA, GDOE 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, and a third party Subject Matter Expert (SME). GDOE also reserves the right to purchase the system at any time after the 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 this Subsection *cannot* be waived. Said monetary fines *shall* be deposited into *Y Kuentan Salåppe' Prinsepåt* Fund, and

shall be used for the school where the implementation of the solar energy system or any other renewable energy sources is delayed.

(p) Qualified PPA 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 providers, as long as the qualified PPA 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 providers, doing its due diligence, identifies that the rooftop of any GDOE owned schools, GDOE administrative, and GDOE ancillary buildings and for schools occupied under a lease agreement may *not* be financially feasible due to the age or quality of the building's rooftop.

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

(3) In the event that there is *no* room to install the photovoltaic solar energy system due to limited access of rooftops and real property of all GDOE owned schools, GDOE

administrative, and GDOE ancillary buildings, and for schools occupied under a lease agreement.

(4) The qualified PPA provider(s) *shall* apply for a meter, at their own expense, to record the flow of power into the existing grid.

(5) If co-located, that each individual system be metered for each specific qualified PPA provider(s).

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

(7) The qualified PPA provider(s) has submitted proof of land ownership and/or legal lease of land used for the purposes of solar power generation.

(8) The qualified PPA provider(s) will provide an interconnection study that validates the ability of a photovoltaic system prior to construction; if that photovoltaic system(s) is expected to exceed 100KW due to co-location.

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

(q) Throughout the qualified PPA provider's management duration of any solar energy system procured and installed under this Act, the qualified PPA 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, 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 for the respective schools. The savings *shall* be transferred from the utility pool and deposited into *Y Kuentan Salåppe' Prinsepåt* 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.

(s) Each participating school will have access to the remaining fifty percent (50%) of the energy savings yielded from the PPA for the respective schools. The savings *shall* be transferred to Maintenance Division for the maintenance and repair of all DOE schools from the utility pool and deposited into the Energy Efficient 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.

(t) GDOE will have access to the annual utility appropriation set forth in its GDOE budget for Power Purchase Payment commitments to its Qualified Power Purchase Agreement provider(s). In addition, GDOE 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."

Section 3. A new §8502(2)(c) of Article 5, Chapter 8 of Title 12, Guam Code Annotated, is hereby *added* to read as follows:

"(C) This Subsection is *only* applicable to solar energy systems located on, or co-located for the benefit of GDOE owned schools, GDOE leased schools, GDOE administrative, and GDOE ancillary buildings. Guam Power Authority public school customers under third party owned solar

energy power systems may exceed net metering capacity limitation as long as there is *no* demonstrated adverse impact on Guam Power Authority's transmission and distribution system, and *does not exceed* eighty percent (80%) of GPA's current billing charges. Any contract issued under this item shall be under net metering as defined as a one to one exchange of energy as currently adopted by the GPUC."

Section 4. A new §5008.2 of Part A of Article 1, Chapter 5 of Title 5, Guam Code Annotated, is hereby *added* to read as follows:

"**§ 5008.2. Policy in Favor of Renewable Energy Purchase of Service.**

(a) In procuring services as cited in §7120 of Title 17, Guam Code Annotated, GSA *shall*, subject to the provisions of Title 5, Chapter 5, GCA, grant a preference to a local business.

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

(1) the qualified PPA provider(s) must be doing business on Guam with a valid business license, and is in good standing with the Department of Revenue and Taxation prior to the award of the contract; and

(2) the qualified PPA provider(s) *shall* be experienced in designing, implementing and installing solar energy systems, have a record of established projects, demonstrate technical,

operational, financial and managerial capabilities to design and operate the solar energy system."