

1 **ENROLLED**

2 **H. B. 4346**

3  
4 (By Delegates R. Phillips, Caputo, Andes, Craig,  
5 Sumner, Pethtel, Marcum, Lynch, Tomblin,  
6 Eldridge and Barker)

7  
8 [Passed March 8, 2014; in effect ninety days from passage,]  
9

10 AN ACT to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section, designated §22-5-20, relating  
12 to the development of a state plan to reduce carbon pollution  
13 and greenhouse gas production under section 111 of the Clean  
14 Air Act; establishing separate standards of performance for  
15 carbon dioxide emissions from existing coal-fired electric  
16 generating units; establishing separate standards of  
17 performance for natural gas-fired electric generating units;  
18 and factors and considerations to be reflected in the  
19 developed state plan.

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

21 That the Code of West Virginia, 1931, as amended, be amended  
22 by adding thereto a new section, designated §22-5-20, to read as  
23 follows:

24 **ARTICLE 5. AIR POLLUTION CONTROL.**

1 **§22-5-20. Regulating carbon dioxide emissions from existing fossil**  
2 **fuel-fired electric generating units.**

3 (a) The Department of Environmental Protection, in  
4 consultation with the Department of Environmental Protection  
5 Advisory Council, shall establish separate standards of performance  
6 for carbon dioxide emissions from existing coal-fired electric  
7 generating units in accordance with subsection (b) and from  
8 existing natural gas-fired electric generating units in accordance  
9 with subsection (c). The standards of performance developed and  
10 proposed under any state plan to comply with Section 111 of the  
11 Clean Air Act should allow for greater flexibility and take into  
12 consideration the additional factors set forth in subsection (d) as  
13 a part of any state plan to achieve targeted reductions in  
14 greenhouse gas emissions which are equivalent or comparable to the  
15 goals and marks established by federal guidelines.

16 (b) *Standards of performance for existing coal-fired electric*  
17 *generating units.* -- Except as provided under subsection (d), the  
18 standard of performance established for existing coal-fired  
19 electric generating units under subsection (a) shall be based upon:

20 (1) The best system of emission reduction which, taking into  
21 account the cost of achieving the reduction and any nonair quality  
22 health and environmental impact and energy requirements, has been  
23 adequately demonstrated for coal-fired electric generating units  
24 that are subject to the standard of performance;

1           (2) Reductions in emissions of carbon dioxide that can  
2 reasonably be achieved through measures undertaken at each coal-  
3 fired electric generating unit; and

4           (3) Efficiency and other measures that can be undertaken at  
5 each coal-fired electric generating unit to reduce carbon dioxide  
6 emissions from the unit without switching from coal to other fuels  
7 or limiting the economic utilization of the unit; and

8           (4) Additional regulatory mechanisms that provide flexibility  
9 in complying with the standards, including: (A) Emissions trading  
10 with credited reduction for any unit that was in operation January  
11 1, 2011, or thereafter, and fleet wide averaging; (B) other  
12 alternative implementation measures that are determined to further  
13 the interests of West Virginia and its citizens including state  
14 programs such as clean energy programs that mandate reduced energy  
15 consumption resulting in avoided emissions, emission reductions, or  
16 a reduction in the state's carbon dioxide intensity whereby the  
17 state shall credit equally based on the output to the generators  
18 located in the state that are subject to carbon dioxide performance  
19 standard rules under Section 111(d) of the Clean Air Act.

20           (c) *Standards of performance for existing natural gas-fired*  
21 *electric generating units.* -- Except as provided in subsection (d),  
22 the standard of performance established for existing gas-fired  
23 electric generating units under subsection (a) shall be based upon:

24           (1) The best system of emission reduction which, taking into

1 account the cost of achieving the reduction and any nonair quality  
2 health and environmental impact and energy requirements, has been  
3 adequately demonstrated for natural gas-fired electric generating  
4 units that are subject to the standard of performance;

5 (2) Reductions in emissions of carbon dioxide that can  
6 reasonably be achieved through measures at each natural gas-fired  
7 electric generating unit; and

8 (3) Efficiency and other measures that can be undertaken at  
9 the unit to reduce carbon dioxide emissions from the unit without  
10 switching from natural gas to other lower-carbon fuels or limiting  
11 the economic utilization of the unit.

12 (d) *Flexibility in establishing standards of performance.* --  
13 In developing a flexible state plan to achieve targeted reductions  
14 in greenhouse gas emissions, the Department of Environmental  
15 Protection shall endeavor to establish an achievable standard of  
16 performance for any existing fossil fuel-fired electric generating  
17 unit, and examine whether less stringent performance standards or  
18 longer compliance schedules may be implemented or adopted for  
19 existing fossil fuel-fired electric generating units in comparison  
20 to the performance standards established for new, modified or  
21 reconstructed generating units, based on the following:

22 (1) Consumer impacts, including any disproportionate impacts  
23 of energy price increases on lower income populations;

24 (2) Nonair quality health and environmental impacts;

1 (3) Projected energy requirements;

2 (4) Market-based considerations in achieving performance  
3 standards;

4 (5) The costs of achieving emission reductions due to factors  
5 such as plant age, location or basic process design;

6 (6) Physical difficulties with or any apparent inability to  
7 feasibly implement certain emission reduction measures;

8 (7) The absolute cost of applying the performance standard to  
9 the unit;

10 (8) The expected remaining useful life of the unit;

11 (9) The impacts of closing the unit, including economic  
12 consequences such as expected job losses, if the unit is unable to  
13 comply with the performance standard;

14 (10) Impacts on the reliability of the system; and

15 (11) Any other factors specific to the unit that make  
16 application of a modified or less stringent standard or a longer  
17 compliance schedule more reasonable.

18 (e) *State plan requirement.* -- The Department of Environmental  
19 Protection shall propose or submit to the U. S. Environmental  
20 Protection Agency a state plan which includes achievable  
21 performance standards for existing sources, and a combination of  
22 additional measures designed to meet the U. S. Environmental  
23 Protection Agency's guidelines, consistent with the considerations,  
24 goals and parameters set forth in this section.