

HOUSE BILL 256

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

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AN ACT

RELATING TO TRADE PRACTICES; ENACTING A NEW SECTION OF CHAPTER  
57 NMSA 1978 TO PROVIDE FOR THE LEASE OR SALE OF A DISTRIBUTED  
ENERGY GENERATION SYSTEM; PROVIDING FOR DISCLOSURES IN  
AGREEMENTS; PROVIDING FOR AN EXCEPTION.

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] DEFINITIONS--DISTRIBUTED ENERGY GENERATION  
SYSTEM AGREEMENTS--DISCLOSURES--EXCEPTION.--

A. As used in section:

(1) "distributed energy generation system"  
means a device or system that is used to generate or store  
electricity and that has a capacity, singly or in connection  
with other similar devices or systems, greater than one

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1 kilowatt that is primarily for on-site consumption, but  
2 "distributed energy generation system" does not include an  
3 electric generator that is intended for occasional use; and

4 (2) "seller or marketer" means an individual  
5 or a company acting through its officers, employees or agents  
6 that markets, sells or solicits the sale, financing or lease of  
7 distributed energy generation systems or negotiates or enters  
8 into agreements for the sale, financing or lease of distributed  
9 energy generation systems.

10 B. An agreement governing the financing, sale or  
11 lease of a distributed energy generation system to any person  
12 or political subdivision of the state shall:

13 (1) be signed by the person buying, financing  
14 or leasing the distributed energy generation system and shall  
15 be dated. Any agreement that contains blank spaces affecting  
16 the timing, value or obligations of the agreement in a material  
17 manner when signed by the buyer or lessee is voidable at the  
18 option of the buyer or lessee until the distributed energy  
19 generation system is installed;

20 (2) be in at least ten-point type;

21 (3) include a provision granting the buyer or  
22 lessee the right to rescind the financing, sale or lease  
23 agreement for a period of not less than three business days  
24 after the agreement is signed by the buyer or lessee and before  
25 the distributed energy generation system is installed;

1 (4) provide a description, including the make  
2 and model of the distributed energy generation system's major  
3 components or a guarantee concerning energy production output  
4 that the distributed energy generation system being sold or  
5 leased will provide over the life of the agreement;

6 (5) separately set forth the following items,  
7 if applicable:

8 (a) the total purchase price or total  
9 cost to the buyer or lessee under the agreement for the  
10 distributed energy generation system over the life of the  
11 agreement;

12 (b) any interest, installation fees,  
13 document preparation fees, service fees or other costs to be  
14 paid by the buyer or lessee of the distributed energy  
15 generation system; and

16 (c) if the distributed energy generation  
17 system is being financed or leased, the total number of  
18 payments, the payment frequency, the amount of the payment  
19 expressed in dollars and the payment due date;

20 (6) provide a disclosure in the sale and  
21 financing agreements, to the extent they are used by the seller  
22 or marketer in determining the purchase price of the agreement,  
23 that identifies all current tax incentives and rebates or other  
24 state or federal incentives for which the buyer may be eligible  
25 and any conditions or requirements pursuant to the agreement to

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1 obtain these tax incentives, rebates or other incentives;

2 (7) identify the tax obligation that the buyer  
3 or lessee may be required to pay as a result of buying,  
4 financing or leasing the distributed energy generation system;

5 (8) 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 (9) include a disclosure, the receipt of which  
9 shall be separately acknowledged by the buyer or lessee, of a  
10 transfer of the sale, lease or financing agreement that  
11 contains any restrictions pursuant to the agreement on the  
12 lessee's or buyer's ability to modify or transfer ownership of  
13 a distributed energy generation system, including whether any  
14 modification or transfer is subject to review or approval by a  
15 third party. If the modification or transfer of the  
16 distributed energy generation system is subject to review or  
17 approval by a third party, the agreement shall identify the  
18 name, address and telephone number of, and provide for updating  
19 any change in, the entity responsible for approving the  
20 modification or transfer;

21 (10) include a disclosure, the receipt of  
22 which shall be separately acknowledged by the buyer or lessee,  
23 if a modification or transfer of ownership of the real property  
24 to which the distributed energy generation system is or will be  
25 affixed, that contains any restrictions pursuant to the

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

12 (11) provide for a full and accurate summary  
13 of the total costs under the agreement for maintaining and  
14 operating the distributed energy generation system over the  
15 life of the distributed energy generation system, including  
16 financing, maintenance and construction costs related to the  
17 distributed energy generation system;

18 (12) if the agreement contains an estimate of  
19 the buyer's or lessee's future utility charges based on  
20 projected utility rates after the installation of a distributed  
21 energy generation system, provide an estimate of the buyer's or  
22 lessee's estimated utility charges during the same period as  
23 impacted by potential utility rate changes ranging from at  
24 least a five percent annual decrease to at least a five percent  
25 annual increase from current utility costs. The comparative

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1 estimates shall be calculated based on the same utility rates;  
2 and

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

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 distributed  
10 energy generation systems are subject to change; and

11 (c) tax incentives are subject to change  
12 or termination by executive, legislative or regulatory action.

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

21 D. If the seller's or marketer's marketing  
22 materials contain an estimate of the buyer's or lessee's future  
23 utility charges based on projected utility rates after the  
24 installation of a distributed energy generation system, the  
25 marketing materials shall contain an estimate of the buyer's or

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1 lessee's estimated utility charges during the same period as  
2 impacted by potential utility rate changes ranging from at  
3 least a five percent annual decrease to at least a five percent  
4 annual increase from current utility costs.

5 E. This section does not apply to an individual or  
6 company, acting through its officers, employees or agents, that  
7 markets, sells, solicits, negotiates or enters into an  
8 agreement for the sale, financing or lease of a distributed  
9 energy generation system as part of a transaction involving the  
10 sale or transfer of the real property to which the distributed  
11 energy generation system is or will be affixed."