

1 HOUSE BILL 199

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

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

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

25 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."

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