

IN THE SENATE

SENATE BILL NO. 1182

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE RESIDENTIAL SOLAR ENERGY SYSTEM DISCLOSURE ACT; AMENDING TI-
2 TLE 48, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 18, TITLE 48, IDAHO
3 CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE APPLICABIL-
4 ITY, TO REQUIRE A DISCLOSURE STATEMENT IN CERTAIN INSTANCES, TO PROVIDE
5 FOR THE CONTENTS OF A DISCLOSURE STATEMENT, TO PROVIDE THAT DISCLOSURE
6 STATEMENTS FOR ANY SOLAR AGREEMENTS SHALL CONTAIN CERTAIN INFORMATION,
7 TO PROVIDE THAT DISCLOSURE STATEMENTS FOR SYSTEM PURCHASE AGREEMENTS
8 SHALL CONTAIN CERTAIN INFORMATION, TO PROVIDE THAT DISCLOSURE STATE-
9 MENTS FOR SYSTEM LEASE AGREEMENTS SHALL CONTAIN CERTAIN INFORMATION, TO
10 PROVIDE FOR A GOOD FAITH ESTIMATE IN CERTAIN INSTANCES, AND TO PROVIDE
11 THAT THE ATTORNEY GENERAL AND DISTRICT COURT SHALL HAVE CERTAIN AUTHOR-
12 ITY.
13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Title 48, Idaho Code, be, and the same is hereby amended
16 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
17 ter 18, Title 48, Idaho Code, and to read as follows:

18 CHAPTER 18

19 RESIDENTIAL SOLAR ENERGY SYSTEM DISCLOSURE ACT

20 48-1801. SHORT TITLE. This chapter shall be known and may be cited as
21 the "Residential Solar Energy System Disclosure Act."

22 48-1802. DEFINITIONS. As used in this chapter:

23 (1) "Consumer" means a person who, for primarily personal, family, or
24 household purposes:

25 (a) Purchases a residential solar energy system under a solar agree-
26 ment; or

27 (b) Leases a residential solar energy system under a system lease
28 agreement.

29 (2) "Residential solar energy system" means a solar energy system that:

30 (a) Is installed on or in real property in the state of Idaho;

31 (b) Generates electricity primarily for on-site consumption for pri-
32 marily personal, family, or household purposes; and

33 (c) Has an electricity delivery capacity that exceeds one (1) kilowatt.

34 (3) "Solar agreement" means a system purchase agreement or a system
35 lease agreement.

36 (4) "Solar energy system" means a system or configuration of energy de-
37 vices that collects and uses solar energy to generate electricity to be used
38 by a consumer.

39 (5) "Solar retailer" means a person who:

- 1 (a) Sells or proposes to sell a residential solar energy system to a
2 consumer under a system purchase agreement; or
3 (b) Owns the residential solar energy system that is the subject of a
4 system lease agreement or proposed system lease agreement.
5 (6) "System lease agreement" means an agreement:
6 (a) Under which a consumer leases a residential solar energy system
7 from a solar retailer; and
8 (b) That provides for the consumer to make payments over a term for the
9 lease of the residential solar energy system.
10 (7) "System purchase agreement" means an agreement under which a con-
11 sumer purchases a residential solar energy system, or the energy created
12 from a residential solar energy system, from a solar retailer either out-
13 right or through installment payments.

- 14 48-1803. APPLICABILITY. (1) The provisions of this chapter shall ap-
15 ply to any solar agreement entered into on or after October 1, 2019, between
16 a solar retailer and a consumer including, but not limited to, a solar agree-
17 ment that accompanies the transfer of ownership or lease of real property.
18 (2) The provisions of this chapter shall not apply to:
19 (a) The transfer or rental of real property on which a residential so-
20 lar energy system is, or is expected to be, located if the presence of
21 the residential solar energy system is incidental to the transfer or
22 rental;
23 (b) A lender, governmental entity, or other third party that enters
24 into an agreement with a consumer to finance a residential solar energy
25 system but is not a party to a system purchase agreement or lease agree-
26 ment; or
27 (c) A sale or lease of, or the purchase of electricity from, a solar en-
28 ergy system that is not a residential solar energy system.

- 29 48-1804. DISCLOSURE STATEMENT REQUIRED. (1) Before entering a solar
30 agreement, a solar retailer shall provide to a potential consumer a sep-
31 arate, written disclosure statement as provided in this section and, as
32 applicable, the information required in sections 48-1805, 48-1806, and
33 48-1807, Idaho Code.
34 (a) The requirements of this subsection may be satisfied by the elec-
35 tronic delivery of a disclosure statement to the potential consumer.
36 (b) An electronic document delivered pursuant to paragraph (a) of this
37 subsection shall satisfy the font size standard under subsection (2) (a)
38 of this section if the required disclosures are displayed in a clear and
39 conspicuous manner.
40 (2) A disclosure statement under subsection (1) of this section shall:
41 (a) Be in at least twelve (12) point font;
42 (b) Contain:
43 (i) The name, address, and telephone number or e-mail address of
44 the potential consumer;
45 (ii) The name, address, telephone number, and e-mail address of
46 the solar retailer;
47 (iii) The name, address, telephone number, e-mail address, and
48 state contractor registration number of the person who is expected

1 to install the system that is the subject of the solar agreement;
 2 and
 3 (iv) If the solar retailer is the person who is expected to provide
 4 operations or maintenance support to the potential consumer or who
 5 introduced that person to the potential consumer, the name, ad-
 6 dress, telephone number, e-mail address, and any applicable state
 7 contractor registration number of the operations or maintenance
 8 support person; and
 9 (c) Any applicable information and disclosures as required in sections
 10 48-1805, 48-1806, and 48-1807, Idaho Code.

11 48-1805. CONTENTS OF DISCLOSURE STATEMENT FOR ANY SOLAR AGREEMENT. If
 12 a solar retailer is proposing to enter any solar agreement with a potential
 13 consumer, the disclosure statement required in section 48-1804, Idaho Code,
 14 shall also include:

15 (1) If operations or maintenance services are not included as part of
 16 the solar agreement, a statement indicating those services are not included
 17 in the agreement;

18 (2) Any written estimate of the savings the potential consumer is pro-
 19 jected to realize from the system, including:

20 (a) At the discretion of the solar retailer, the estimated projected
 21 savings over the life of the solar agreement and the estimated projected
 22 savings over any longer period not to exceed the anticipated useful life
 23 of the system;

24 (b) Any material assumptions used to calculate estimated projected
 25 savings and the source of those assumptions including, but not limited
 26 to:

27 (i) If an annual electricity rate increase is assumed, the rate of
 28 the increase and the solar retailer's basis for the assumption of
 29 the rate increase;

30 (ii) The potential consumer's eligibility for or receipt of tax
 31 credits or other governmental or utility incentives;

32 (iii) System production data, including production degradation;

33 (iv) Reference to any utility tariff and the possibility of addi-
 34 tional costs for interconnection under any net metering or similar
 35 program;

36 (v) Electrical usage and the system's designed offset of the
 37 electrical usage;

38 (vi) Historical utility costs paid by the potential consumer; and

39 (vii) The costs associated with replacing equipment making up any
 40 part of the system or, if those costs are not assumed, a statement
 41 indicating that those costs are not assumed; and

42 (c) Two (2) separate statements in capital letters in close proximity
 43 to any written estimate of projected savings, with substantially the
 44 following form and content:

45 (i) "THIS IS AN ESTIMATE. UTILITY RATES MAY GO UP OR DOWN AND AC-
 46 TUAL SAVINGS, IF ANY, MAY VARY. HISTORICAL DATA IS NOT NECESSARILY
 47 REPRESENTATIVE OF FUTURE RESULTS. FOR FURTHER INFORMATION REGARD-
 48 ING RATES, CONTACT YOUR LOCAL UTILITY OR THE IDAHO PUBLIC UTILI-
 49 TIES COMMISSION."; and

1 (ii) "TAX AND OTHER FEDERAL, STATE, AND LOCAL INCENTIVES VARY
2 AS TO REFUNDABILITY AND ARE SUBJECT TO CHANGE OR TERMINATION BY
3 LEGISLATIVE OR REGULATORY ACTION, WHICH MAY IMPACT SAVINGS ESTI-
4 MATES. CONSULT A TAX PROFESSIONAL FOR MORE INFORMATION.";

5 (3) A notice in capital letters with substantially the following form
6 and content: "LEGISLATIVE OR REGULATORY ACTION MAY AFFECT OR ELIMINATE YOUR
7 ABILITY TO SELL OR GET CREDIT FOR ANY EXCESS POWER GENERATED BY THE SYSTEM AND
8 MAY AFFECT THE PRICE OR VALUE OF THAT POWER.";

9 (4) A notice describing any right a consumer has under applicable law to
10 cancel or rescind a solar agreement;

11 (5) A statement describing the system and indicating the system design
12 assumptions, including the make and model of the solar panels and inverters,
13 system size, positioning of the panels on the consumer's property, estimated
14 first-year energy production, and estimated annual energy production degra-
15 dation, including the overall percentage degradation over the term of the
16 solar agreement or, at the solar retailer's option, over the estimated use-
17 ful life of the system;

18 (6) A description of any warranty, representation, or guarantee of en-
19 ergy production of the system;

20 (7) The approximate start and completion dates for the installation of
21 the system;

22 (8) A statement indicating whether any warranty or maintenance obli-
23 gations related to the system may be transferred by the solar retailer to a
24 third party and, if so, a statement with substantially the following form and
25 content: "The maintenance and repair obligations under your contract may
26 be assigned or transferred without your consent to a third party who will be
27 bound to all the terms of the contract. If a transfer occurs, you will be no-
28 tified of any change to the address, e-mail address, or phone number to use
29 for questions or payments or to request system maintenance or repair.";

30 (9) If the solar retailer will not obtain approval to connect the system
31 to the consumer's utility, a statement to that effect and a description of
32 what the consumer must do to interconnect the system to the utility;

33 (10) A description of any roof penetration warranty or other warranty
34 that the solar retailer provides the consumer or a statement, in bold capital
35 letters, that the solar retailer does not provide any warranty;

36 (11) A statement indicating whether the solar retailer will make a fix-
37 ture filing or other notice in the state or local records related to the sys-
38 tem and any fees or other costs associated with the filing that may be charged
39 to the consumer;

40 (12) A statement at the outset of the agreement in capital letters with
41 substantially the following form and content: "NO EMPLOYEE OR REPRESENTA-
42 TIVE OF [name of solar retailer] IS AUTHORIZED TO MAKE ANY PROMISE TO YOU THAT
43 IS NOT CONTAINED IN THIS DISCLOSURE STATEMENT CONCERNING COST SAVINGS, TAX
44 BENEFITS, OR GOVERNMENT OR UTILITY INCENTIVES. YOU SHOULD NOT RELY UPON ANY
45 PROMISE OR ESTIMATE THAT IS NOT INCLUDED IN THIS DISCLOSURE STATEMENT.";

46 (13) A statement in capital letters at the outset of the agreement with
47 substantially the following form and content: "[name of solar retailer] IS
48 NOT AFFILIATED WITH ANY UTILITY COMPANY OR GOVERNMENT AGENCY. NO EMPLOYEE OR
49 REPRESENTATIVE OF [name of solar retailer] IS AUTHORIZED TO CLAIM AFFILIA-
50 TION WITH A UTILITY COMPANY OR GOVERNMENT AGENCY."; and

1 (14) Any additional information, statement, or disclosure the solar re-
2 tailer considers appropriate, as long as the additional information, state-
3 ment, or disclosure does not have the purpose or effect of obscuring the dis-
4 closures required under this chapter.

5 48-1806. CONTENTS OF DISCLOSURE STATEMENT FOR SYSTEM PURCHASE AGREE-
6 MENT. If a solar retailer is proposing to enter a system purchase agreement
7 with a potential consumer, the disclosure statement required in section
8 48-1804, Idaho Code, shall also include:

9 (1) A statement with substantially the following form and content:
10 "You are entering an agreement to purchase an energy generation system.
11 You will own the system installed on your property. You may be entitled to
12 federal tax credits because of the purchase. You should consult your tax
13 advisor.";

14 (2) The price quoted to the potential consumer for a non-financed pur-
15 chase of the system;

16 (3) If the system purchase agreement is not an outright purchase and re-
17 quires installment payments:

18 (a) The interest rate charged and a schedule of required and antici-
19 pated payments from the consumer to the solar retailer and any third
20 parties over the term of the system purchase agreement, including ap-
21 plication fees, up-front charges, down payment, scheduled payments
22 under the system purchase agreement, payments at the end of the term of
23 the system purchase agreement, payments for any operations or mainte-
24 nance contract offered by or through the solar retailer in connection
25 with the system purchase agreement, payments for replacement of system
26 components likely to require replacement before the end of the term of
27 the system purchase agreement, and any prepayment penalties; and

28 (b) A figure that reflects the total amount to be paid by the consumer
29 pursuant to the charges set forth in paragraph (a) of this subsection;

30 (4) A statement indicating the charges associated with insuring the
31 system against loss or a statement that loss insurance is not included within
32 the schedule of payments under the system purchase agreement;

33 (5) A statement, if applicable, with substantially the following form
34 and content: "You are responsible for obtaining insurance coverage for any
35 loss or damage to the system. You should consult an insurance professional
36 to understand how to protect against the risk of loss or damage to the system.
37 You should also consult your home insurer about the potential impact of in-
38 stallling a system."; and

39 (6) Information disclosing whether the system purchase agreement is
40 transferrable to a purchaser of the home or real property where the system is
41 located and, if so, any conditions for a transfer.

42 48-1807. CONTENTS OF DISCLOSURE STATEMENT FOR SYSTEM LEASE AGREE-
43 MENT. If a solar retailer is proposing to enter a system lease agreement with
44 a potential consumer, the disclosure statement required in section 48-1804,
45 Idaho Code, shall also include:

46 (1) A statement with substantially the following form and content:
47 "You are entering an agreement to lease an energy generation system. You

1 will lease (not own) the system installed on your property. You will not be
2 entitled to any federal tax credit associated with the lease.";

3 (2) Information about whether the system lease agreement may be trans-
4 ferred to a purchaser of the home or real property where the system is located
5 and, if so, any conditions for a transfer;

6 (3) If the solar retailer will not obtain insurance against damage or
7 loss to the system, a statement to that effect and a description of the conse-
8 quences to the consumer if there is damage or loss to the system; and

9 (4) Information about what will happen to the system at the end of the
10 term of the system lease agreement.

11 48-1808. GOOD FAITH ESTIMATE ALLOWED. A solar retailer that does
12 not, at the time of providing a disclosure statement required in sec-
13 tion 48-1804(1), Idaho Code, have information required under sections
14 48-1805(2)(a) and (b) and 48-1806(2), (3), and (4), Idaho Code, may make a
15 good faith estimate of that information in the disclosure statement if the
16 solar retailer clearly indicates that the information is an estimate and
17 provides the basis for the estimate.

18 48-1809. AUTHORITY OF THE ATTORNEY GENERAL AND DISTRICT COURT. (1) The
19 attorney general and the district court shall have the same authority in en-
20 forcing and carrying out the provisions of this chapter as is granted the at-
21 torney general and district court under the Idaho consumer protection act,
22 chapter 6, title 48, Idaho Code.

23 (2) All penalties, costs, and fees received or recovered by the attor-
24 ney general shall be remitted to the consumer protection fund and expended
25 pursuant to section 48-606(5), Idaho Code.

26 (3) Nothing in this chapter shall be construed to affect:

27 (a) A remedy a consumer has independent of this chapter; or

28 (b) The attorney general's ability or authority to enforce any other
29 law or regulation.