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SENATE BILL 108

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY
Michael Padilla

AN ACT

RELATING TO TRADE PRACTICES; AMENDING AND ENACTING SECTIONS OF
THE DISTRIBUTED GENERATION DISCLOSURE ACT; REQUIRING A THIRD-
PARTY OWNER TO FILE WITH THE COUNTY CLERK A NOTICE OF
DISTRIBUTED ENERGY GENERATION SYSTEM OWNED BY THIRD-PARTY.

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

SECTION 1. A new section of the Distributed Generation
Disclosure Act is enacted to read:

"[NEW MATERIAL] THIRD-PARTY OWNER--NOTICE--FILING
REQUIREMENTS.--

A. No later than thirty days after a distributed
energy generation system is energized, a third-party owner
shall record an accurate and complete "notice of distributed
energy generation system owned by third-party" in the office of
the county clerk of the county in which the real property is

1 situated. The third-party owner shall provide the property
2 owner a copy of the filed notice.

3 B. A third-party owner shall file a subsequent
4 document extinguishing the notice within thirty days after the
5 agreement between the third-party owner and property owner is
6 voided, terminated, sold, assigned or transferred.

7 C. A notice of distributed energy generation system
8 owned by third-party shall contain the following statements:

9 (1) "Notice. This notice of distributed
10 energy generation system owned by third-party is required to be
11 filed by the third-party owner pursuant to New Mexico law. The
12 above-referenced property is receiving part of its electric
13 service from a distributed energy generation system owned and
14 operated by the above-referenced third-party owner. The third-
15 party owner provides electricity service to the property
16 through the above-referenced agreement with the property
17 owner.";

18 (2) "Third-party owner's rights. The third-
19 party owner owns the distributed energy generation system,
20 collectively with all associated rights, privileges, assets,
21 incentives, rebates, tax attributes and benefits arising from,
22 relating to or attributable to the system. At all times during
23 the term of the agreement, the system and the system interests
24 shall remain the third-party owner's sole personal property and
25 shall not be deemed or characterized as a "fixture" or any part

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1 of the "real property" as those terms may be defined by
2 applicable law.";

3 (3) "Effect of this notice. The third-party
4 owner does not have a security interest or lien on the
5 property. This notice shall not be construed as an encumbrance
6 affecting title to the property. This notice shall not modify
7 the character or classification of the distributed energy
8 generation system or modify or change any provision of the
9 third-party owner's agreement with the property owner. In the
10 event of any conflict between the terms of this notice and the
11 agreement, the agreement shall control."; and

12 (4) "Transfer options. Pursuant to the terms
13 and conditions of the agreement, if the property owner proposes
14 to sell or transfer the property, the property owner shall
15 provide the third-party owner with thirty days' written notice
16 prior to the sale or transfer, including the name of the
17 proposed property purchaser or transferee. If the property
18 transferee will not assume the obligations under the agreement,
19 or if the third-party owner determines that the property
20 transferee does not qualify, then the property owner will be
21 required to purchase the distributed energy generation system
22 at a price set forth in the agreement or prepay all remaining
23 payments under the agreement.".

24 D. The attorney general may issue a form notice of
25 distributed energy generation system owned by third-party that

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1 may be used by a third-party owner to satisfy the requirements
2 of this section."

3 SECTION 2. Section 57-31-2 NMSA 1978 (being Laws 2017,
4 Chapter 102, Section 2) is amended to read:

5 "57-31-2. DEFINITIONS.--As used in the Distributed
6 Generation Disclosure Act:

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

11 B. "business day" means any day Monday through
12 Friday, unless such day falls on a legal holiday, in which case
13 "business day" means the next day that is not a Saturday,
14 Sunday or legal holiday;

15 C. "buyer" means a person that purchases a
16 distributed energy generation system from a seller or marketer
17 and includes a power purchaser;

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

25 E. "energized" means that a distributed energy

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1 generation system is installed and operational for its intended
2 purposes of generating or storing electricity;

3 F. "interconnected" means that a distributed energy
4 generation system is connected to the power grid and is able to
5 transfer electricity to the power grid;

6 G. "lessee" means a person that leases a
7 distributed energy generation system from the owner of the
8 distributed energy generation system;

9 H. "person" means an individual person,
10 corporation, trust, partnership, association, cooperative
11 association, club, company, firm, joint venture or syndicate;

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

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

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

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1 or lease of distributed energy generation systems or the sale
2 of power to a power purchaser; and

3 L. "third-party owner" means a person that owns a
4 distributed energy generation system installed on property
5 owned by a power purchaser or lessee."

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