

H. B. 2025

(By Delegates Fleischauer and Manypenny)
[Introduced January 12, 2011; referred to the
Committee on Government Organization then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §24-2G-1, §24-2G-2,
§24-2G-3, §24-2G-4, §24-2G-5, §24-2G-6, §24-2G-7, §24-2G-8 and
§24-2G-9, all relating to energy efficiency for electric and
gas utilities and their customers; defining terms;
establishing required energy efficiency programs and plans;
setting forth time tables; establishing targets and goals;
identifying certain metering and grid technologies; providing
for revenue sharing; establishing penalties; and providing for
\$600,000 in special license fees for implementation purposes.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new article, designated §24-2G-1, §24-2G-2,
§24-2G-3, §24-2G-4, §24-2G-5, §24-2G-6, §24-2G-7, §24-2G-8 and §24-
2G-9, all to read as follows:

1 **ARTICLE 2G. Energy Efficiency.**

2 **§24-2G-1. Short title.**

3 This article shall be known as the "West Virginia Energy
4 Efficiency Act."

5 **§24-2G-2. Findings and purpose.**

6 The Legislature finds and declares that:

7 (1) Energy efficiency is among the least expensive ways to
8 meet the growing electricity demands of the state; and

9 (2) To provide affordable, reliable and clean energy for
10 consumers of West Virginia, it is the goal of the state to, based
11 on electricity consumption for calendar year 2010, achieve the
12 following energy efficiency, conservation and demand response
13 targets:

14 (A) Fifteen percent reduction in per capita electricity
15 consumption by the end of 2017; and

16 (B) Fifteen percent reduction in per capita peak demand by the
17 end of 2017.

18 **§24-2G-3. Definitions.**

19 As used in this article:

20 (1) "Demand response program" means a program established by
21 an electric utility that promotes changes in electricity usage by
22 customers from their normal consumption patterns in response to:

23 (A) Changes in the price of electricity over time; or

24 (B) Incentives designed to promote lower electricity use at

1 times of high wholesale market prices or when system reliability is
2 jeopardized.

3 (2) "Electricity consumption" and "electricity consumed" mean
4 the sum of retail electricity sales to all customers and reported
5 electricity losses within the electric distribution system.

6 (3) "Peak demand" means the highest level of electricity
7 demand in the state measured in megawatts during the period from
8 January 1 to December 31 of a year on a weather-normalized basis.

9 (4) "Per capita electricity consumption" means the resultant
10 amount calculated by dividing the total gigawatt-hours of
11 electricity consumed by electricity customers in the state as of
12 December 31 for each year, as determined by the commission by the
13 population of the state as of December 31 of that year.

14 (5) "Plan" means an electricity savings and demand reduction
15 plan and cost recovery proposal.

16 **§24-2G-4. Energy efficiency programs required.**

17 (a) Beginning with the 2011 calendar year and each year
18 thereafter, the commission shall calculate:

19 (1) The per capita electricity consumption for each year; and

20 (2) The peak demand for each year.

21 (b) Subject to review and approval by the commission, each gas
22 utility and electric utility shall develop and implement programs
23 and services to encourage and promote the efficient use and
24 conservation of energy by consumers, commercial and industrial end

1 users, gas utilities, and electric utilities.

2 (c) As directed by the commission, each municipal electric
3 utility and each electric cooperative that serves a population of
4 less than fifty thousand in its service territory shall include
5 energy efficiency and conservation programs or services as part of
6 the services provided to its customers.

7 (d) The commission shall:

8 (1) Require each gas utility and electric utility to establish
9 a program or service that the commission finds appropriate and
10 cost-effective to encourage and promote the efficient use and
11 conservation of energy; and

12 (2) Adopt rate-making policies that provide cost recovery and,
13 in appropriate circumstances, reasonable financial incentives for
14 gas utilities and electric utilities to establish programs and
15 services that encourage and promote the efficient use and
16 conservation of energy.

17 (e) Except as provided in subsection (c) of this section, by
18 December 31, 2011, by rule or order, the commission shall:

19 (1) To the extent the commission determines that cost-
20 effective energy efficiency and conservation programs and services
21 are available, for each affected class, require each electric
22 utility to provide for its electricity customers cost-effective
23 energy efficiency and conservation programs and services with
24 projected and verifiable electricity savings that are designed to

1 achieve, based on per capita electricity consumed in the electric
2 utility's service territory during the year 2009, a targeted
3 reduction, at a minimum, of:

4 (A) Five percent by the end of 2013;

5 (B) Ten percent by the end of 2015; and

6 (C) Fifteen percent by the end of 2017.

7 (2) Require each electric utility to implement a cost-
8 effective demand response program in the electric utility's service
9 territory that, based on per capita peak demand of electricity
10 consumed in the electric utility's service territory during the
11 year 2009, is designed to achieve, at a minimum, a targeted
12 reduction of:

13 (A) Five percent by the end of 2013;

14 (B) Ten percent by the end of 2015; and

15 (C) Fifteen percent by the end of 2017.

16 (f) (1) By July 1, 2011, and every three years thereafter, an
17 electric utility shall:

18 (A) Consult with the commission regarding the design and
19 adequacy of its plan to achieve the electricity savings and demand
20 reduction targets specified in subsection (e) of this section; and

21 (B) Provide the commission with any additional information
22 regarding the plan that the commission requests.

23 (2) By September 1, 2011, and every three years thereafter,
24 each electric utility shall submit its plan to the commission that

1 details the electric utility's proposals for achieving the
2 electricity savings and demand reduction targets specified in
3 subsection (e) of this section for the three subsequent calendar
4 years.

5 (3) Each electric utility shall provide annual updates to the
6 commission on plan implementation and progress towards achieving
7 the electricity savings and demand reduction targets specified in
8 subsection (e) of this section.

9 (4) Each plan shall include:

10 (A) A description of the proposed energy efficiency and
11 conservation programs and services and the proposed demand response
12 program, anticipated costs, projected electricity savings and any
13 other information requested by the commission.

14 (B) Each plan shall address residential, commercial and
15 industrial sectors as appropriate, including low-income communities
16 and low-to-moderate-income communities.

17 (5) The commission shall review each electric utility's plan
18 to determine if the plan is adequate and cost-effective in
19 achieving the electricity savings and demand reduction targets
20 specified in subsection (e) of this section.

21 (6) The commission may request additional information from an
22 electric utility regarding its plan.

23 (g) (1) In determining whether a program or service encourages
24 and promotes the efficient use and conservation of energy, the

1 commission shall consider its:

2 (A) Impact on jobs;

3 (B) Impact on the environment;

4 (C) Impact on rates of each ratepayer class; and

5 (D) Cost-effectiveness.

6 (2) The commission shall monitor and analyze the impact of
7 each program and service to ensure that the outcome of each program
8 or service provides the best possible results.

9 (3) In monitoring and analyzing the impact of a program or
10 service under paragraph (2) of this subdivision, if the commission
11 determines that the outcome of the program or services may not be
12 providing the best possible results, the commission shall direct
13 the electric utility to include in its annual update, under
14 subdivision (3), subsection (f) of this section, specific measures
15 to address the findings.

16 (h) (1) At least once each year, each electric utility and gas
17 utility shall notify affected customers of the energy efficiency
18 and conservation charges imposed and benefits conferred.

19 (2) The notice shall be posted on the utility's website and
20 provided to its customers by including it with a customer's billing
21 information, such as a bill insert or bill message.

22 **§24-2G-5. Energy efficiency program reports.**

23 (a) On or before January 1 of each year, the commission shall
24 report to the Legislature on:

1 (1) The status of programs and services to encourage and
2 promote the efficient use and conservation of energy, including an
3 evaluation of the impact of programs and services that are directed
4 to low-income communities, low-to-moderate-income communities to
5 the extent possible, and other particular classes of ratepayers;

6 (2) A recommendation for the appropriate funding level to
7 adequately fund these programs and services; and

8 (3) The per capita electricity consumption and the peak demand
9 for the previous calendar year.

10 (b) By December 31, 2014, the commission shall:

11 (1) Review the anticipated achievement of the goals set forth
12 in section two of this article for purposes of determining whether
13 electricity consumption and peak demand reduction targets should be
14 set beyond 2017; and

15 (2) After providing opportunity for public comment, report its
16 findings to the Senate Finance Committee and the House of Delegates
17 Finance Committee.

18 (c) By December 31, 2014, the commission shall:

19 (1) Study the feasibility of setting energy savings targets in
20 2016 and 2021 for natural gas companies; and

21 (2) After providing opportunity for public comment, report its
22 findings to the Senate Finance Committee and the House of Delegates
23 Finance Committee.

24 **§24-2G-6. Smart meter and smart grid technology.**

1 The commission shall evaluate whether advanced meter
2 technology, commonly known as "smart meters," and digital
3 automation of the components of the entire power supply system,
4 commonly known as "smart grid," are cost-effective in reducing
5 consumption and peak demand of electricity. If smart meter or
6 smart grid technology are found to be cost-effective, the
7 commission may require, by rule or order, each electric utility to
8 implement, as appropriate, smart meter or smart grid technology in
9 its service territory.

10 **§24-2G-7. Revenue sharing.**

11 (a) If, after notice and opportunity for hearing and based
12 upon its analysis of the annual plan updates required under
13 subdivision (3), subsection (f), section four and subsection (g),
14 section four of this article, the commission determines that an
15 electric utility has failed to comply with an energy efficiency or
16 peak demand reduction requirement of subsection (e), section four
17 of this article, the commission shall determine the number of
18 kilowatt hours of electricity savings by which the supplier has
19 fallen short of the standards, and assess a forfeiture on the
20 utility, in the amount equal to \$0.04 per kilowatt hour for each
21 such kilowatt hour. Any revenue from this forfeiture shall be
22 deposited to the credit of the Low Income Weatherization Assistance
23 Program in the Governors Office of Economic Opportunity.

24 (b) The commission may establish rules regarding the content

1 of an application by an electric utility for commission approval of
2 a revenue sharing mechanism under this article by which the utility
3 and the customer share the economic benefits of energy
4 conservation. That application shall not be considered an
5 application to increase rates and may be included as part of a
6 proposal to establish, continue or expand energy efficiency or
7 conservation programs. The commission by order may approve an
8 application under this subsection if it determines both that the
9 revenue sharing mechanism provides for the recovery of revenue, as
10 well as incentive rates of return, that otherwise may be foregone
11 by the utility as a result of or in connection with the
12 implementation by the electric utility of any energy efficiency or
13 energy conservation programs and reasonably aligns the interests of
14 the utility and its customers in favor of those programs:
15 *Provided*, That the revenue sharing mechanism is structured to: (1)
16 Prevent over-earning and provide an appropriate downward
17 adjustment to a utility's return on equity in recognition of the
18 significant reduction in risk associated with the use of the
19 incentive mechanism; (2) ensure that the utility engages in
20 incremental conservation efforts to meet and maintain energy
21 efficiency requirements; and (3) require the utility to demonstrate
22 that the reduced usage reflected in revenue sharing adjustments are
23 specifically linked to the utility's promotion of energy efficiency
24 programs.

1 **§24-2G-8. Special license fee.**

2 (a) (1) Notwithstanding any other provision of this code, for
3 fiscal year 2011 only, in addition to the amounts appropriated in
4 the budget bill for fiscal year 2011, the commission may establish
5 up to \$600,000 as a special license fee for the commission and its
6 Consumer Advocate Division to accomplish the requirements of this
7 article.

8 (2) Of the \$600,000 that may be collected under subdivision
9 (1) of this subsection:

10 (A) Up to \$500,000 may be expended in accordance with an
11 approved budget amendment for consultants, personnel and related
12 expenses of the commission as it determines is necessary to
13 accomplish the requirements of this article; and

14 (B) Up to \$100,000 may be expended in accordance with an
15 approved budget amendment for consultants, personnel and related
16 expenses of the Consumer Advocate Division as it determines is
17 necessary to accomplish the requirements of this article.

18 (3) The special license fee shall be imposed only on those
19 electric utilities otherwise subject to the license fees under
20 section six, article three, chapter twenty-four of this code. The
21 amounts collected shall be deposited in the Public Service
22 Commission Fund.

23 (4) The amount of the bill sent to each electric utility
24 subject to the special license fee shall be that amount resulting

1 from multiplying:

2 (A) The amount authorized to be collected under this
3 subsection; and

4 (B) The ratio of gross operating revenues of the entity
5 subject to the special license fee to the total gross operating
6 revenues for all entities subject to the special license fee.

7 (b) It is the intent of the Legislature that, beginning with
8 fiscal year 2012, the annual state budget include amounts for the
9 commission and the Consumer Advocate Division for the
10 implementation of this article, including consultants, personnel
11 and related expenses.

12 **§24-2G-9. Severability.**

13 The provisions of this article are severable, and if any
14 phrase, clause, sentence or provision is declared to be invalid or
15 is preempted by federal law or regulation, the validity of the
16 remainder of this article is not affected.

NOTE: The purpose of this bill is to provide the Public Service Commission the authority to require electric and gas utilities to develop and implement plans for the efficient use, conservation and reduction of energy usage. The bill sets forth goals to reduce electricity usage by five percent by 2014, ten percent by 2016 and fifteen percent by 2018. The bill also requires electric utilities to submit plans for reaching those goals, provides for revenue sharing and the opportunity for financial incentives for gas and electric utilities to establish energy saving programs. Additionally, the bill authorizes a special license fee up to \$600,000 to be collected from the affected utilities to implement the bill's requirements and establishes a penalty of \$0.04 per kilowatt hour for those utilities that fail to comply with the commission's reduction

requirements. Moreover, the bill requires the commission to file usage reports and the results of studies concerning the feasibility of additional demand reduction targets beyond 2018 with the Legislature.

This article is new; therefore, it has been completely underscored.