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
Saturday, Sunday or legal holiday;

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

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

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

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

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

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

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

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

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

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

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

A. Beginning thirty days after publication in the
New Mexico register of the form disclosure statements issued
by the attorney general pursuant to Section 5 of the
Distributed Generation Disclosure Act, any agreement
governing the financing, sale or lease of a distributed
energy generation system, or the sale of power to a power
purchaser, shall include a written statement with font no
smaller than ten points and no more than four pages, unless a
font larger than ten points is used, separate from the
agreement and separately signed by the buyer or lessee, that
includes the following provisions:

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

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

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

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

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

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

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

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

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

(10) if a seller or marketer uses a tax incentive or rebate in determining the price, a provision identifying each state and federal tax incentive or rebate
used;

(11) a description of the ownership and transferability of any tax credits, rebates, incentives or renewable energy certificates in connection with the distributed energy generation system;

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

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

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

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

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

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

(14) a disclosure regarding any restrictions
pursuant to the agreement on the buyer's or lessee's ability
to modify or transfer ownership of the distributed energy
generation system, including whether any modification or
transfer is subject to review or approval by a third party
and the name, mailing address and telephone number of the
entity responsible for approving the modification or
transfer, if known to the seller or marketer at the time the
agreement is made;

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

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

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

(18) a disclosure notifying the buyer or the
lessee of transferability of any warranty obligations to
subsequent buyers or lessees; and
(19) a disclosure notifying the buyer or lessee that interconnection requirements, including time lines, are established by rules of the public regulation commission and may be obtained from either the public regulation commission or the local utility.

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

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

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

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

D. If a promotional document or sales presentation related to a distributed energy generation system states that the system will result in certain financial savings for the buyer or lessee, the document or sales presentation shall
provide the assumptions and calculations used to derive those savings.

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

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

"ADDITIONAL REQUIREMENTS--EXCEPTION.--

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

B. The Distributed Generation Disclosure Act does not apply to an individual or company, acting through its officers, employees, brokers or agents, that markets, sells, solicits, negotiates or enters into an agreement for the sale, financing or lease of a distributed energy generation system as part of a transaction involving the sale or transfer of the real property to which the distributed energy
C. The Distributed Generation Disclosure Act does not apply to third-party financial institutions that enter into an agreement for the financing of a distributed energy generation system."

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

"DISCLOSURE STATEMENT FORMS.--

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

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

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

"DISCLOSURE OF CERTAIN DISTRIBUTED ENERGY GENERATION SYSTEMS.--The requirements of the Distributed Generation Disclosure Act shall not apply to a transaction involving
the sale or transfer of the real property on which the
distributed energy generation system is located.