

SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TRADE PRACTICES; ENACTING THE TRUTH IN MARKETING
DISTRIBUTED GENERATION ACT; PROVIDING MINIMUM DISCLOSURES FOR
THE FINANCING, LEASE OR SALE OF A DISTRIBUTED ENERGY GENERATION
SYSTEM; PROVIDING FOR DISCLOSURES IN AGREEMENTS; PROVIDING FOR
AN EXCEPTION; PROVIDING FOR PENALTIES AND REMEDIES FOR
VIOLATIONS; 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 4 of this
act may be cited as the "Truth in Marketing Distributed
Generation Act"."

SECTION 2. A new section of Chapter 57 NMSA 1978 is
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underscored material = new
[bracketed material] = delete

1 enacted to read:

2 "[NEW MATERIAL] DEFINITIONS.--As used in the Truth in
3 Marketing Distributed Generation Act:

4 A. "buyer" means a person that purchases a
5 distributed energy generation system from a seller or marketer
6 or electricity generated by a distributed energy generation
7 system from the owner of the distributed energy generation
8 system;

9 B. "distributed energy generation system" means a
10 device or system that is used to generate or store electricity,
11 that has an electric delivery capacity, individually or in
12 connection with other similar devices or systems, greater than
13 one kilowatt or one kilowatt hour, and that is used primarily
14 for on-site consumption, but it does not include an electric
15 generator that is intended for occasional use;

16 C. "energized" means that the distributed energy
17 generation system is installed and operational for its intended
18 purposes of generating or storing electricity;

19 D. "financing" includes arrangements whereby the
20 buyer enters into an agreement to borrow funds to pay for the
21 purchase of a distributed energy generation system and repay
22 the loan over time and arrangements to purchase the power
23 generated by the distributed energy generation system from the
24 owner of the distributed energy generation system;

25 E. "interconnected" means a distributed energy

.205080.2

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

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

6 G. "person" means, where applicable, a natural
7 person, corporation, trust, partnership, association,
8 cooperative association, club, company, firm, joint venture or
9 syndicate; and

10 H. "seller or marketer" means a person acting
11 through its officers, employees, brokers or agents that
12 markets, sells or solicits the sale, financing or lease of
13 distributed energy generation systems or negotiates or enters
14 into agreements for the sale, financing or lease of distributed
15 energy generation systems."

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

18 "[NEW MATERIAL] DISTRIBUTED ENERGY GENERATION SYSTEM
19 AGREEMENTS--DISCLOSURES--EXCEPTION.--

20 A. After the effective date of the provisions of
21 the Truth in Marketing Distributed Generation Act, an agreement
22 governing the financing, sale or lease of a distributed energy
23 generation system to any person, entity or political
24 subdivision of this state shall:

25 (1) be in writing and signed by the person

1 buying, financing or leasing the distributed energy generation
2 system and shall be dated. Any agreement that contains blank
3 spaces affecting the timing, value or obligations of the
4 agreement in a material manner when signed by the buyer or
5 lessee is voidable at the option of the buyer or lessee until
6 the distributed energy generation system is energized. Any
7 blank spaces in the agreement must be shown to and initialed by
8 the buyer or lessee at the time the buyer or lessee signs the
9 agreement;

10 (2) be in ten-point type or larger;

11 (3) include a provision, which must be
12 separately acknowledged by the buyer or lessee, granting the
13 buyer or lessee the right to rescind the financing, sale or
14 lease agreement within a period of not less than five calendar
15 days after the agreement is signed by and delivered to the
16 buyer or lessee and before the distributed energy generation
17 system is energized;

18 (4) describe the capacity and expected energy
19 production of the distributed energy generation system compared
20 to the buyer's or lessee's consumption for the prior twelve-
21 month period, which disclosure shall be separately acknowledged
22 by the buyer or lessee and shall not be left blank; if
23 consumption data for the prior twelve-month period is not
24 available, the comparison shall be made to estimated
25 consumption for the next twelve-month period and include the

.205080.2

1 method and assumptions used to estimate the consumption;

2 (5) provide a description of the makes and
3 models of the distributed energy generation system's major
4 components, including the solar panel or inverter quality
5 performance rating. This description shall include a guarantee
6 concerning energy production output that the distributed energy
7 generation system being sold or leased will provide over the
8 life of the agreement. If the warranty period for any major
9 component is less than the duration of the agreement, the
10 length of the warranty shall be disclosed to and separately
11 acknowledged by the buyer or lessee;

12 (6) separately set forth the following items,
13 which shall be separately acknowledged by the buyer or lessee,
14 if applicable:

15 (a) the total purchase price or total
16 cost to the buyer or lessee under the agreement for the
17 distributed energy generation system over the life of the
18 agreement;

19 (b) any interest, installation fees,
20 document preparation fees, service fees or other costs to be
21 paid by the buyer or lessee of the distributed energy
22 generation system;

23 (c) if the distributed energy generation
24 system is being financed or leased, the total number of
25 payments, the payment frequency, the amount of the payment

.205080.2

1 expressed in dollars, the effective annual percentage rate and
2 the payment due date; and

3 (d) contact information for emergency
4 repair or service capable of responding within twenty-four
5 hours;

6 (7) provide a disclosure in the sale and
7 financing agreements, to the extent that they are used by the
8 seller or marketer in determining the purchase price of the
9 agreement, that identifies all current tax incentives and
10 rebates or other state or federal incentives, including
11 renewable energy credits, for which the buyer or lessee may be
12 eligible, and any conditions or requirements pursuant to the
13 agreement to obtain these tax incentives rebates or other
14 incentives, including expiration dates or deadlines, as
15 applicable;

16 (8) identify the tax obligations, with a
17 statement that the buyer or lessee should contact a tax
18 advisor, associated with buying, financing or leasing a
19 distributed energy generation system that the buyer or lessee
20 may be required to pay, including:

21 (a) the assessed value and the property
22 tax assessments associated with the distributed energy
23 generation system, calculated in the year the agreement is
24 signed;

25 (b) the gross receipts taxes that may be

.205080.2

1 passed through to the buyer or lessee; and

2 (c) any obligation of the buyer or
3 lessee to transfer tax credits or tax incentives of the
4 distributed energy generation system to any other person;

5 (9) disclose whether the warranty or
6 maintenance obligations related to the distributed energy
7 generation system may be sold or transferred to a third party;

8 (10) include a disclosure, the receipt of
9 which shall be separately acknowledged by the buyer or lessee,
10 regarding any restrictions pursuant to the agreement on the
11 lessee's or buyer's ability to modify or transfer ownership of
12 the distributed energy generation system, including whether any
13 modification or transfer is subject to review or approval by a
14 third party. If the modification or transfer of the
15 distributed energy generation system is subject to review or
16 approval by a third party, the agreement shall identify the
17 name, address and telephone number of, and provide for updating
18 any change in, the entity responsible for approving the
19 modification or transfer;

20 (11) include a disclosure, the receipt of
21 which shall be separately acknowledged by the buyer or lessee,
22 regarding whether the agreement contains any restrictions on
23 the lessee's or buyer's ability to transfer ownership of or
24 modify the real property to which the distributed energy
25 generation system is installed or affixed, including whether

1 any modification or transfer is subject to review or approval
2 by a third party. If the modification or transfer of the real
3 property to which the distributed energy generation system is
4 affixed or installed is subject to review or approval by a
5 third party, the agreement shall identify the name, address and
6 telephone number of, and provide for updating any change in,
7 the entity responsible for approving the modification or
8 transfer;

9 (12) provide a full and accurate estimate of
10 the total costs for maintaining and operating the distributed
11 energy generation system over the life of the distributed
12 energy generation system, including financing, maintenance and
13 construction costs related to the distributed energy generation
14 system, together with a statement identifying the party
15 responsible for paying for the operating and maintenance costs,
16 which statement shall be separately acknowledged by the buyer
17 or lessee;

18 (13) if the agreement contains an estimate of
19 the buyer's or lessee's future utility charges based on
20 projected utility rates, provide an estimate of the buyer's or
21 lessee's future utility charges as affected by potential
22 utility rate changes ranging from at least a five percent
23 annual decrease to at least a five percent annual increase from
24 current utility costs applied to the duration of the agreement
25 in one percent increments. Any comparative estimates shall be

1 calculated by applying the entire rate change to the duration
2 of the agreement; and

3 (14) include a disclosure, the receipt of
4 which shall be separately acknowledged by the buyer or lessee,
5 that states that:

6 (a) the utility rates and utility rate
7 structures are subject to change, and such changes cannot be
8 accurately predicted;

9 (b) projected savings from the
10 distributed energy generation systems are therefore subject to
11 change; and

12 (c) tax and other state and federal
13 incentives are subject to change or termination by executive,
14 legislative or regulatory action.

15 B. If a document or sales presentation relating to
16 a distributed energy generation system states or implies that
17 the distributed energy generation system will result in
18 financial savings for a buyer or lessee, the document or sales
19 presentation shall substantiate the methodology used to
20 calculate those savings, and if the document or sales
21 presentation is intended for a specific potential buyer or
22 lessee, it shall reasonably quantify the cumulative savings
23 expected for the duration of the agreement.

24 C. If a document or sales presentation relating to
25 a distributed energy generation system contains financial

1 savings comparative estimates or utility rate comparative
2 estimates, the document or sales presentation shall include
3 historical utility rates for the immediately preceding period
4 of time that is of the same duration as the proposed financing
5 or lease period for the same class of utility customer in the
6 same utility service territory as the prospective buyer or
7 lessee. These historical rates shall be included in any
8 comparative estimates.

9 D. Before the maintenance or warranty obligations
10 of a distributed energy generation system under an existing
11 lease, financing or purchase agreement are transferred, the
12 person who is currently obligated to maintain or warrant the
13 distributed energy generation system shall disclose the name,
14 address and telephone number of the person who will be assuming
15 the maintenance or warranty of the distributed energy
16 generation system.

17 E. If a document or sales presentation relating to
18 a distributed energy generation system contains an estimate of
19 the buyer's or lessee's future utility charges based on
20 projected utility rates, the document or sales presentation
21 shall contain an estimate of the buyer's or lessee's future
22 utility charges as affected by potential utility rate changes
23 ranging from at least a five percent annual decrease to at
24 least a five percent annual increase from current utility costs
25 applied to the duration of an agreement for the financing, sale

1 or lease of a distributed energy generation system in one
2 percent increments. Comparative estimates shall be calculated
3 by applying the entire rate change range to the duration of the
4 agreement.

5 F. The seller or marketer, or any successor in
6 interest to the seller or marketer, shall provide to the buyer
7 or lessee a conformed copy of a financing statement, or any
8 amendment to or assignment or termination of a financing
9 statement, that was filed pursuant to Chapter 55, Article 9
10 NMSA 1978 within three business days of the filing.

11 G. Recurring payments under a distributed energy
12 generation system lease shall not begin until the distributed
13 energy generation system is energized and interconnected.

14 H. This section does not apply to an individual or
15 company, acting through its officers, employees, brokers or
16 agents, that markets, sells, solicits, negotiates or enters
17 into an agreement for the sale, financing or lease of a
18 distributed energy generation system as part of a transaction
19 involving the sale or transfer of the real property to which
20 the distributed energy generation system is or will be
21 affixed."

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

24 "[NEW MATERIAL] VIOLATIONS AS UNFAIR PRACTICES--PENALTIES
25 AND REMEDIES FOR VIOLATIONS.--A violation of any of the

1 provisions of the Truth in Marketing Distributed Generation Act
2 shall be considered to be a violation of the Unfair Practices
3 Act and shall be subject to the private remedies and civil
4 penalties provided for in the Unfair Practices Act. The
5 attorney general shall have the same enforcement authority for
6 the Truth in Marketing Distributed Generation Act as is
7 provided in the Unfair Practices Act."

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

10 "[NEW MATERIAL] DISCLOSURE OF CERTAIN DISTRIBUTED ENERGY
11 GENERATION SYSTEMS.--The requirements of the Truth in Marketing
12 Distributed Generation Act shall not apply to a transaction
13 involving the sale or transfer of the real property to which
14 the distributed energy generation system is affixed."

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