

1 **H. B. 4363**

2
3 (By Delegates Manypenny, Fleischauer, Staggers,
4 Guthrie, Talbott, Doyle and Fragale)

5
6 [Introduced January 31, 2012; referred to the
7 Committee on the Judiciary then Finance.]

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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, §24-2G-10 and §24-2G-11, all relating to energy
14 efficiency for electric and gas utilities and their customers;
15 defining terms; establishing required energy efficiency
16 programs and plans; setting forth time tables; establishing
17 targets and goals; identifying certain metering and grid
18 technologies; providing for revenue sharing; establishing
19 penalties; providing for customer self direct option; allowing
20 for administration by third-party entities; and providing for
21 \$600,000 in special license fees for implementation purposes.

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,
25 §24-2G-3, §24-2G-4, §24-2G-5, §24-2G-6, §24-2G-7, §24-2G-8,

1 §24-2G-9, §24-2G-10 and §24-2G-11, all to read as follows:

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

3 **§24-2G-1. Short title.**

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

6 **§24-2G-2. Findings and purpose.**

7 The Legislature finds and declares that:

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

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

15 (A) Savings of fifteen percent of 2010 electricity sales by
16 the end of 2025; and

17 (B) Savings of fifteen percent of 2010 peak demand by the end
18 of 2025.

19 **§24-2G-3. Definitions.**

20 As used in this article:

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

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

2 (B) Incentives designed to promote lower electricity use at
3 times of high wholesale market prices or when system reliability is
4 jeopardized.

5 (2) "Commission" means the West Virginia Public Service
6 Commission.

7 (3) "Cost effective" means a standard that is met for an
8 energy efficiency program if, on a life cycle basis, the total
9 avoided supply-side costs to the utility, including representative
10 values for electricity or natural gas supply, transmission,
11 distribution, and other associated costs, are greater than the
12 total costs to the utility of administering and delivering the
13 energy efficiency program.

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

17 (5) "Peak demand" means the highest level of electricity
18 demand in the state measured in megawatts during the period from
19 January 1 to December 31 of a year on a weather-normalized basis.

20 (6) "Plan" means an electricity savings and demand reduction
21 plan and cost recovery proposal.

22 **§24-2G-4. Energy efficiency programs required.**

23 (a) Beginning with the 2013 calendar year and each year
24 thereafter, the commission shall calculate:

1 (1) The electricity consumption for each year; and

2 (2) The peak demand for each year.

3 (b) Subject to review and approval by the commission, each
4 electric utility shall develop and implement programs and services
5 to encourage and promote energy efficiency improvements and
6 conservation of energy by consumers, commercial and industrial end
7 users and electric utilities.

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

13 (d) The commission shall:

14 (1) Require each electric utility to establish a program or
15 service that the commission finds appropriate and cost-effective
16 to encourage and promote energy efficiency improvements and
17 conservation of energy; and

18 (2) Adopt rate-making policies that provide cost recovery for
19 all energy efficiency and demand response programs approved by the
20 commission under subsection (e) of this section and, in appropriate
21 circumstances, reasonable financial incentives for gas utilities
22 and electric utilities who implement programs and services that
23 successfully achieve customer energy efficiency improvements and
24 conservation of energy.

1 (e) Except as provided in subsection (c) of this section, by
2 December 31, 2012, by rule or order, the commission shall:

3 (1) To the extent the commission determines that
4 cost-effective energy efficiency and conservation programs and
5 services are available, for each affected class, require each
6 electric utility to:

7 (A) Provide cost-effective energy efficiency and conservation
8 programs for its electricity customers; and

9 (B) To achieve through such programs, at a minimum, verifiable
10 electricity savings equivalent to the following cumulative
11 percentages of electricity consumed in the electric utility's
12 service territory during the year 2010:

13 (i) Five percent of 2010 sales by the end of 2013;

14 (ii) One and one-quarter percent of 2010 sales by the end of
15 2014;

16 (iii) Two percent of 2010 sales by the end of 2015;

17 (iv) Three percent of 2010 sales by the end of 2016;

18 (v) Four percent of 2010 sales by the end of 2017; and

19 (vi) Five percent of 2010 sales by the end of 2018.

20 (2) Require each electric utility to:

21 (A) Implement a cost-effective demand response program in the
22 electric utility's service territory; and

23 (B) Achieve, through demand response and energy efficiency
24 programs, relative to the peak demand of electricity consumed in

1 the electric utility's service territory during the year 2010, a
2 targeted cumulative reduction of:

3 (i) One-half percent of 2010 peak demand by the end of 2013;

4 (ii) One and one-quarter percent of 2010 peak demand by the
5 end of 2014;

6 (iii) Two percent of 2010 peak demand by the end of 2015;

7 (iv) Three percent of 2010 peak demand by the end of 2016;

8 (v) Four percent of 2010 peak demand by the end of 2017; and

9 (vi) Five percent of 2010 peak demand by the end of 2018.

10 (f) By December 31, 2017, the commission shall:

11 (1) Review the performance of the utilities in achieving the
12 targets set forth in subsections (e) (1) and (e) (2) of this section,
13 together with information about future energy savings potential,
14 and develop recommendations as to whether there should be any
15 adjustments, up or down, in the following cumulative energy
16 efficiency and peak demand reduction targets proposed for 2019
17 through and including 2025:

18 (A) Six and one-quarter percent of 2010 peak demand and six
19 and one-quarter percent of 2010 electricity sales by the end of
20 2019;

21 (B) Seven and one-half percent of 2010 peak demand and seven
22 and one-half percent of 2010 electricity sales by the end of 2020;

23 (C) Eight and three-quarter percent of 2010 peak demand and
24 eight and three-quarter percent of 2010 electricity sales by the

1 end of 2021;

2 (D) Ten percent of 2010 peak demand and ten percent of 2010
3 electricity sales by the end of 2022;

4 (E) Eleven and six-tenths percent of 2010 peak demand and
5 eleven and six-tenths percent of 2010 electricity sales by the end
6 of 2023;

7 (F) Thirteen and three-tenths percent of 2010 peak demand and
8 thirteen and three-tenths percent of 2010 electricity sales by the
9 end of 2024; and

10 (G) Fifteen percent of 2010 peak demand and fifteen percent of
11 2010 electricity sales by the end of 2025.

12 (2) Provide any other recommendations for improving the
13 ability of West Virginia to achieve the state goal of saving the
14 equivalent of fifteen percent of 2010 electricity sales and peak
15 demand by the end of 2025.

16 (3) After providing opportunity for public comment, report its
17 findings to the interim Joint Committee on Economic Development.

18 (g) (1) By September 1, 2012, and every three years thereafter,
19 an electric utility shall:

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

23 (B) Provide the commission with any additional information
24 regarding the plan that the commission requests.

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

7 (3) Each electric utility shall provide annual updates to the
8 commission on plan implementation and progress towards achieving
9 the electricity savings and demand reduction targets specified in
10 subsection (e) of this section. As part of these updates, each
11 utility shall follow evaluation guidance provided by the commission
12 under subsection (g) of this section.

13 (4) Each plan shall include:

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

18 (B) Energy efficiency programs for residential, commercial and
19 industrial sectors, as appropriate, including low-income
20 communities and low-to-moderate income communities.

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

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

3 (h) (1) The commission shall establish rules for evaluating the
4 savings from energy efficiency and demand response programs,
5 seeking to balance accuracy and cost and based on best practices
6 from other states.

7 (2) In monitoring and analyzing the impact of a program or
8 service under paragraph (1) of this subdivision, if the commission
9 determines that the outcome of the program or services may not be
10 providing the best possible results, the commission shall direct
11 the electric utility to include in its annual update, under
12 subdivision (3), subsection (f) of this section, specific measures
13 to address the findings.

14 **§24-2G-5. Energy efficiency program reports.**

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

17 (1) The status of programs and services to encourage and
18 promote energy efficiency improvements and conservation of energy,
19 including, to the extent possible, an evaluation of the impact of
20 programs and services on energy use, energy costs and jobs in the
21 state. In addition, specific sections in the report shall discuss
22 the energy efficiency programs and services directed to low-income
23 communities, low-to-moderate income communities, businesses and
24 other particular classes of ratepayers;

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

3 (3) The electricity consumption and the peak demand for the
4 previous calendar year.

5 (b) By December 31, 2013, the commission shall:

6 (1) Study the feasibility of setting energy savings targets in
7 2016 and 2021 for natural gas companies; and

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

11 **§24-2G-6. Smart meter and smart grid technology.**

12 The commission shall evaluate whether advanced meter
13 technology, commonly known as "smart meters", and digital
14 automation of the components of the entire power supply system,
15 commonly known as "smart grid", are cost-effective in reducing
16 consumption and peak demand of electricity. If smart meter or
17 smart grid technology are found to be cost-effective, the
18 commission shall allow appropriate cost recovery for any electric
19 utility to implement cost-effective smart meter or smart grid
20 technology in its service territory.

21 **§24-2G-7. Revenue sharing.**

22 (a) The commission shall establish performance incentives
23 under this article by which the utility and the customer share the
24 economic benefits of energy conservation. Such performance

1 incentives shall be structured to:

2 (1) Require that the utility meet at least ninety percent of
3 its energy savings goal in a given year in order to receive an
4 incentive for that year;

5 (2) Preclude the utility from receiving compensation for
6 revenues lost due to energy efficiency program savings in any year
7 for which actual electricity sales exceed the sales forecast upon
8 which rates were set;

9 (3) Ensure that the utility engages in incremental
10 conservation efforts to meet and maintain energy efficiency
11 requirements;

12 (4) Require the utility to demonstrate that the reduced usage
13 reflected in revenue sharing adjustments are specifically linked to
14 the utility's promotion of energy efficiency programs; and

15 (5) Base incentives on the utility's performance in achieving
16 energy efficiency targets with the incentive structured as a
17 percentage of the utility's energy efficiency spending. Incentives
18 shall begin as performance targets are approached and the incentive
19 increased as targets are reached and further increased as targets
20 are exceeded. Such incentives may not exceed, in the maximum case,
21 twenty percent of utility spending on energy efficiency programs.

22 (b) The commission may authorize a utility that spends a
23 minimum of one and one-half percent of total retail sales revenues
24 in a year on commission-approved energy efficiency programs to

1 implement a symmetrical revenue decoupling true-up mechanism that
2 adjusts for sales volumes that are above or below the projected
3 levels that were used to determine the revenue requirement and set
4 retail rates authorized in the utility's most recent rate case. The
5 commission may authorize such decoupling regardless of whether the
6 utility's energy efficiency programs are administered by the
7 utility or an independent energy efficiency program administrator
8 under section ten of this article.

9 **§24-2G-8. Special license fee.**

10 (a) (1) Notwithstanding any other provision of this code, for
11 fiscal year 2012 only, in addition to the amounts appropriated in
12 the budget bill for fiscal year 2012, 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 subdivision
17 (1) 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 energy efficiency charge on
23 electricity usage that the customer would otherwise incur, based on
24 projected energy usage for the duration of the customer's proposed

1 self-directed plan, towards developing and implementing a
2 self-directed energy efficiency plan as provided in this section.

3 (b) Eligibility requirements for participation in the
4 self-direct option under subsection (a) of this section are as
5 follows:

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

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

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

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

16 (1) Require a customer to develop and file with the provider
17 and the commission a self-directed energy efficiency plan meeting
18 the requirements in subsection (e) of this section and provide
19 evidence each year that it has implemented the self-directed plan;
20 and

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

24 (e) All of the following apply to a self-directed energy

1 efficiency plan under subsection (a) of this section:

2 (1) The self-directed plan shall cover not less than one nor
3 more than three years;

4 (2) The self-directed plan shall provide for aggregate energy
5 savings from new energy efficiency measures that for each year meet
6 or exceed the energy efficiency performance standards in
7 subdivision (1), subsection (e), section four of this article. The
8 percentage savings shall be computed using the electricity
9 purchases in 2010 for the site or sites covered by the
10 self-directed plan;

11 (3) Under the self-directed plan, none of the following are
12 included in the calculation of cumulative energy savings:

13 (A) Changes in electricity usage because of changes in
14 business activity levels not attributable to energy efficiency
15 measures; and

16 (B) Changes in electricity usage because of the installation,
17 operation or testing of pollution control equipment; and

18 (4) The self-directed plan shall describe how the customer
19 intends to achieve the energy savings specified in the
20 self-directed plan.

21 (f) Verified energy savings from energy efficiency measures
22 implemented under a self-directed plan may be attributed to the
23 relevant provider's energy efficiency programs for the purposes of
24 determining annual cumulative savings achieved by the provider

1 under subdivision (1), subsection (e), section four of this
2 article.

3 (g) Once a customer begins to implement a self-directed plan
4 at a site covered by the self-directed plan, that site qualifies
5 for the up to eighty percent self-direct option described in
6 subsection (a) of this section and is not eligible to participate
7 in the relevant electric provider's energy efficiency programs.

8 (h) A customer implementing a self-directed energy
9 optimization plan under this section shall submit to the customer's
10 electric provider every year a brief report documenting the energy
11 efficiency measures taken under the self-directed plan during that
12 period and the corresponding energy savings that will result. The
13 report shall provide sufficient information for the provider and
14 the commission to monitor progress toward the goals in the
15 self-directed plan and to develop reliable estimates of the energy
16 savings that are being achieved from self-directed plans. A
17 customer shall promptly notify the provider in its annual report if
18 the customer fails to achieve cumulative energy savings as set
19 forth in its self-directed plan. If a customer submitting a report
20 or notice under this subsection wishes to amend its self-directed
21 plan, the customer shall submit with the report or notice an
22 amended self-directed plan. A report under this subsection shall be
23 accompanied by an affidavit from a knowledgeable official of the
24 customer that the information in the report is true and correct to

1 the best of the official's knowledge and belief. If the customer
2 has retained an independent energy efficiency service company, the
3 requirements of this subsection shall be met by the energy
4 efficiency service company.

5 (i) An electric provider shall provide an annual report to the
6 commission that identifies customers implementing self-directed
7 energy optimization plans and summarizes the results achieved for
8 each of those customers under these self-directed plans. The annual
9 report shall also describe the steps taken by the electric provider
10 to independently verify the reported energy efficiency measures and
11 the estimated savings. The commission may request additional
12 information from the electric provider. If the commission has
13 sufficient reason to believe the information is inaccurate or
14 incomplete, it may request additional information from the customer
15 to ensure the accuracy of the report.

16 (j) If the commission determines that the minimum energy
17 efficiency goals under subdivision (2), subsection (e) of this
18 section have not been achieved at the sites covered by a
19 self-directed plan, in aggregate, the customer will no longer be
20 allowed to participate in the self-direct option and must begin
21 paying the full normal energy efficiency charge. In addition, the
22 commission shall order the customer or customers collectively to
23 pay to the provider, for exclusive use in funding energy efficiency
24 programs, an amount calculated as follows:

1 (1) Determine the proportion of the shortfall in achieving the
2 minimum energy optimization goals under subdivision (2), subsection
3 (e) of this section; then

4 (2) Multiply the figure under subdivision (1) of this
5 subsection by the energy efficiency charges which the customer or
6 customers collectively avoided under subsection (a) of this
7 section; then

8 (3) Multiply the product under subdivision (2) of this
9 subsection by a number not less than one nor greater than two, as
10 determined by the commission based on the reasons for failure to
11 meet the minimum energy efficiency goals.

12 **§24-2G-10. Third-Party Administration.**

13 In place of utility-specific programs developed pursuant to
14 section four of this article, the commission may, after notice and
15 opportunity for hearing, provide for the development,
16 implementation and monitoring of gas and electric energy efficiency
17 and conservation programs and measures, including programs and
18 measures delivered in multiple service territories, by one or more
19 entities appointed by the commission for these purposes. The
20 commission may specify that the implementation of these programs
21 and measures satisfies a utility's corresponding obligations, in
22 whole or in part, under section four of this article and under any
23 prior orders of the commission. If such an independent third-party
24 entity administers energy efficiency programs in lieu of the

1 utility under this section, the annual incremental energy savings
2 requirements described in section four of this article shall apply
3 to that third-party administrator for any years that this entity
4 administers such programs. The commission has the authority to
5 fund energy efficiency and conservation programs developed,
6 implemented and monitored by an independent entity under this
7 section via a volumetric charge to customers. The charge shall be
8 known as the energy efficiency charge and shall be paid to a fund
9 administrator appointed by the commission. Funds collected through
10 an energy efficiency charge shall not be funds of the state, shall
11 not be available to meet the general obligations of the government
12 and shall not be included in the financial reports of the state.
13 The commission will annually provide the Legislature with a report
14 detailing the revenues collected and the expenditures made for
15 energy efficiency programs under this section.

16 **§24-2G-11. Severability.**

17 The provisions of this article are severable and if any
18 phrase, clause, sentence or provision is declared to be invalid or
19 is preempted by federal law or regulation, the validity of the
20 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 utilities to develop and implement plans for the efficient use, conservation and reduction of energy usage. The bill sets forth goals to achieve energy savings equivalent to five percent of 2010 sales by 2018,

and directs the Public Service Commission to establish targets through 2025 by December 31, 2017. 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. The bill also provides for a self-direct option for large, energy customers.

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