

House Bill 73 (COMMITTEE SUBSTITUTE)

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

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 provide
13 for appeals; to require that persons installing such systems be licensed; to require the Public
14 Service Commission to develop a form for the written disclosure statement and a solar
15 awareness presentation to be provided on its website; to provide for the imposition and
16 collection of civil penalties; to provide for exceptions; to provide for related matters; to
17 provide for an effective date and applicability; to repeal conflicting laws; and for other
18 purposes.

H. B. 73 (SUB)

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 SECTION 1.

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

23 "ARTICLE 5

24 46-3-600.

25 As used in this article, the term:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 46-3-601.

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

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

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

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

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

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

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

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

67 (e)(1) Upon the filing of a completed application, the commission shall have 60 days to
68 issue an order approving or disapproving of such application, except as provided in
69 paragraph (2) of this subsection.

70 (2) Any complaint concerning an application or any request by the applicant for a public
71 hearing on the application shall be filed within 30 days of the filing of the completed
72 application. If such a complaint or request for hearing is filed, the commission shall,
73 within 60 days of the filing of the complaint or request for hearing, hold a public hearing
74 on such application. Within 30 days of such hearing, the commission shall issue an order
75 approving or disapproving of the application.

76 (f) Any certificate of authority issued by the commission is subject to revocation,
77 suspension, or adjustment where the commission finds upon complaint and hearing that:

78 (1) A seller has failed repeatedly or has failed willfully to meet obligations to its retail
79 customers which are imposed by this article, by any rules or regulations issued pursuant
80 to this article, or by the seller's certificate of authority; or

81 (2) The activities of the seller are serving or could serve to mislead, deceive, or work a
82 fraud upon members of the public.

83 (g)(1) The commission may deny an application upon a showing that the applicant or
84 anyone acting in concert with the applicant has a history of violations of laws, rules, or
85 regulations designed to protect the public. The applicant shall have 30 days from the
86 denial of an application for certification to file an appeal with the commission. A public
87 hearing shall be held within 60 days of the filing of such an appeal, and the commission
88 shall issue its decision as to such appeal within 30 days of the date of the hearing.

89 (2) The commission may revoke any certificate of authority issued pursuant to this Code
90 section where it finds that the seller or anyone acting in concert with the seller has such
91 a history, that any information on the application was falsified or forged, that the seller
92 has acted unlawfully to the detriment of the public while certificated, or for any other

93 good and valid reason where activities of the seller are serving or could serve to mislead,
94 deceive, or work a fraud upon members of the public.

95 (3) The commission shall be authorized to adopt rules and regulations to implement this
96 subsection.

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

101 (i) Any person engaged in the installation of a distributed energy generation system shall
102 be licensed pursuant to Chapter 41 of Title 43 as a general contractor or as a residential
103 contractor or employ an individual who is licensed as an electrical contractor pursuant to
104 Chapter 41 of Title 43.

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

107 46-3-602.

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

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

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

116 (3) The name, address, telephone number, email address, and valid state contractor
117 license number of the distributed energy generation system maintenance provider, if

118 different from the person responsible for installing the distributed energy generation
119 system;

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

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

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

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

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

141 (6) A payment schedule, including any amounts owed at the agreement signing, at the
142 commencement of installation, and at the completion of installation and any final
143 payments. If the distributed energy generation system is being financed through a lease,

144 the written disclosure statement shall include the frequency and amount of each payment
145 due under the lease and the total estimated lease payments over the term of the lease;
146 (7) A description of the assumptions used to calculate any savings estimates provided to
147 the buyer or lessee and a statement in substantially the following form: 'It is important to
148 understand that any representations as to savings based on future electric utility rates are
149 estimates only. Your future electric utility rates may vary.';
150 (8) A description of any one-time or recurring fees, including, but not limited to,
151 estimated system removal fees, maintenance fees, internet connection fees, automated
152 clearinghouse fees, and circumstances triggering late fees that may apply;
153 (9) A disclosure notifying the buyer or lessee as to whether the distributed energy
154 generation system is being financed and whether the seller is assisting in arranging such
155 financing. If the distributed energy generation system is being financed, the written
156 disclosure statement shall include a statement in substantially the following form: 'Your
157 system is financed. Carefully read any agreements, contracts, and disclosure forms
158 provided by your lender. This written disclosure statement does not contain the terms of
159 your financing agreement. If you have any questions about your financing agreement,
160 contact your finance provider before signing any agreement or contract.';
161 (10) A declaration providing notification of the number of days after the agreement is
162 signed during which the buyer or lessee shall have the right to rescind such agreement.
163 If the buyer or lessee does not have right to rescind the agreement, notification that such
164 right does not exist and an explanation as to why it does not;
165 (11) A description of the distributed energy generation system's:
166 (A) Design assumptions, including the make and model of the major components,
167 system size, estimated first-year energy production, and estimated annual energy
168 production decreases, including the overall percentage degradation over the estimated
169 life of the distributed energy generation system; and
170 (B) Excess energy utility compensation status at the time the agreement is signed;

171 provided, however, that a seller that provides a warranty or guarantee of the energy
172 production output of the distributed energy generation system may provide a description
173 and copy of such warranty or guarantee in lieu of the description required under this
174 paragraph;

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

176 (13) A declaration notifying the buyer or lessee of each federal and state tax credit,
177 rebate, or incentive, if any, relied upon by the seller in determining the price of the
178 distributed energy generation system and any applicable federal or state tax credit, rebate,
179 or incentive for which the buyer or lessee may qualify that is known to the seller at the
180 time the agreement is signed. Such declaration shall also disclose to the lessee whether
181 financing a distributed energy generation system through a lease may affect qualification
182 for any such tax credit, rebate, or incentive. Such declaration shall recommend that the
183 buyer or lessee seek professional tax advice to determine how any tax credits, rebates,
184 incentives, or renewable energy certificates may apply to such buyer or lessee;

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

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

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

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

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

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

209 (20) A disclosure notifying the buyer or lessee of the party responsible for obtaining
210 interconnection approval;

211 (21) A disclosure notifying the buyer or lessee whether any additional equipment may
212 be necessary in order to maintain continuous power access;

213 (22) A description and copy of any roof warranties;

214 (23) A disclosure notifying the lessee whether the seller will insure a leased distributed
215 energy generation system against damage or loss and, if applicable, a disclosure notifying
216 the buyer or lessee the circumstances under which the seller will not insure the system
217 against damage or loss, in substantially the following form: 'You are responsible for
218 obtaining insurance policies or coverage for any loss of or damage to the system. Consult
219 an insurance professional to understand how to protect against the risk of loss or damage
220 to the system.';

221 (24) A disclosure notifying the buyer or lessee whether the seller will place a lien on the
222 buyer's or lessee's home or other property as a result of entering into an agreement for the
223 purchase or financing of the distributed energy generation system;

224 (25) A disclosure notifying the buyer or lessee whether the seller will file a fixture filing
225 or a financing statement pursuant to Article 9 of Title 11 on the distributed energy
226 generation system;

227 (26) A disclosure identifying whether the agreement contains any restrictions on the
228 buyer's or lessee's ability to modify or transfer ownership of a distributed energy
229 generation system, including whether any such modification or transfer is subject to
230 review or approval by a third party;

231 (27) If the distributed energy generation system is being financed through a lease or solar
232 energy procurement agreement, a disclosure as to whether the lease or the solar energy
233 procurement agreement may be transferred to a purchaser upon sale of the home or real
234 property to which the system is affixed, and any conditions for such transfer;

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

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

241 (b) The requirement to provide a written disclosure statement under subsection (a) of this
242 Code section may be satisfied by the electronic delivery of such written disclosure
243 statement if the intended recipient of the electronically delivered written disclosure
244 statement affirmatively acknowledges its receipt. An electronic document satisfies the font
245 and other formatting standards required for the written disclosure statement if the format
246 and the relative size of characters of the electronic document are reasonably similar to
247 those required in subsection (a) of this Code section or if the contents of such electronic
248 document are otherwise displayed in a reasonably conspicuous manner.

249 46-3-603.

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

251 (1) Publish on its internet website separate standard written disclosure statement forms
252 that may be used to comply with the requirements of Code Section 46-3-602. Written
253 disclosure statements provided in substantially the same configuration as the forms
254 published by the commission or containing the information and disclosures required by
255 Code Section 46-3-602 shall satisfy the disclosure requirements of this article; and

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

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

260 (i) Written disclosure statements and other requirements of this article;

261 (ii) The ongoing costs and maintenance associated with distributed energy generation
262 systems; and

263 (iii) The current laws in this state relating to metering and connecting distributed
264 energy generation systems to an electric supplier's distribution system.

265 (C) The commission shall consult with and solicit proposals from the solar industry
266 when developing the solar awareness presentation.

267 (D) The commission may contract with or hire any experts, consultants, or other
268 individuals as may be necessary to develop and publish the solar awareness
269 presentation.

270 46-3-604.

271 (a) A person that willfully violates Code Section 46-3-601 or any rules and regulations
272 promulgated thereunder or a seller that willfully:

273 (1) Fails to provide a written disclosure statement as required under Code Section
274 46-3-602; or

275 (2) Fails to provide a written disclosure statement that meets all of the applicable
276 requirements of Code Section 46-3-602
277 shall be liable for a civil penalty for each violation, provided that the maximum civil
278 penalty for violations associated with one distributed energy generation system shall not
279 exceed the amount provided for in the agreement as the purchase price if the distributed
280 energy generation system is purchased or, if the agreement is for the financing of the
281 distributed energy generation system, the maximum civil penalty shall not exceed the
282 amount the financed distributed energy generation system would have cost the lessee to
283 purchase at the time the agreement is signed.
284 (b) A civil penalty under subsection (a) of this Code section may be imposed by the
285 commission only after notice and hearing. In determining the amount of the penalty, the
286 commission shall consider the gravity and number of violations. The amount of such
287 penalty may be collected by the commission in the manner provided in Code Section
288 9-11-69 for the enforcement of money judgments.
289 (c) The civil penalty provided for in this Code section shall be in addition to any criminal
290 or civil penalties otherwise provided by law.

291 46-3-605.

292 The provisions of this article shall not apply to:

- 293 (1) A person acting through officers, employees, brokers, or agents that markets, sells,
294 solicits, negotiates, or enters into an agreement for the purchase or financing of a
295 distributed energy generation system as part of a transaction involving the sale or transfer
296 of the real property on which the system is or will be affixed;
297 (2) A transaction involving the sale or transfer of the real property on which a distributed
298 energy generation system is affixed;
299 (3) The sale or lease of a distributed energy generation system that will be installed on
300 nonresidential real property; or

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

303 **SECTION 2.**

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

308 **SECTION 3.**

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