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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:

"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  
enacted to read:

"DEFINITIONS.--As used in the Distributed Generation  
Disclosure Act:

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

B. "business day" means any day Monday through  
Friday, unless such day falls on a legal holiday, in which  
case "business day" means the next day that is not a

1 Saturday, Sunday or legal holiday;

2 C. "buyer" means a person that purchases a  
3 distributed energy generation system from a seller or  
4 marketer and includes a power purchaser;

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

13 E. "energized" means that a distributed energy  
14 generation system is installed and operational for its  
15 intended purposes of generating or storing electricity;

16 F. "interconnected" means that a distributed  
17 energy generation system is connected to the power grid and  
18 is able to transfer electricity to the power grid;

19 G. "lessee" means a person that leases a  
20 distributed energy generation system from the owner of the  
21 distributed energy generation system;

22 H. "person" means an individual person,  
23 corporation, trust, partnership, association, cooperative  
24 association, club, company, firm, joint venture or syndicate;

25 I. "power purchaser" means a buyer that agrees to

1 purchase the power generated by a distributed energy  
2 generation system from the owner of the distributed energy  
3 generation system;

4 J. "renewable energy certificate" means a  
5 certificate or other record, in a format approved by the  
6 public regulation commission, that represents all the  
7 environmental attributes from one kilowatt-hour of  
8 electricity generation from a renewable energy resource; and

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

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

18 "DISTRIBUTED ENERGY GENERATION SYSTEM DISCLOSURES--  
19 EXCEPTION.--

20 A. Beginning thirty days after publication in the  
21 New Mexico register of the form disclosure statements issued  
22 by the attorney general pursuant to Section 5 of the  
23 Distributed Generation Disclosure Act, any agreement  
24 governing the financing, sale or lease of a distributed  
25 energy generation system, or the sale of power to a power

1 purchaser, shall include a written statement with font no  
2 smaller than ten points and no more than four pages, unless a  
3 font larger than ten points is used, separate from the  
4 agreement and separately signed by the buyer or lessee, that  
5 includes the following provisions:

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

8 (2) the name, address, telephone number,  
9 email address and valid state contractor license number of  
10 the person responsible for installing the distributed energy  
11 generation system;

12 (3) the name, address, telephone number,  
13 email address and a valid state contractor license number of  
14 the distributed energy generation system maintenance  
15 provider, if different from the person responsible for  
16 installing the system;

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

21 (5) a description of the distributed energy  
22 generation system design assumptions, including system size,  
23 estimated first-year production and estimated annual system  
24 production decreases, including the overall percentage  
25 degradation over the life of the distributed energy

1 generation system;

2 (6) a description of any performance  
3 guarantees that a seller or marketer may include in an  
4 agreement;

5 (7) the purchase price of the distributed  
6 energy generation system, total projected lease or power  
7 purchase payments;

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

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

1 used;

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 list of the following tax obligations  
7 that the buyer may be required to pay or incur as a result of  
8 the contract's provisions, including:

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

12 (b) gross receipts taxes for any  
13 equipment purchased and services rendered;

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

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

21 (13) a disclosure regarding whether the  
22 warranty or maintenance obligations related to the  
23 distributed energy generation system may be sold or  
24 transferred to a third party;

25 (14) a disclosure regarding any restrictions

1 pursuant to the agreement on the buyer's or lessee's ability  
2 to modify or transfer ownership of the distributed energy  
3 generation system, including whether any modification or  
4 transfer is subject to review or approval by a third party  
5 and the name, mailing address and telephone number of the  
6 entity responsible for approving the modification or  
7 transfer, if known to the seller or marketer at the time the  
8 agreement is made;

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

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

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

23 (18) a disclosure notifying the buyer or the  
24 lessee of transferability of any warranty obligations to  
25 subsequent buyers or lessees; and

1                   (19) a disclosure notifying the buyer or  
2 lessee that interconnection requirements, including time  
3 lines, are established by rules of the public regulation  
4 commission and may be obtained from either the public  
5 regulation commission or the local utility.

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

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

12                   (2) installation or any modification of the  
13 distributed energy generation system received the approval of  
14 an inspector authorized by the governmental authority having  
15 jurisdiction over the permitting and enforcement authority.

16                   C. In the event that a seller or marketer causes a  
17 financing statement to be filed pursuant to the Uniform  
18 Commercial Code-Secured Transactions, the seller or marketer,  
19 or any successor in interest to the seller or marketer, shall  
20 provide to the buyer or lessee a copy of the filed financing  
21 statement within thirty calendar days of the filing.

22                   D. If a promotional document or sales presentation  
23 related to a distributed energy generation system states that  
24 the system will result in certain financial savings for the  
25 buyer or lessee, the document or sales presentation shall



1 provide the assumptions and calculations used to derive those  
2 savings.

3 E. If a promotional document or sales presentation  
4 related to a distributed energy generation system states that  
5 the system will result in certain energy savings in terms of  
6 production, the document or sales presentation shall provide  
7 the assumptions and calculations used to derive those energy  
8 savings and any comparative estimates. If historical  
9 information is used, it shall be accompanied by the following  
10 statement: "Historical data are not necessarily  
11 representative of future results."."

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

14 "ADDITIONAL REQUIREMENTS--EXCEPTION.--

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

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

1 generation system is or will be affixed.

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

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

8 "DISCLOSURE STATEMENT FORMS.--

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

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

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

23 "DISCLOSURE OF CERTAIN DISTRIBUTED ENERGY GENERATION  
24 SYSTEMS.--The requirements of the Distributed Generation  
25 Disclosure Act shall not apply to a transaction involving the

1 sale or transfer of the real property on which the

2 distributed energy generation system is located."                     

HJC/HB 199

Page 11

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