Chapter 90

Senate Bill 1465

An Act

Amending Section 44-1761, Arizona Revised Statutes; Amending Title 44, Chapter 11, Article 11, Arizona Revised Statutes, by adding Section 44-1763; Relating to Solar Energy Devices.

(Text of bill begins on next page)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 44-1761, Arizona Revised Statutes, is amended to read:

44-1761. Definitions
In this article, unless the context otherwise requires:

1. "Collector" means a component of a solar energy device that is used to absorb solar radiation, convert it to heat or electricity and transfer the heat to a heat transfer fluid or to storage.

2. "DISTRIBUTED ENERGY GENERATION SYSTEM":
   (a) MEANS A DEVICE OR SYSTEM THAT IS USED TO GENERATE OR STORE ELECTRICITY, THAT HAS A CAPACITY, SINGLY OR IN CONNECTION WITH OTHER SIMILAR DEVICES OR SYSTEMS, GREATER THAN ONE KW THAT IS PRIMARILY FOR ON-SITE CONSUMPTION.
   (b) DOES NOT INCLUDE AN ELECTRIC GENERATOR THAT IS INTENDED FOR OCCASIONAL USE.

3. "Heat exchanger" means a component of a solar energy device that is used to transfer heat from one fluid to another.

4. "SELLER OR MARKETER" MEANS AN INDIVIDUAL OR A COMPANY ACTING THROUGH ITS OFFICERS, EMPLOYEES OR AGENTS THAT MARKETS, SELLS OR SOLICITS THE SALE, FINANCING OR LEASE OF DISTRIBUTED ENERGY GENERATION SYSTEMS OR NEGOTIATES OR ENTERS INTO AGREEMENTS FOR THE SALE, FINANCING OR LEASE OF DISTRIBUTED ENERGY GENERATION SYSTEMS.

5. "Solar daylighting" means a device THAT IS specifically designed to capture and redirect the visible portion of the solar beam spectrum, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.

6. "Solar energy device" means a system or series of mechanisms THAT IS designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means. Such systems may also have the capability of storing such energy for future utilization. Passive systems shall clearly be designed as a solar energy device such as a trombe wall and not merely a part of a normal structure such as a window.

7. "Storage unit" means a component of a solar energy device that is used to store solar generated electricity or heat for later use.

Sec. 2. Title 44, chapter 11, article 11, Arizona Revised Statutes, is amended by adding section 44-1763, to read:

44-1763. Distributed energy generation system agreements; disclosures; exception

A. AN AGREEMENT GOVERNING THE FINANCING, SALE OR LEASE OF A DISTRIBUTED ENERGY GENERATION SYSTEM TO ANY PERSON OR A POLITICAL SUBDIVISION OF THIS STATE MUST:

1. BE SIGNED BY THE PERSON BUYING, FINANCING OR LEASING THE DISTRIBUTED ENERGY GENERATION SYSTEM AND MUST BE DATED. ANY AGREEMENT THAT
CONTAINS BLANK SPACES AFFECTING THE TIMING, VALUE OR OBLIGATIONS OF THE AGREEMENT IN A MATERIAL MANNER WHEN SIGNED BY THE BUYER OR LESSEE IS VOIDABLE AT THE OPTION OF THE BUYER OR LESSEE UNTIL THE DISTRIBUTED ENERGY GENERATION SYSTEM IS INSTALLED.

2. BE IN AT LEAST TEN-POINT TYPE.

3. INCLUDE A PROVISION GRANTING THE BUYER OR LESSEE THE RIGHT TO RESCIND THE FINANCING, SALE OR LEASE AGREEMENT FOR A PERIOD OF NOT LESS THAN THREE BUSINESS DAYS AFTER THE AGREEMENT IS SIGNED BY THE BUYER OR LESSEE AND BEFORE THE DISTRIBUTED ENERGY GENERATION SYSTEM IS INSTALLED.

4. PROVIDE A DESCRIPTION, INCLUDING THE MAKE AND MODEL OF THE DISTRIBUTED ENERGY GENERATION SYSTEM'S MAJOR COMPONENTS OR A GUARANTEE CONCERNING ENERGY PRODUCTION OUTPUT THAT THE DISTRIBUTED ENERGY GENERATION SYSTEM BEING SOLD OR LEASED WILL PROVIDE OVER THE LIFE OF THE AGREEMENT.

5. SEPARATELY SET FORTH THE FOLLOWING ITEMS, IF APPLICABLE:
   (a) THE TOTAL PURCHASE PRICE OR TOTAL COST TO THE BUYER OR LESSEE UNDER THE AGREEMENT FOR THE DISTRIBUTED ENERGY GENERATION SYSTEM OVER THE LIFE OF THE AGREEMENT.
   (b) ANY INTEREST, INSTALLATION FEES, DOCUMENT PREPARATION FEES, SERVICE FEES OR OTHER COSTS TO BE PAID BY THE BUYER OR LESSEE OF THE DISTRIBUTED ENERGY GENERATION SYSTEM.
   (c) IF THE DISTRIBUTED ENERGY GENERATION SYSTEM IS BEING FINANCED OR LEASED, THE TOTAL NUMBER OF PAYMENTS, THE PAYMENT FREQUENCY, THE AMOUNT OF THE PAYMENT EXPRESSED IN DOLLARS AND THE PAYMENT DUE DATE.

6. PROVIDE A DISCLOSURE IN THE SALE AND FINANCING AGREEMENTS, TO THE EXTENT THEY ARE USED BY THE SELLER OR MARKETER IN DETERMINING THE PURCHASE PRICE OF THE AGREEMENT, IDENTIFY ALL CURRENT TAX INCENTIVES AND REBATES OR OTHER STATE OR FEDERAL INCENTIVES FOR WHICH THE BUYER MAY BE ELIGIBLE AND ANY CONDITIONS OR REQUIREMENTS PURSUANT TO THE AGREEMENT TO OBTAIN THESE TAX INCENTIVES, REBATES OR OTHER INCENTIVES.

7. IDENTIFY THE TAX OBLIGATIONS THAT THE BUYER OR LESSEE MAY BE REQUIRED TO PAY AS A RESULT OF BUYING, FINANCING OR LEASING THE DISTRIBUTED ENERGY GENERATION SYSTEM, INCLUDING:
   (a) THE ASSESSED VALUE AND THE PROPERTY TAX ASSESSMENTS ASSOCIATED WITH THE DISTRIBUTED ENERGY GENERATION SYSTEM CALCULATED IN THE YEAR THE AGREEMENT IS SIGNED.
   (b) TRANSACTION PRIVILEGE TAXES THAT MAY BE ASSESSED AGAINST THE PERSON BUYING OR LEASING THE DISTRIBUTED ENERGY GENERATION SYSTEM.
   (c) ANY OBLIGATION OF THE BUYER OR LESSEE TO TRANSFER TAX CREDITS OR TAX INCENTIVES OF THE DISTRIBUTED ENERGY GENERATION SYSTEM TO ANY OTHER PERSON.

8. DISCLOSE WHETHER THE WARRANTY OR MAINTENANCE OBLIGATIONS RELATED TO THE DISTRIBUTED ENERGY GENERATION SYSTEM MAY BE SOLD OR TRANSFERRED TO A THIRD PARTY.

9. INCLUDE A DISCLOSURE, THE RECEIPT OF WHICH SHALL BE SEPARATELY ACKNOWLEDGED BY THE BUYER OR LESSEE, IF A TRANSFER OF THE SALE, LEASE OR FINANCING AGREEMENT CONTAINS ANY RESTRICTIONS PURSUANT TO THE AGREEMENT ON
THE LESSEE'S OR BUYER'S ABILITY TO MODIFY OR TRANSFER OWNERSHIP OF A DISTRIBUTED ENERGY GENERATION SYSTEM, INCLUDING WHETHER ANY MODIFICATION OR TRANSFER IS SUBJECT TO REVIEW OR APPROVAL BY A THIRD PARTY. IF THE MODIFICATION OR TRANSFER OF THE DISTRIBUTED ENERGY GENERATION SYSTEM IS SUBJECT TO REVIEW OR APPROVAL BY A THIRD PARTY, THE AGREEMENT MUST IDENTIFY THE NAME, ADDRESS AND TELEPHONE NUMBER OF, AND PROVIDE FOR UPDATING ANY CHANGE IN, THE ENTITY RESPONSIBLE FOR APPROVING THE MODIFICATION OR TRANSFER.

10. INCLUDE A DISCLOSURE, THE RECEIPT OF WHICH SHALL BE SEPARATELY ACKNOWLEDGED BY THE BUYER OR LESSEE, IF A MODIFICATION OR TRANSFER OF OWNERSHIP OF THE REAL PROPERTY TO WHICH THE DISTRIBUTED ENERGY GENERATION SYSTEM IS OR WILL BE AFFIXED CONTAINS ANY RESTRICTIONS PURSUANT TO THE AGREEMENT ON THE LESSEE'S OR BUYER'S ABILITY TO MODIFY OR TRANSFER OWNERSHIP OF THE REAL PROPERTY TO WHICH THE DISTRIBUTED ENERGY GENERATION SYSTEM IS INSTALLED OR AFFIXED, INCLUDING WHETHER ANY MODIFICATION OR TRANSFER IS SUBJECT TO REVIEW OR APPROVAL BY A THIRD PARTY. IF THE MODIFICATION OR TRANSFER OF THE REAL PROPERTY TO WHICH THE DISTRIBUTED ENERGY GENERATION SYSTEM IS AFFIXED OR INSTALLED IS SUBJECT TO REVIEW OR APPROVAL BY A THIRD PARTY, THE AGREEMENT MUST IDENTIFY THE NAME, ADDRESS AND TELEPHONE NUMBER, AND PROVIDE FOR UPDATING ANY CHANGE IN, THE ENTITY RESPONSIBLE FOR APPROVING THE MODIFICATION OR TRANSFER.

11. PROVIDE A FULL AND ACCURATE SUMMARY OF THE TOTAL COSTS UNDER THE AGREEMENT FOR MAINTAINING AND OPERATING THE DISTRIBUTED ENERGY GENERATION SYSTEM OVER THE LIFE OF THE DISTRIBUTED ENERGY GENERATION SYSTEM, INCLUDING FINANCING, MAINTENANCE AND CONSTRUCTION COSTS RELATED TO THE DISTRIBUTED ENERGY GENERATION SYSTEM.

12. IF THE AGREEMENT CONTAINS AN ESTIMATE OF THE BUYER'S OR LESSEE'S FUTURE UTILITY CHARGES BASED ON PROJECTED UTILITY RATES AFTER THE INSTALLATION OF A DISTRIBUTED ENERGY GENERATION SYSTEM, PROVIDE AN ESTIMATE OF THE BUYER'S OR LESSEE'S ESTIMATED UTILITY CHARGES DURING THE SAME PERIOD AS IMPACTED BY POTENTIAL UTILITY RATE CHANGES RANGING FROM AT LEAST A FIVE PERCENT ANNUAL DECREASE TO AT LEAST A FIVE PERCENT ANNUAL INCREASE FROM CURRENT UTILITY COSTS. THE COMPARATIVE ESTIMATES MUST BE CALCULATED BASED ON THE SAME UTILITY RATES.

13. INCLUDE A DISCLOSURE, THE RECEIPT OF WHICH SHALL BE SEPARATELY ACKNOWLEDGED BY THE BUYER OR LESSEE, THAT STATES:

UTILITY RATES AND UTILITY RATE STRUCTURES ARE SUBJECT TO CHANGE.

THOSE CHANGES CANNOT BE ACCURATELY PREDICTED. PROJECTED SAVINGS FROM YOUR DISTRIBUTED ENERGY GENERATION SYSTEM ARE THEREFORE SUBJECT TO CHANGE. TAX INCENTIVES ARE SUBJECT TO CHANGE OR TERMINATION BY EXECUTIVE, LEGISLATIVE OR REGULATORY ACTION.

B. BEFORE THE MAINTENANCE OR WARRANTY OBLIGATIONS OF A DISTRIBUTED ENERGY GENERATION SYSTEM UNDER AN EXISTING LEASE, FINANCING OR PURCHASE AGREEMENT IS TRANSFERRED, THE PERSON WHO IS CURRENTLY OBLIGATED TO MAINTAIN OR WARRANT THE DISTRIBUTED ENERGY GENERATION SYSTEM MUST DISCLOSE THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE PERSON WHO WILL BE ASSUMING THE MAINTENANCE OR WARRANTY OF THE DISTRIBUTED ENERGY GENERATION SYSTEM.
C. If the seller's or marketer's marketing materials contain an estimate of the buyer's or lessee's future utility charges based on projected utility rates after the installation of a distributed energy generation system, the marketing materials must contain an estimate of the buyer's or lessee's estimated utility charges during the same period as impacted by potential utility rate changes ranging from at least a five percent annual decrease to at least a five percent annual increase from current utility costs.

D. This section does not apply to an individual or company, acting through its officers, employees 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 generation system is or will be affixed.

Sec. 3. Effective date
This act is effective from and after December 31, 2015.