

1 **H. B. 3088**

2
3 (By Delegates Manypenny and Fleischauer)
4 [Introduced February 10, 2011; referred to the
5 Committee on Government Organization then Finance.]

6 **FISCAL**
7 **NOTE**

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9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §24-2G-1, §24-2G-2,
12 §24-2G-3, §24-2G-4, §24-2G-5, §24-2G-6, §24-2G-7, §24-2G-8,
13 §24-2G-9 and §24-2G-10, all relating to energy efficiency for
14 electric and gas utilities and their customers; defining
15 terms; establishing required energy efficiency programs and
16 plans; setting forth time tables; establishing targets and
17 goals; identifying certain metering and grid technologies;
18 providing for revenue sharing; establishing penalties;
19 providing for \$600,000 in special license fees for
20 implementation purposes; and providing a self-direct option
21 for large energy customers.

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

23 That the Code of West Virginia, 1931, as amended, be amended
24 by adding thereto a new article, designated §24-2G-1, §24-2G-2,

1 §24-2G-3, §24-2G-4, §24-2G-5, §24-2G-6, §24-2G-7, §24-2G-8, §24-2G-
2 9 and §24-2G-10, all to read as follows:

3 **ARTICLE 2G. ENERGY EFFICIENCY.**

4 **§24-2G-1. Short title.**

5 This article may be known as the "West Virginia Energy
6 Efficiency Act."

7 **§24-2G-2. Findings and purpose.**

8 The Legislature finds and declares that:

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

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

16 (A) Fifteen percent reduction in per capita electricity
17 consumption by the end of 2025; and

18 (B) Fifteen percent reduction in per capita peak demand by the
19 end of 2025.

20 **§24-2G-3. Definitions.**

21 As used in this article:

22 (1) "Demand response program" means a program established by
23 an electric utility that promotes changes in electricity usage by

1 customers from their normal consumption patterns in response to:

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

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

4 times of high wholesale market prices or when system reliability is

5 jeopardized.

6 (2) "Electricity consumption" and "electricity consumed" mean

7 the sum of retail electricity sales to all customers and reported

8 electricity losses within the electric distribution system.

9 (3) "Peak demand" means the highest level of electricity

10 demand in the state measured in megawatts during the period from

11 January 1 to December 31 of a year on a weather-normalized basis.

12 (4) "Per capita electricity consumption" means the resultant

13 amount calculated by dividing the total gigawatt-hours of

14 electricity consumed by electricity customers in the state as of

15 December 31 for each year, as determined by the commission by the

16 population of the state as of December 31 of that year.

17 (5) "Plan" means an electricity savings and demand reduction

18 plan and cost recovery proposal.

19 **§24-2G-4. Energy efficiency programs required.**

20 (a) Beginning with the 2011 calendar year and each year

21 thereafter, the commission shall calculate:

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

23 (2) The peak demand for each year.

24 (b) Subject to review and approval by the commission, each gas

1 utility and electric utility shall develop and implement programs
2 and services to encourage and promote the efficient use and
3 conservation of energy by consumers, commercial and industrial end
4 users, gas utilities and electric utilities.

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

10 (d) The commission shall:

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

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

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

22 (1) To the extent the commission determines that cost-
23 effective energy efficiency and conservation programs and services
24 are available, for each affected class, require each electric

1 utility to provide for its electricity customers cost-effective
2 energy efficiency and conservation programs and services with
3 projected and verifiable electricity savings that are designed to
4 achieve, based on per capita electricity consumed in the electric
5 utility's service territory during the year 2009, a targeted
6 reduction, at a minimum, of:

7 (A) Two percent by the end of 2014;

8 (B) Five percent by the end of 2017;

9 (C) Ten percent by the end of 2021; and

10 (D) Fifteen percent by the end of 2025.

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

17 (A) Two percent by the end of 2014;

18 (B) Five percent by the end of 2017;

19 (C) Ten percent by the end of 2021; and

20 (D) Fifteen percent by the end of 2025.

21 (f) (1) By September 1, 2011, and every three years thereafter,
22 an electric utility shall:

23 (A) Consult with the commission regarding the design and
24 adequacy of its plan to achieve the electricity savings and demand

1 reduction targets specified in subsection (e) of this section; and

2 (B) Provide the commission with any additional information
3 regarding the plan that the commission requests.

4 (2) By January 1, 2012, and every three years thereafter,
5 each electric utility shall submit its plan to the commission that
6 details the electric utility's proposals for achieving the
7 electricity savings and demand reduction targets specified in
8 subsection (e) of this section for the three subsequent calendar
9 years.

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

14 (4) Each plan shall include:

15 (A) A description of the proposed energy efficiency and
16 conservation programs and services and the proposed demand response
17 program, anticipated costs, projected electricity savings and any
18 other information requested by the commission.

19 (B) Each plan shall address residential, commercial and
20 industrial sectors as appropriate, including low-income communities
21 and low-to-moderate-income communities.

22 (5) The commission shall review each electric utility's plan
23 to determine if the plan is adequate and cost-effective in
24 achieving the electricity savings and demand reduction targets

1 specified in subsection (e) of this section.

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

4 (g) (1) In determining whether a program or service encourages
5 and promotes the efficient use and conservation of energy, the
6 commission shall consider its:

7 (A) Impact on jobs;

8 (B) Impact on the environment;

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

10 (D) Cost-effectiveness.

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

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

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

24 (2) The notice shall be posted on the utility's website and

1 provided to its customers by including it with a customer's billing
2 information such as a bill insert or bill message.

3 **§24-2G-5. Energy efficiency program reports.**

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

6 (1) The status of programs and services to encourage and
7 promote the efficient use and conservation of energy including, to
8 the extent possible, an evaluation of the impact of programs and
9 services that are directed to low-income communities, low-to-
10 moderate-income communities and other particular classes of
11 ratepayers;

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

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

16 (b) By December 31, 2015, the commission shall:

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

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

24 (c) By December 31, 2012, the commission shall:

1 (1) Study the feasibility of setting energy savings targets in
2 2016 and 2021 for natural gas companies; and

3 (2) After providing opportunity for public comment, report its
4 findings to the Senate Committee on Finance and the House of
5 Delegates Committee on Finance.

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

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

16 **§24-2G-7. Revenue sharing.**

17 (a) If, after notice and opportunity for hearing and based
18 upon its analysis of the annual plan updates required under
19 subdivision (3), subsection (f), section four and subsection (g),
20 section four of this article, the commission determines that an
21 electric utility has failed to comply with an energy efficiency or
22 peak demand reduction requirement of subsection (e), section four
23 of this article, the commission shall determine the number of
24 kilowatt hours of electricity savings by which the supplier has

1 fallen short of the standards and assess a forfeiture on the
2 utility in the amount equal to \$0.04 per kilowatt hour for each
3 such kilowatt hour. Any revenue from this forfeiture shall be
4 deposited to the credit of the Low-Income Weatherization Assistance
5 Program in the Governor's Office of Economic Opportunity.

6 (b) The commission may establish rules regarding the content
7 of an application by an electric utility for commission approval of
8 a revenue sharing mechanism under this article by which the utility
9 and the customer share the economic benefits of energy
10 conservation. That application shall not be considered an
11 application to increase rates and may be included as part of a
12 proposal to establish, continue or expand energy efficiency or
13 conservation programs. The commission by order may approve an
14 application under this subsection if it determines both that the
15 revenue sharing mechanism provides for the recovery of revenue, as
16 well as incentive rates of return, that otherwise may be foregone
17 by the utility as a result of or in connection with the
18 implementation by the electric utility of any energy efficiency or
19 energy conservation programs and reasonably aligns the interests of
20 the utility and its customers in favor of those programs:
21 Provided, That the revenue sharing mechanism is structured to:

22 (1) Prevent over-earning and provide an appropriate downward
23 adjustment to a utility's return on equity in recognition of the

1 significant reduction in risk associated with the use of the
2 incentive mechanism;

3 (2) Ensure that the utility engages in incremental
4 conservation efforts to meet and maintain energy efficiency
5 requirements; and

6 (3) Require the utility to demonstrate that the reduced usage
7 reflected in revenue sharing adjustments are specifically linked to
8 the utility's promotion of energy efficiency programs.

9 **§24-2G-8. Special license fee.**

10 (a) (1) Notwithstanding any other provision of this code, for
11 fiscal year 2011 only, in addition to the amounts appropriated in
12 the budget bill for fiscal year 2011, the commission may establish
13 up to \$600,000 as a special license fee for the commission and its
14 Consumer Advocate Division to accomplish the requirements of this
15 article.

16 (2) Of the \$600,000 that may be collected under paragraph (1)
17 of this subsection:

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

22 (B) Up to \$100,000 may be expended in accordance with an
23 approved budget amendment for consultants, personnel and related
24 expenses of the Consumer Advocate Division as it determines is

1 necessary to accomplish the requirements of this article.

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

7 (4) The amount of the bill sent to each electric utility
8 subject to the special license fee shall be that amount resulting
9 from multiplying:

10 (A) The amount authorized to be collected under this
11 subsection; and

12 (B) The ratio of gross operating revenues of the entity
13 subject to the special license fee to the total gross operating
14 revenues for all entities subject to the special license fee.

15 (b) It is the intent of the Legislature that, beginning with
16 fiscal year 2012, the annual state budget include amounts for the
17 commission and the Consumer Advocate Division for the
18 implementation of this article, including consultants, personnel
19 and related expenses.

20 **§24-2G-9. Self-direct option.**

21 (a) An eligible primary or secondary electric customer may
22 direct up to eighty percent of any environmental or energy control
23 charge on electricity usage that the customer would otherwise incur
24 towards developing and implementing a self-directed energy

1 efficiency plan as provided in this section.

2 (b) Eligibility requirements for participation in the self-
3 direct option under subsection (a) are as follows:

4 (1) The customer must have had an annual peak demand in the
5 preceding year of at least two megawatts at each site to be covered
6 by the self-directed plan or ten megawatts in the aggregate at all
7 sites to be covered by the plan.

8 (2) The customer must comply with all provisions established
9 by the commission under this section, including subsections (c),
10 (d), (e), (g) and (h) of this section.

11 (c) The commission shall by order establish the rates, terms,
12 and conditions of service for customers related to this section.

13 (d) The commission shall by order do all of the following:

14 (1) Require a customer to develop and file with the provider
15 and the commission a self-directed energy efficiency plan meeting
16 the requirements in subsection (e) and provide evidence each year
17 that it has implemented the self-directed plan.

18 (2) Provide a mechanism to recover from customers under
19 subdivision (1), subsection (b) of this section, the costs for
20 review and evaluation of the self-directed energy efficiency plan
21 and the energy efficiency actions taken under that plan.

22 (3) Take such additional actions as necessary to effectively
23 implement the self-directed energy efficiency program option in a
24 manner that provides verifiable energy efficiency savings.

1 (e) All of the following apply to a self-directed energy
2 efficiency plan under subsection (a):

3 (1) The self-directed plan shall cover not less than one, nor
4 more than three years.

5 (2) The self-directed plan shall provide for aggregate energy
6 savings that for each year meet or exceed the energy efficiency
7 performance standards based on the electricity purchases in the
8 previous year for the site or sites covered by the self-directed
9 plan.

10 (3) Under the self-directed plan, energy efficiency shall be
11 calculated based on annual electricity usage. Annual electricity
12 usage shall be normalized so that none of the following are
13 included in the calculation of the percentage of incremental energy
14 savings:

15 (A) Changes in electricity usage because of changes in
16 business activity levels not attributable to energy efficiency
17 measures.

18 (B) Changes in electricity usage because of the installation,
19 operation or testing of pollution control equipment.

20 (4) The self-directed plan shall specify whether electricity
21 usage will be weather-normalized or based on the average number of
22 megawatt hours of electricity sold by the electric provider
23 annually during the previous three years to retail customers in
24 this state. Once the self-directed plan is submitted to the

1 provider, this option shall not be changed.

2 (5) The self-directed plan shall outline how the customer
3 intends to achieve the incremental energy savings specified in the
4 self-directed plan.

5 (f) Verified energy savings from measures implemented under a
6 self-directed plan may be attributed to the relevant provider's
7 energy efficiency programs for the purposes of determining annual
8 incremental savings achieved by the provider.

9 (g) Once a customer begins to implement a self-directed plan
10 at a site covered by the self-directed plan, that site qualifies
11 for the up to eighty percent self-direct option described in
12 subsection (a) and is not eligible to participate in the relevant
13 electric provider's energy efficiency programs.

14 (h) A customer implementing a self-directed energy
15 optimization plan under this section shall submit to the customer's
16 electric provider every year a brief report documenting the energy
17 efficiency measures taken under the self-directed plan during that
18 period and the corresponding energy savings that will result. The
19 report shall provide sufficient information for the provider and
20 the commission to monitor progress toward the goals in the self-
21 directed plan and to develop reliable estimates of the energy
22 savings that are being achieved from self-directed plans. A
23 customer shall promptly notify the provider if the customer fails
24 to achieve incremental energy savings as set forth in its self-

1 directed plan for a year that will be the first year covered by the
2 next biannual report. If a customer submitting a report or notice
3 under this subsection wishes to amend its self-directed plan, the
4 customer shall submit with the report or notice an amended self-
5 directed plan. A report under this subsection shall be accompanied
6 by an affidavit from a knowledgeable official of the customer that
7 the information in the report is true and correct to the best of
8 the official's knowledge and belief. If the customer has retained
9 an independent energy efficiency service company, the requirements
10 of this subsection shall be met by the energy efficiency service
11 company.

12 (i) An electric provider shall provide an annual report to the
13 commission that identifies customers implementing self-directed
14 energy optimization plans and summarizes the results achieved under
15 these self-directed plans. The commission may request additional
16 information from the electric provider. If the commission has
17 sufficient reason to believe the information is inaccurate or
18 incomplete, it may request additional information from the customer
19 to ensure the accuracy of the report.

20 (j) If the commission determines that the minimum energy
21 efficiency goals under subdivision (2), subsection (e) of this
22 section have not been achieved at the sites covered by a self-
23 directed plan, in aggregate, the customer will no longer be allowed
24 to participate in the self-direct option and must begin paying the

1 full normal environmental or energy efficiency charge. In addition,
2 the commission shall order the customer or customers collectively
3 to pay to the provider, for exclusive use in funding environmental
4 or energy efficiency programs, an amount calculated as follows:

5 (1) Determine the proportion of the shortfall in achieving the
6 minimum energy optimization goals under subdivision (2), subsection
7 (e); then

8 (2) Multiply the figure under subdivision (1) by the energy
9 optimization charges which the customer or customers collectively
10 avoided under subsection (a); then

11 (3) Multiply the product under subdivision (2) by a number not
12 less than 1 or greater than 2, as determined by the commission
13 based on the reasons for failure to meet the minimum energy
14 optimization goals.

15 **§24-2G-10. Severability.**

16 The provisions of this article are severable and if any
17 phrase, clause, sentence or provision is declared to be invalid or
18 is preempted by federal law or regulation, the validity of the
19 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 2017, ten percent by 2021 and fifteen percent by 2025. 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. The bill also provides for a self-direct option for large, energy customers. Moreover, the bill requires the commission to file usage reports and the results of studies concerning whether the energy savings and demand reduction targets beyond 2017 with the Legislature.

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