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SENATE BILL 210

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Clemente Sanchez

AN ACT

RELATING TO TRADE PRACTICES; ENACTING THE CONSUMER PROTECTION FOR DISTRIBUTED GENERATION ACT; PROVIDING MINIMUM DISCLOSURES FOR THE LEASE OR SALE OF A DISTRIBUTED ENERGY GENERATION SYSTEM; PROVIDING FOR AN EXCEPTION; PROVIDING FOR PENALTIES AND REMEDIES FOR VIOLATIONS; PROVIDING FOR REGULATIONS AND FORM DISCLOSURE STATEMENTS; ENACTING A NEW SECTION OF THE REAL ESTATE DISCLOSURE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 57 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Consumer Protection for Distributed Generation Act"."

SECTION 2. A new section of Chapter 57 NMSA 1978 is

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1 enacted to read:

2 "[NEW MATERIAL] DEFINITIONS.--As used in the Consumer
3 Protection for Distributed Generation Act:

4 A. "annual percentage rate" means the cost of
5 credit, expressed as a yearly rate, that relates the amount and
6 timing of value received by the consumer to the amount and
7 timing of payments made;

8 B. "business day" means any day Monday through
9 Friday, unless such day falls on a legal public holiday, in
10 which case "business day" means the next day following the
11 legal public holiday;

12 C. "buyer" means a person that purchases a
13 distributed energy generation system from a seller or marketer
14 and includes a power purchaser;

15 D. "distributed energy generation system" means a
16 device or system that is used to generate or store electricity,
17 that has an electric delivery capacity, individually or in
18 connection with other similar devices or systems, greater than
19 one kilowatt or one kilowatt-hour, and that is used primarily
20 for on-site consumption, but does not include an electric
21 generator that is intended for occasional use;

22 E. "energized" means that a distributed energy
23 generation system is installed and operational for its intended
24 purposes of generating or storing electricity;

25 F. "interconnected" means that a distributed energy

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1 generation system is connected to the power grid and is able to
2 transfer electricity to the power grid;

3 G. "lessee" means a person that leases a
4 distributed energy generation system from the owner of the
5 distributed energy generation system;

6 H. "person" means an individual person,
7 corporation, trust, partnership, association, cooperative
8 association, club, company, firm, joint venture or syndicate;

9 I. "power purchaser" means a buyer that agrees to
10 purchase the power generated by a distributed energy generation
11 system from the owner of the distributed energy generation
12 system;

13 J. "renewable energy certificate" means a
14 certificate or other record, in a format approved by the public
15 regulation commission, that represents all the environmental
16 attributes from one kilowatt-hour of electricity generation
17 from a renewable energy resource; and

18 K. "seller or marketer" means a person acting
19 through its officers, employees, brokers or agents that
20 markets, sells or solicits the sale or lease of distributed
21 energy generation systems or negotiates or enters into
22 agreements for the sale or lease of distributed energy
23 generation systems."

24 SECTION 3. A new section of Chapter 57 NMSA 1978 is
25 enacted to read:

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1 "[NEW MATERIAL] DISTRIBUTED ENERGY GENERATION SYSTEM

2 DISCLOSURES--EXCEPTION.--

3 A. Any agreement governing the financing, sale or
4 lease of a distributed energy generation system, or the sale of
5 power to a power purchaser, shall include a written statement
6 of no more than four pages with font no smaller than ten
7 points, separate from the agreement and separately acknowledged
8 by the buyer or lessee, that includes the following provisions:

9 (1) the name, address, telephone number and
10 email address of the buyer or lessee;

11 (2) the name, address, telephone number, email
12 address and valid state contractor license number of the person
13 responsible for installing the distributed energy generation
14 system;

15 (3) the name, address, telephone number, email
16 address and a valid state contractor license number of the
17 distributed energy generation system maintenance provider, if
18 different from the person responsible for installing the
19 system;

20 (4) a provision notifying the buyer or lessee
21 of the right to rescind the agreement for a period ending not
22 less than three business days after the agreement is signed;

23 (5) a description of the distributed energy
24 generation system design assumptions, including system size,
25 estimated first-year production and estimated annual system

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1 production decreases, including the overall percentage
2 degradation over the life of the distributed energy generation
3 system;

4 (6) a description of any performance
5 guarantees that a seller or marketer may include in an
6 agreement;

7 (7) the purchase price of the distributed
8 energy generation system, total projected lease or power
9 purchase payments;

10 (8) a description of any one-time or recurring
11 fees, including the circumstances triggering any late fees,
12 estimated system removal fees, maintenance fees, Uniform
13 Commercial Code notice removal and refiling fees, internet
14 connection fees and automated clearing house fees;

15 (9) the total amount financed, the total
16 number of payments, the payment frequency, the amount of the
17 payment expressed in dollars, the payment due dates and the
18 applicable annual percentage rate; except that in the case of
19 financing arrangements subject to state or federal lending
20 disclosure requirements, disclosure of the annual percentage
21 rate shall be made in accordance with the applicable state or
22 federal lending disclosure requirements;

23 (10) if a seller or marketer uses a tax
24 incentive or rebate in determining the price, a provision
25 identifying each state and federal tax incentive for which the

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1 buyer or lessee may be eligible;

2 (11) a description of the ownership and
3 transferability of any tax credits, rebates, incentives or
4 renewable energy certificates in connection with the
5 distributed energy generation system;

6 (12) a statement that the buyer or lessee
7 should contact a tax advisor when buying, financing or leasing
8 a distributed energy generation system or buying power from a
9 distributed energy generation system and list all tax
10 obligations that the buyer may be required to pay or incur as a
11 result of the contract's provisions, including:

12 (a) higher assessed property taxes in
13 the event of a purchase;

14 (b) the cost of any business personal
15 property taxes assessed on the distributed energy generation
16 system in the event of a power purchase agreement or lease;

17 (c) gross receipts taxes for any
18 equipment purchased and services rendered; and

19 (d) all obligations of the power
20 purchaser or lessee to transfer tax credits or tax incentives
21 of the distributed energy generation system to any other
22 person;

23 (13) a disclosure regarding whether the
24 warranty or maintenance obligations related to the distributed
25 energy generation system may be sold or transferred to a third

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1 party;

2 (14) a disclosure regarding any restrictions
3 pursuant to the agreement on the buyer's or lessee's ability to
4 modify or transfer ownership of the distributed energy
5 generation system, including whether any modification or
6 transfer is subject to review or approval by a third party and
7 the name, mailing address and telephone number of the entity
8 responsible for approving the modification or transfer, if
9 known at the time the agreement is made;

10 (15) a description of all options available to
11 the buyer or lessee in connection with the continuation,
12 termination or transfer of the agreement in the event of the
13 sale of the real property to which the distributed energy
14 generation system is affixed or the death of the buyer or
15 lessee;

16 (16) a description of the assumptions used for
17 any savings estimates that were provided to the buyer or
18 lessee;

19 (17) a disclosure that states: "Actual
20 utility rates may go up or down and actual savings may vary.
21 For further information regarding rates, you may contact your
22 local utility or the public regulation commission. Tax and
23 other state and federal incentives are subject to change or
24 termination by executive, legislative or regulatory action.";

25 (18) a disclosure notifying the buyer or the

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1 lessee of transferability of any warranty obligations to
2 subsequent buyers or lessees; and

3 (19) a disclosure notifying the buyer or
4 lessee that information regarding interconnection requirements,
5 including time lines, established by the public regulation
6 commission may be found at 17.9.568 NMAC, a copy of which may
7 be obtained from either the public regulation commission or the
8 local utility.

9 B. The seller or marketer shall provide the buyer
10 or lessee with proof that:

11 (1) all permits required for the installation
12 or any modification of the distributed energy generation system
13 have been obtained; and

14 (2) installation or any modification of the
15 distributed energy generation system has received the approval
16 of an inspector authorized by the governmental authority having
17 jurisdiction over the permitting and enforcement authority.

18 C. In the event that a seller or marketer causes a
19 financing statement to be filed pursuant to the Uniform
20 Commercial Code-Secured Transactions, the seller or marketer,
21 or any successor in interest to the seller or marketer, shall
22 provide to the buyer or lessee a copy of the filed financing
23 statement within thirty calendar days of the filing.

24 D. If a promotional document or sales presentation
25 related to a distributed energy generation system states that

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1 the system will result in certain financial savings for the
2 buyer or lessee, the document or sales presentation shall
3 provide the assumptions and calculations used to derive those
4 savings.

5 E. If a promotional document or sales presentation
6 related to a distributed energy generation system states that
7 the system will result in certain energy savings, the document
8 or sales presentation shall provide the assumptions and
9 calculations used to derive those savings and any comparative
10 estimates. If historical information is used, it shall be
11 accompanied by the following statement: "Historical data are
12 not necessarily representative of future results."."

13 SECTION 4. A new section of Chapter 57 NMSA 1978 is
14 enacted to read:

15 "[NEW MATERIAL] ADDITIONAL REQUIREMENTS--EXCEPTION.--

16 A. Recurring payments under a distributed energy
17 generation system agreement shall not begin until the
18 distributed energy generation system is energized and
19 interconnected.

20 B. This section does not apply to an individual or
21 company, acting through its officers, employees, brokers or
22 agents, that markets, sells, solicits, negotiates or enters
23 into an agreement for the sale, financing or lease of a
24 distributed energy generation system as part of a transaction
25 involving the sale or transfer of the real property to which

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1 the distributed energy generation system is or will be
2 affixed."

3 SECTION 5. A new section of Chapter 57 NMSA 1978 is
4 enacted to read:

5 "[NEW MATERIAL] VIOLATIONS AS UNFAIR PRACTICES--PENALTIES
6 AND REMEDIES FOR VIOLATIONS--REGULATIONS--DISCLOSURE FORMS.--

7 A. A violation of any of the provisions of the
8 Consumer Protection for Distributed Generation Act shall be
9 considered a violation of the Unfair Practices Act and shall be
10 subject to the private remedies and civil penalties provided
11 for in the Unfair Practices Act. The attorney general shall
12 have the same enforcement authority for the Consumer Protection
13 for Distributed Generation Act as is provided in the Unfair
14 Practices Act.

15 B. The attorney general is authorized to issue and
16 file, as required by law, regulations necessary to implement
17 and enforce any provision of the Consumer Protection for
18 Distributed Generation Act. In consultation with the energy,
19 minerals and natural resources department, the attorney general
20 shall issue form disclosure statements that may be used to
21 provide the disclosures required by the Consumer Protection for
22 Distributed Generation Act for agreements with buyers or
23 lessees.

24 C. Disclosure statements provided in substantially
25 the form issued by the attorney general shall be regarded as

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1 complying with the disclosure statements required by Subsection
2 A of Section 3 of the Consumer Protection for Distributed
3 Generation Act."

4 SECTION 6. A new section of the Real Estate Disclosure
5 Act is enacted to read:

6 "[NEW MATERIAL] DISCLOSURE OF CERTAIN DISTRIBUTED ENERGY
7 GENERATION SYSTEMS.--The requirements of the Consumer
8 Protection for Distributed Generation Act shall not apply to a
9 transaction involving the sale or transfer of the real property
10 on which the distributed energy generation system is located."