

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 199

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

AN ACT

RELATING TO TRADE PRACTICES; ENACTING THE DISTRIBUTED
GENERATION DISCLOSURE ACT; PROVIDING MINIMUM DISCLOSURES FOR
THE LEASE OR SALE OF A DISTRIBUTED ENERGY GENERATION SYSTEM;
PROVIDING FOR AN EXCEPTION; PROVIDING FOR REGULATIONS AND FORM
DISCLOSURE STATEMENTS; EXEMPTING BROKERS, AGENTS AND FINANCIAL
INSTITUTIONS; 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 "Distributed Generation Disclosure
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 Distributed
3 Generation Disclosure 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 holiday, in which case
10 "business day" means the next day that is not a Saturday,
11 Sunday or legal 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

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 the sale of power to a power
22 purchaser or negotiates or enters into agreements for the sale
23 or lease of distributed energy generation systems or the sale
24 of power to a power purchaser."

25 SECTION 3. A new section of Chapter 57 NMSA 1978 is

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1 enacted to read:

2 "[NEW MATERIAL] DISTRIBUTED ENERGY GENERATION SYSTEM
3 DISCLOSURES--EXCEPTION.--

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

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

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

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

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

25 (5) a description of the distributed energy

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1 generation system design assumptions, including system size,
2 estimated first-year production and estimated annual system
3 production decreases, including the overall percentage
4 degradation over the life of the distributed energy generation
5 system;

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

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

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

17 (9) if the seller is financing or leasing the
18 distributed energy generation system, the total amount
19 financed, the total number of payments, the payment frequency,
20 the amount of the payment expressed in dollars, the payment due
21 dates and the applicable annual percentage rate; except that in
22 the case of financing arrangements subject to state or federal
23 lending disclosure requirements, disclosure of the annual
24 percentage rate shall be made in accordance with the applicable
25 state or federal lending disclosure requirements;

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1 (10) if a seller or marketer uses a tax
2 incentive or rebate in determining the price, a provision
3 identifying each state and federal tax incentive or rebate
4 used;

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

9 (12) a list of the following tax obligations
10 that the buyer may be required to pay or incur as a result of
11 the contract's provisions, including:

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

15 (b) gross receipts taxes for any
16 equipment purchased and services rendered;

17 (c) obligations of the power purchaser
18 or lessee to transfer tax credits or tax incentives of the
19 distributed energy generation system to any other person; and

20 (d) in the case of a commercial
21 installation, a change in assessed property taxes in the event
22 of a purchase of a distributed energy generation system;

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

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 to the seller or marketer at the time the agreement is
10 made;

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

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

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

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 interconnection requirements, including time lines,
5 are established by rules of the public regulation commission
6 and may be obtained from either the public regulation
7 commission or the local utility.

8 B. The seller or marketer shall provide the buyer
9 or lessee with proof that, within thirty days of completion of
10 installation or modification:

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

14 (2) installation or any modification of the
15 distributed energy generation system received the approval of
16 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 in terms of
 8 production, the document or sales presentation shall provide
 9 the assumptions and calculations used to derive those energy
 10 savings and any comparative estimates. If historical
 11 information is used, it shall be accompanied by the following
 12 statement: "Historical data are not necessarily representative
 13 of future results."."

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

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

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

21 B. The Distributed Generation Disclosure Act does
 22 not apply to an individual or company, acting through its
 23 officers, employees, brokers or agents, that markets, sells,
 24 solicits, negotiates or enters into an agreement for the sale,
 25 financing or lease of a distributed energy generation system as

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1 part of a transaction involving the sale or transfer of the
2 real property to which the distributed energy generation system
3 is or will be affixed.

4 C. The Distributed Generation Disclosure Act does
5 not apply to third-party financial institutions that enter into
6 an agreement for the financing of a distributed energy
7 generation system."

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

10 "[NEW MATERIAL] DISCLOSURE STATEMENT FORMS.--

11 A. The attorney general shall adopt rules necessary
12 to implement and enforce the provisions of the Distributed
13 Generation Disclosure Act. The attorney general shall, by
14 January 1, 2018, issue form disclosure statements that may be
15 used to provide the disclosures required by the Distributed
16 Generation Disclosure Act for agreements with buyers or
17 lessees.

18 B. Disclosure statements provided in substantially
19 the form issued by the attorney general shall be regarded as
20 complying with the disclosure statements required by Subsection
21 A of Section 3 of the Distributed Generation Disclosure Act."

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

24 "[NEW MATERIAL] DISCLOSURE OF CERTAIN DISTRIBUTED ENERGY
25 GENERATION SYSTEMS.--The requirements of the Distributed

1 Generation Disclosure Act shall not apply to a transaction
2 involving the sale or transfer of the real property on which
3 the distributed energy generation system is located."

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