

1 **H. B. 2056**

2
3 (By Delegate Guthrie)

4 [Introduced January 12, 2011; referred to the
5 Committee on Energy, Industry and Labor, Economic
6 Development and Small Business then Finance.]

7 **FISCAL**
8 **NOTE**

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §5B-2H-1, §5B-2H-2,
12 §5B-2H-3, §5B-2H-4, §5B-2H-5, §5B-2H-6 and §5B-2H-7; and to
13 amend said code by adding thereto a new section, designated
14 §11-24-11c, all relating to creating the West Virginia
15 Renewable Energy Act; providing an investment cost recovery
16 incentive for customer-generated electricity from renewable
17 energy systems; making exceptions; providing for tax credits
18 electric light and power companies that purchase customer-
19 generated electricity; establishing time limits for the
20 incentives and credits; providing that customers who generate
21 electricity from renewable sources may sell electricity to
22 electric light and power companies; requiring reports be made
23 to the Legislature; and making legislative findings and
24 defining terms.

1 *Be it enacted by the Legislature of West Virginia:*

2 That the Code of West Virginia, 1931, as amended, be amended
3 by adding thereto a new article, designated §5B-2H-1, §5B-2H-2,
4 §5B-2H-3, §5B-2H-4, §5B-2H-5, §5B-2H-6 and §5B-2H-7; and that said
5 code be amended by adding thereto a new section, designated §11-24-
6 11c, all to read as follows:

7 **CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

8 **ARTICLE 2H. THE WEST VIRGINIA RENEWABLE ENERGY ACT.**

9 **§5B-2H-1. Short title.**

10 This article shall be known and cited as the "West Virginia
11 Renewable Energy Act."

12 **§5B-2H-2. Legislative findings.**

13 The Legislature finds that the use of renewable energy
14 resources generated from local sources such as solar, biomass,
15 geothermal, hydroelectric and wind power benefit our state by
16 reducing the load on the state's electric energy grid, by providing
17 nonpolluting sources of electricity generation, and by the creation
18 of jobs for local industries that develop and sell renewable energy
19 products and technologies.

20 The Legislature finds that West Virginia can become a national
21 and international leader in the technologies related to the solar,
22 biomass, geothermal, hydroelectric and wind electric markets. The
23 state can support these industries by providing incentives for the
24 purchase of locally made renewable energy products. Locally made

1 renewable technologies benefit and protect the state's environment.

2 The Legislature also finds that the state's economy can be
3 enhanced through the creation of incentives to develop additional
4 renewable energy industries in the state. The Legislature intends
5 to provide incentives for the greater use of locally created
6 renewable energy technologies, support and retain existing local
7 industries and create new opportunities for renewable energy
8 industries to develop in the state.

9 **§5B-2H-3. Definitions.**

10 The following definitions apply throughout this article unless
11 the context clearly requires otherwise:

12 (1) "Biomass energy" means any organic materials that can be
13 burned and used as a source of fuel, including, but not limited to,
14 wood, wood waste, wood waste used to make wood pellets, biogas,
15 animal manure to make biogas, solid waste, waste heat harnessed by
16 waste-to-energy plants that can generate electricity for heating
17 buildings.

18 (2) "Customer-generated electricity" means the alternating
19 current electricity that is generated from a renewable energy
20 system located on an individual's, businesses', or local
21 government's real property that is also provided electricity
22 generated by an electric light and power company. A system located
23 on a leasehold interest does not qualify under this definition.

24 "Customer-generated electricity" does not include electricity

1 generated by an electric light and power company with greater than
2 one thousand megawatt hours of annual sales or a gas distribution
3 business.

4 (3) "Economic development kilowatt-hour" means the actual
5 kilowatt-hour measurement of customer-generated electricity
6 multiplied by the appropriate economic development factor.

7 (4) "Geothermal energy" means the energy that is harnessed
8 under the earth's surface by the water that comes into contact with
9 hot rock turning it into boiling hot water or steam.

10 (5) "Hydroelectric energy" means energy generated from the
11 energy of falling water or any other hydraulic source and producing
12 electricity.

13 (6) "Photovoltaic cell" means a device that converts light
14 directly into electricity without moving parts.

15 (7) "Renewable energy system" means a solar, biomass,
16 geothermal, hydroelectric and wind energy systems used for
17 producing electricity.

18 (8) "Solar energy system" means any device or combination of
19 devices or elements that rely upon direct sunlight as an energy
20 source for use in the generation of electricity.

21 (9) "Solar inverter" means the device used to convert direct
22 current to alternating current in a photovoltaic cell system.

23 (10) "Solar module" means the smallest nondivisible self-
24 contained physical structure housing interconnected photovoltaic

1 cells and providing a single direct current electrical output.

2 (11) "Standards for interconnection to the electric
3 distribution system" means technical, engineering, operational,
4 safety, and procedural requirements for interconnection to the
5 electric distribution system of an electric light and power
6 company.

7 (12) "Wind energy" means the energy of motion harnessed or
8 captured by a wind turbine.

9 **§5B-2H-4. Investment cost recovery incentive for customer-**
10 **generated electricity from renewable energy**
11 **systems.**

12 (a) Any individual, business, or local governmental entity,
13 not in the electric light and power business or in the gas
14 distribution business, may apply to the electric light and power
15 company serving the situs of the system, each fiscal year beginning
16 July 1, 2011, for an investment cost recovery incentive for each
17 kilowatt-hour from a customer-generated electricity renewable
18 energy system installed on its property that is not interconnected
19 to the electric distribution system. No incentive may be paid for
20 kilowatt-hours generated before July 1, 2011, or after June 30,
21 2020.

22 (b) Electric light and power companies serving eighty percent
23 of the total customer load in the state shall adopt uniform
24 standards by January 1, 2013 for interconnection to the electric

1 distribution system, any individual, business, or local
2 governmental entity, not in the electric light and power business
3 or in the gas distribution business, may apply to an electric light
4 and power company serving the situs of the system, each fiscal
5 year, for an investment cost recovery incentive for each kilowatt-
6 hour from a customer-generated electricity renewable energy system
7 installed on its property that is not interconnected to the
8 electric distribution system and from a customer-generated
9 electricity renewable energy system installed on its property that
10 is interconnected to the electric distribution system. No incentive
11 may be paid for kilowatt-hours generated before July 1, 2011, or
12 after June 30, 2020.

13 (c)(1) Before submitting for the first time the application
14 for the incentive allowed under this section, the applicant shall
15 submit to the Tax Department and the Division of Energy, a
16 certification in a form and manner prescribed by the department
17 that includes, but is not limited to, the following information:

18 (A) The name and address of the applicant and location of the
19 renewable energy system;

20 (B) The applicant's tax registration number or, if an
21 individual, his or her name and address;

22 (C) That the electricity produced by the applicant meets the
23 definition of "customer-generated electricity" and that the
24 renewable energy system produces electricity with:

1 (i) Any solar inverters and solar modules manufactured in the
2 state;

3 (ii) A wind generator powered by blades manufactured in the
4 state;

5 (iii) A solar inverter manufactured in the state;

6 (iv) A solar module manufactured in the state;

7 (v) Other renewable energy system equipment manufactured in
8 the state; or

9 (vi) Solar, wind or other energy system equipment manufactured
10 outside of the state;

11 (D) That the electricity can be transformed or transmitted for
12 entry into or operation in parallel with electricity transmission
13 and distribution systems; and

14 (E) The date that the renewable energy system received its
15 final electrical permit from the applicable local jurisdiction.

16 (2) Within thirty days of receipt of the certification the
17 State Tax Department shall advise the applicant in writing whether
18 the renewable energy system qualifies for an incentive under this
19 section. The department may consult with the Division of Energy to
20 determine eligibility for the incentive.

21 (d) (1) By October 1 of each year application for the incentive
22 shall be made to the electric light and power company serving the
23 situs the system by certification in a form and manner prescribed
24 by the Tax Department that includes, but is not limited to, the

1 following information:

2 (A) The name and address of the applicant and location of the
3 renewable energy system;

4 (B) The applicant's tax registration number or, if an
5 individual, his or her name and address;

6 (C) The date of the letter from the Tax Department stating
7 that the renewable energy system is eligible for the incentives
8 under this section;

9 (D) A statement of the amount of kilowatt-hours generated by
10 the renewable energy system in the prior fiscal year.

11 (2) Within sixty days of receipt of the incentive
12 certification the electric light and power company serving the
13 situs of the system shall notify the applicant in writing whether
14 the incentive payment will be authorized or denied. The company may
15 consult with the Division of Energy for the incentive payment.

16 (3) (A) Persons receiving incentive payments shall keep and
17 preserve, for a period of five years, suitable records as may be
18 necessary to determine the amount of incentive applied for and
19 received. Such records shall be open for examination at any time
20 upon notice by the electric light and power company that made the
21 payment. If upon examination of any records or from other
22 information obtained by the company or the Tax Department, it
23 appears that an incentive has been paid in an amount that exceeds
24 the correct amount of incentive payable, the business may assess

1 against the person for the amount found to have been paid in excess
2 of the correct amount of incentive payable and shall add thereto
3 interest on the amount. Interest shall be assessed in the manner
4 that the department assesses interest upon delinquent tax.

5 (B) If it appears that the amount of incentive paid is less
6 than the correct amount of incentive payable the company may
7 authorize additional payment.

8 (e) The investment cost recovery incentive may be paid \$0.15
9 per economic development kilowatt-hour unless requests exceed the
10 amount authorized for credit to the participating electric light
11 and power company. For the purposes of this section, the rate paid
12 for the investment cost recovery incentive may be multiplied by the
13 following factors:

14 (1) For customer-generated electricity produced using solar
15 modules manufactured in the state, two and four-tenths;

16 (2) For customer-generated electricity produced using a solar,
17 biomas, geothermal, hydroelectric or wind system manufactured in
18 the state, one and two-tenths; and

19 (3) For all other customer-generated electricity produced by
20 solar, biomas, geothermal, hydroelectric and wind systems, eight-
21 tenths.

22 (f) No individual, household, business, or local governmental
23 entity is eligible for incentives for more than \$2,000 per year.

24 (g) If requests for the investment cost recovery incentive

1 exceed the amount of funds available for credit to the
2 participating light and power company, the incentive payments shall
3 be reduced proportionately.

4 (h) The Division of Energy may establish guidelines and
5 standards for technologies that are identified as West Virginia
6 manufactured and therefore most beneficial to the state's
7 environment.

8 (i) The environmental attributes of the renewable energy
9 system belong to the applicant, and do not transfer to the state or
10 the light and power business upon receipt of the investment cost
11 recovery incentive.

12 **§5B-2H-5. Sales of customer-generated electricity from renewable**
13 **energy systems to electric light and power companies.**

14 Any individual, business, or local governmental entity, not in
15 the electric light and power business or in the gas distribution
16 business, may contract with the electric light and power company
17 servicing the situs of the system, each fiscal year beginning July
18 1, 2011, to sell to the company kilowatt-hours from a customer-
19 generated electricity renewable energy system installed on its
20 property that is interconnected to the electric distribution system
21 at the following rates:

22 (1) For ten year contracts the rate is \$0.15 per kilowatt
23 hour;

24 (2) For twenty year contracts the rate is \$0.32 per kilowatt

1 hour; and

2 (3) For electricity generated from solar modules, solar
3 inverters or solar energy systems manufactured in the state the
4 rate is \$0.54 per kilowatt hour.

5 **§5B-2H-6. Tax credit.**

6 (a) An electric light and power company is allowed a credit
7 against taxes due under article twenty-four, chapter eleven of this
8 code in an amount equal to investment cost recovery incentive
9 payments made in any fiscal year under section four of this
10 article. The credit shall be taken in a form and manner as required
11 by the Tax Department. The credit under this section for the fiscal
12 year shall not exceed twenty-five one-hundredths of one percent of
13 the businesses' taxable power sales or \$25,000, whichever is
14 greater. The credit may not exceed the tax that would otherwise be
15 due under this chapter. Refunds shall not be granted in the place
16 of credits. Expenditures not used to earn a credit in one fiscal
17 year may not be used to earn a credit in subsequent years.

18 (b) The right to earn tax credits under this section expires
19 June 30, 2020. Credits may not be claimed after June 30, 2021.

20 **§5B-2H-7. Reporting to the Legislature.**

21 (a) Using existing sources of information, the Tax Department
22 shall report to the Legislature by December 1, 2015. The report
23 shall measure the impacts of this article, including the total
24 number of solar, biomas, geothermal, hydroelectric and wind energy

1 systems manufacturing companies in the state, any change in the
2 number of solar, biomas, geothermal, hydroelectric and wind energy
3 system manufacturing companies in the state, and, where relevant,
4 the effect on job creation, the number of jobs created for West
5 Virginia residents, and such other factors as the Tax Department
6 selects.

7 **CHAPTER 11. TAXATION.**

8 **ARTICLE 24. CORPORATION NET INCOME TAX.**

9 **§11-24-11c. Credit for the purchase of electricity from renewable**
10 **energy systems.**

11 (a) Pursuant to section six, article two-h, chapter five-b of
12 this code, an electric light and power company is allowed a credit
13 against taxes due under this article in an amount equal to
14 investment cost recovery incentive payments made in any fiscal year
15 under section four, article two-h, chapter five-b of this code. The
16 credit shall be taken in a form and manner as required by the Tax
17 Department. The credit under this section for the fiscal year shall
18 not exceed twenty-five one-hundredths of one percent of the
19 businesses' taxable power sales or \$25,000, whichever is greater.
20 The credit may not exceed the tax that would otherwise be due under
21 this article. Refunds shall not be granted in the place of credits.
22 Expenditures not used to earn a credit in one fiscal year may not
23 be used to earn a credit in subsequent years.

24 (b) The right to earn tax credits under this section expires

1 June 30, 2020. Credits may not be claimed after June 30, 2021.

NOTE: The purpose of this bill is to create the West Virginia Renewable Energy Act. The bill makes legislative findings and defines terms. The bill provides a maximum \$2,000 investment cost recovery incentive for customer-generated electricity from renewable energy systems, but exempts electric and gas companies from qualifying for that incentive. The bill also provides a \$25,000 maximum tax credit for electric light and power companies that purchase customer-generated electricity. The bill requires reports be made to the Legislature. The bill also provides that no incentives may be taken after June 30, 2020 and credits may not be taken after June 30, 2021. The bill also provides that customers who generate electricity from renewable sources may sell electricity to electric light and power companies.

Article §5B-2H and §11-24-11c are new; therefore, they have been completely underscored.