

House Bill 73

By: Representatives Gullett of the 19th, Parsons of the 44th, Thomas of the 65th, Anderson of the 10th, Meeks of the 178th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 3 of Title 46 of the Official Code of Georgia Annotated, relating to
2 electrical service, so as to require that the seller provide a written disclosure statement with
3 any agreement for the sale of distributed energy generation systems or for the financing of
4 such systems through leases or solar energy procurement agreements; to provide for the
5 delivery of such written disclosure statement; to provide for definitions; to require a
6 certificate of authority as a prerequisite for sellers that are not electric suppliers that want to
7 sell or lease to a retail customer a distributed energy generation system or enter into a solar
8 energy procurement agreement with a retail customer; to provide the Public Service
9 Commission with the authority to issue multiple certificates of authority; to provide for the
10 promulgation of rules and regulations and other requirements regarding applications for a
11 certificate of authority; to provide for public hearings and decisions on applications; to
12 provide for revocations, suspension, and other action on certificates of authority; to require
13 that persons installing such systems be licensed; to require the Public Service Commission
14 to develop a form for the written disclosure statement and a solar awareness presentation to
15 be provided on its website; to provide for the imposition and collection of civil penalties; to
16 provide for exceptions; to provide for related matters; to provide for an effective date and
17 applicability; to repeal conflicting laws; and for other purposes.

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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 SECTION 1.

20 Chapter 3 of Title 46 of the Official Code of Georgia Annotated, relating to electrical service,
21 is amended by adding a new article to read as follows:

22 "ARTICLE 5

23 46-3-600.

24 As used in this article, the term:

25 (1) 'Agreement' means a contract executed between a seller and:

26 (A) A buyer for the purchase of a distributed energy generation system; or

27 (B) A lessee for the financing of a distributed energy generation system either through
28 a lease or a solar energy procurement agreement.

29 (2) 'Buyer' means a person that enters into an agreement to purchase a distributed energy
30 generation system from a seller.

31 (3) 'Distributed energy generation system' means a device or system that:

32 (A) Is used to generate or store electricity;

33 (B) Has an electric delivery capacity, individually or in connection with other similar
34 devices or systems, of greater than one kilowatt or one kilowatt hour; and

35 (C) Is used primarily for on-site consumption.

36 Such term shall not include an electric generator intended for occasional use.

37 (4) 'Electric supplier' shall have the same meaning as provided in Code Section 46-3-3.

38 (5) 'Lessee' means a person that finances a distributed energy generation system either
39 through a lease or a solar energy procurement agreement.

40 (6) 'Person' means an individual or entity.

41 (7) 'Seller' means a person regularly engaged in, or whose business consists of, selling
42 distributed energy generation systems or financing distributed energy generation systems
43 through leases or solar energy procurement agreements.

44 (8) 'Solar energy procurement agreement' shall have the same meaning as provided in
45 Code Section 46-3-62.

46 46-3-601.

47 (a) Every seller that is not an electric supplier shall, before selling, financing, or offering
48 to sell or finance to any retail customer within this state any distributed energy generation
49 system, and before proposing to enter with any retail customer within this state a solar
50 energy procurement agreement, first obtain a certificate of authority from the commission.

51 (b) The commission shall have the authority to issue multiple certificates of authority. A
52 showing of public convenience and necessity is not a condition for the issuance of a
53 certificate of authority.

54 (c) A seller that seeks a certificate of authority shall make an application to the
55 commission which contains the information required by this Code section.

56 (d) No later than December 31, 2023, the commission shall by rules and regulations
57 describe the information to be included in an application for certification under this Code
58 section and the criteria the commission will use in determining an applicant's financial and
59 technical capability. Such criteria shall seek to ensure that all sellers:

60 (1) Require appropriate background checks of all employees or contractors who will
61 work on a buyer's or prospective buyer's premises;

62 (2) Provide contact information that is reasonably accessible by the public;

63 (3) Possess adequate capital and are financially viable; and

64 (4) Meet any other requirements as the commission may deem appropriate, without,
65 however, imposing unnecessary barriers to a seller entering the market.

66 (e) The commission shall conduct a public hearing on each application within 60 days of
67 completion of the filing of such application and issue an order approving or disapproving
68 of the application within 30 days of the hearing.

69 (f) Any certificate of authority issued by the commission is subject to revocation,
70 suspension, or adjustment where the commission finds upon complaint and hearing that a
71 seller has failed repeatedly or has failed willfully to meet obligations to its retail customers
72 which are imposed by this article, by any rules or regulations issued pursuant to this article,
73 or by the seller's certificate of authority; has engaged in unfair competition; or has abused
74 its market position.

75 (g) The commission may deny an application upon a showing that the applicant or anyone
76 acting in concert with the applicant has a history of violations of laws, rules, or regulations
77 designed to protect the public. The commission may revoke any certificate of authority
78 issued pursuant to this Code section where it finds that the seller or anyone acting in
79 concert with the seller has such a history, that any information on the application was
80 falsified or forged, that the seller has acted unlawfully to the detriment of the public while
81 certificated, or for any other good and valid reason where activities of the seller are serving
82 or could serve to mislead, deceive, or work a fraud upon members of the public. The
83 commission shall be authorized to adopt rules and regulations to implement this subsection.
84 In any case where it is asserted in good faith that the seller is, has been, or may be about
85 to become involved in activities described in this subsection, any deadline imposed under
86 this Code section regarding the granting of certification shall be null and void until such
87 time as such assertions can be addressed.

88 (h) Each seller shall be required to continue to possess the financial and technical
89 capability to render service pursuant to the seller's warranties and other commitments made
90 to buyers or lessees. This is a continuing obligation and may be reviewed by the
91 commission at any time.

92 (i) Any person engaged in the installation of a distributed energy generation system shall
93 be licensed pursuant to Chapter 14 of Title 43 as a general contractor or as a residential
94 contractor or employ an individual who is licensed as an electrical contractor pursuant to
95 Chapter 14 of Title 43.

96 (j) The installation of a distributed energy generation system shall comply with the
97 provisions of the article and all applicable federal and state laws, rules, and regulations.

98 46-3-602.

99 (a) The seller shall provide to every buyer and lessee as part of any agreement a written
100 disclosure statement. Such written disclosure statement shall be printed in at least 12 point
101 type, be acknowledged by the buyer or lessee, and include the following information,
102 disclosures, and guarantees, if applicable:

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

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

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

111 (4)(A) A disclosure notifying the buyer or lessee whether the distributed energy
112 generation system is being purchased or being financed through a lease or a solar
113 energy procurement agreement.

114 (B) If the distributed energy generation system is being purchased, the written
115 disclosure statement shall include a disclosure in substantially the following form: 'You
116 are entering into an agreement to purchase a distributed energy generation system. You
117 will own (not lease) the system installed on your property.'

118 (C) If the distributed energy generation system is being financed through a lease, the
119 written disclosure statement shall include a disclosure in substantially the following
120 form: 'You are entering into an agreement to lease a distributed energy generation
121 system. You will lease (not own) the system installed on your property.'

122 (D) If the distributed energy generation system is being financed through a solar
123 energy procurement agreement, the written disclosure statement shall include a
124 disclosure in substantially the following form: 'You are entering into an agreement to
125 purchase power from a distributed energy generation system. You will not own the
126 system installed on your property.'

127 (5) The total cost to be paid by the buyer or lessee, including, but not limited to, any
128 interest, installation fees, document preparation fees, service fees, or other fees. Such
129 total cost if the distributed energy generation system is financed through a solar energy
130 procurement agreement shall include the initial payment rate and, if applicable, the rate
131 of any payment increases and the date of the first increase;

132 (6) A payment schedule, including any amounts owed at the agreement signing, at the
133 commencement of installation, and at the completion of installation and any final
134 payments. If the distributed energy generation system is being financed through a lease,
135 the written disclosure statement shall include the frequency and amount of each payment
136 due under the lease and the total estimated lease payments over the term of the lease;

137 (7) A description of the assumptions used to calculate any savings estimates provided to
138 the buyer or lessee and a statement in substantially the following form: 'It is important to
139 understand that any representations as to savings based on future electric utility rates are
140 estimates only. Your future electric utility rates may vary.'

141 (8) A description of any one-time or recurring fees, including, but not limited to,
142 estimated system removal fees, maintenance fees, internet connection fees, automated
143 clearinghouse fees, and circumstances triggering late fees that may apply;

144 (9) A disclosure notifying the buyer or lessee as to whether the distributed energy
145 generation system is being financed and whether the seller is assisting in arranging such
146 financing. If the distributed energy generation system is being financed, the written
147 disclosure statement shall include a statement in substantially the following form: 'Your
148 system is financed. Carefully read any agreements, contracts, and disclosure forms
149 provided by your lender. This written disclosure statement does not contain the terms of
150 your financing agreement. If you have any questions about your financing agreement,
151 contact your finance provider before signing any agreement or contract.';

152 (10) A declaration providing notification of the number of days after the agreement is
153 signed during which the buyer or lessee shall have the right to rescind such agreement.
154 If the buyer or lessee does not have right to rescind the agreement, notification that such
155 right does not exist and an explanation as to why it does not;

156 (11) A description of the distributed energy generation system's:

157 (A) Design assumptions, including the make and model of the major components,
158 system size, estimated first-year energy production, and estimated annual energy
159 production decreases, including the overall percentage degradation over the estimated
160 life of the distributed energy generation system; and

161 (B) Excess energy utility compensation status at the time the agreement is signed;
162 provided, however, that a seller that provides a warranty or guarantee of the energy
163 production output of the distributed energy generation system may provide a description
164 and copy of such warranty or guarantee in lieu of the description required under this
165 paragraph;

166 (12) A description of any performance or production guarantees;

167 (13) A declaration notifying the buyer or lessee of each federal and state tax credit,
168 rebate, or incentive, if any, relied upon by the seller in determining the price of the
169 distributed energy generation system and any applicable federal or state tax credit, rebate,
170 or incentive for which the buyer or lessee may qualify that is known to the seller at the

171 time the agreement is signed. Such declaration shall also disclose to the lessee whether
172 financing a distributed energy generation system through a lease may affect qualification
173 for any such tax credit, rebate, or incentive;

174 (14) A description of the ownership and transferability of any tax credits, rebates,
175 incentives, or renewable energy certificates associated with the distributed energy
176 generation system, including a disclosure as to whether the seller is able to and intends
177 to assign or sell any associated renewable energy certificates to a third party;

178 (15) If the distributed energy generation system is being purchased, a disclosure
179 notifying the buyer as to the potential for tax liability or tax credit eligibility by including
180 a statement in substantially the following form: 'You are responsible for property taxes
181 on property you own. Consult a tax professional to understand any tax liability or any
182 tax credit eligibility that may result from the purchase or financing of a distributed energy
183 generation system.';

184 (16) The estimated start and completion date for the installation of the distributed energy
185 generation system;

186 (17) A declaration as to whether any maintenance and repairs of the distributed energy
187 generation system are included in the purchase price or financing costs;

188 (18) A disclosure as to whether any warranty or maintenance obligations related to the
189 distributed energy generation system may be assigned, sold, or transferred by the seller
190 to a third party and, if so, a statement in substantially the following form: 'Your contract
191 may be assigned, sold, or transferred without your consent to a third party who will be
192 bound to all of the terms of the contract. If an assignment, sale, or transfer occurs, you
193 will be notified if this will change the address or phone number to use for system
194 maintenance or repair requests.';

195 (19) If the distributed energy generation system is being purchased, a disclosure
196 notifying the buyer of the requirements for interconnecting the system to the utility
197 system;

- 198 (20) A disclosure notifying the buyer or lessee of the party responsible for obtaining
199 interconnection approval;
- 200 (21) A disclosure notifying the buyer or lessee whether any additional equipment may
201 be necessary in order to maintain continuous power access;
- 202 (22) A description and copy of any roof warranties;
- 203 (23) A disclosure notifying the lessee whether the seller will insure a leased distributed
204 energy generation system against damage or loss and, if applicable, a disclosure notifying
205 the buyer or lessee the circumstances under which the seller will not insure the system
206 against damage or loss, in substantially the following form: 'You are responsible for
207 obtaining insurance policies or coverage for any loss of or damage to the system. Consult
208 an insurance professional to understand how to protect against the risk of loss or damage
209 to the system.';
- 210 (24) A disclosure notifying the buyer or lessee whether the seller will place a lien on the
211 buyer's or lessee's home or other property as a result of entering into an agreement for the
212 distributed energy generation system;
- 213 (25) A disclosure notifying the buyer or lessee whether the seller will file a fixture filing
214 or a financing statement pursuant to Article 9 of Title 11 on the distributed energy
215 generation system;
- 216 (26) A disclosure identifying whether the agreement contains any restrictions on the
217 buyer's or lessee's ability to modify or transfer ownership of a distributed energy
218 generation system, including whether any such modification or transfer is subject to
219 review or approval by a third party;
- 220 (27) If the distributed energy generation system is being financed through a lease or solar
221 energy procurement agreement, a disclosure as to whether the lease or the solar energy
222 procurement agreement may be transferred to a purchaser upon sale of the home or real
223 property to which the system is affixed, and any conditions for such transfer;

224 (28) The address of and specific link to the commission's internet website where the solar
225 awareness presentation required under Code Section 46-3-603 is available. The seller
226 may also include the internet website address of or specific link to another consumer
227 information video that it has produced or that is publicly available; and

228 (29) A blank section that allows the seller to provide additional relevant disclosures or
229 explain disclosures made elsewhere in the written disclosure statement.

230 (b) The requirement to provide a written disclosure statement under subsection (a) of this
231 Code section may be satisfied by the electronic delivery of such written disclosure
232 statement if the intended recipient of the electronically delivered written disclosure
233 statement affirmatively acknowledges its receipt. An electronic document satisfies the font
234 and other formatting standards required for the written disclosure statement if the format
235 and the relative size of characters of the electronic document are reasonably similar to
236 those required in subsection (a) of this Code section or if the contents of such electronic
237 document are otherwise displayed in a reasonably conspicuous manner.

238 46-3-603.

239 Prior to January 1, 2024, the commission shall:

240 (1) Publish on its internet website separate standard written disclosure statement forms
241 of no more than five pages in length that may be used to comply with the requirements
242 of Code Section 46-3-602. Written disclosure statements provided in substantially the
243 same configuration as the forms published by the commission or containing the
244 information and disclosures required by Code Section 46-3-602 shall satisfy the
245 disclosure requirements of this article; and

246 (2)(A) Develop and make available to the public on its website a solar awareness
247 presentation.

248 (B) Such solar awareness presentation shall be prerecorded and shall include consumer
249 information related to:

- 250 (i) Written disclosure statements and other requirements of this article;
251 (ii) The ongoing costs and maintenance associated with distributed energy generation
252 systems; and
253 (iii) The current laws in this state relating to metering and connecting distributed
254 energy generation systems to an electric supplier's distribution system.
- 255 (C) The commission shall consult with and solicit proposals from the solar industry
256 and sellers, buyers, and lessees of distributed energy generation systems when
257 developing the solar awareness presentation.
- 258 (D) The commission may contract with or hire any experts, consultants, or other
259 individuals as may be necessary to develop and publish the solar awareness
260 presentation.

261 46-3-604.

- 262 (a) A person that willfully and intentionally violates Code Section 46-3-601 or a seller that
263 willfully and intentionally:
- 264 (1) Fails to provide a written disclosure statement as required under Code Section
265 46-3-602; or
- 266 (2) Fails to provide a written disclosure statement that meets all of the applicable
267 requirements of Code Section 46-3-602
- 268 shall be liable for a civil penalty for each violation, provided that the maximum civil
269 penalty for violations associated with one distributed energy generation system shall not
270 exceed the amount provided for in the agreement as the purchase price if the distributed
271 energy generation system is purchased or, if the agreement is for the financing of the
272 distributed energy generation system, the maximum civil penalty shall not exceed the
273 amount the financed distributed energy generation system would have cost the lessee to
274 purchase at the time the agreement is signed.

275 (b) A civil penalty under subsection (a) of this Code section may be imposed by the
276 commission only after notice and hearing. In determining the amount of the penalty, the
277 commission shall consider the gravity and number of violations. The amount of such
278 penalty may be collected by the commission in the manner provided in Code Section
279 9-11-69 for the enforcement of money judgments.

280 (c) The civil penalty provided for in this Code section shall be in addition to any criminal
281 or civil penalties otherwise provided by law.

282 46-3-605.

283 The provisions of this article shall not apply to:

284 (1) A person acting through officers, employees, brokers, or agents that markets, sells,
285 solicits, negotiates, or enters into an agreement for the purchase or financing of a
286 distributed energy generation system as part of a transaction involving the sale or transfer
287 of the real property on which the system is or will be affixed;

288 (2) A transaction involving the sale or transfer of the real property on which a distributed
289 energy generation system is affixed;

290 (3) The sale or lease of a distributed energy generation system that will be installed on
291 nonresidential real property; or

292 (4) A person, other than the seller, that installs a distributed energy generation system
293 on residential property."

294 **SECTION 2.**

295 This Act shall become effective on July 1, 2023, and shall apply to contracts executed on or
296 after January 1, 2024, for the purchase of a distributed energy generation system or for the
297 financing of a distributed energy generation system either through a lease or a solar energy
298 procurement agreement.

299

SECTION 3.

300 All laws and parts of laws in conflict with this Act are repealed.