

**H. B. 2042**

(By Delegate Guthrie)

[Introduced January 14, 2015; referred to the  
Committee on Energy then Finance.]

**FISCAL  
NOTE**

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

*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 §5B-2I-1, §5B-2I-2, §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6 and §5B-2I-7; and

1 that said code be amended by adding thereto a new section, designated §11-24-11c, all to read as  
2 follows:

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

4 **ARTICLE 2I. THE WEST VIRGINIA RENEWABLE ENERGY ACT.**

5 **§5B-2I-1. Short title.**

6 This article shall be known and cited as the “West Virginia Renewable Energy Act.”

7 **§5B-2I-2. Legislative findings.**

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

13 The Legislature finds that West Virginia can become a national and international leader in  
14 the technologies related to the solar, biomass, geothermal, hydroelectric and wind electric markets.  
15 The state can support these industries by providing incentives for the purchase of locally made  
16 renewable energy products. Locally made renewable technologies benefit and protect the state's  
17 environment.

18 The Legislature also finds that the state's economy can be enhanced through the creation of  
19 incentives to develop additional renewable energy industries in the state. The Legislature intends  
20 to provide incentives for the greater use of locally created renewable energy technologies, support  
21 and retain existing local industries and create new opportunities for renewable energy industries to  
22 develop in the state.

1 **§5B-2I-3. Definitions.**

2 The following definitions apply throughout this article unless the context clearly requires  
3 otherwise:

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

8 (2) "Customer-generated electricity" means the alternating current electricity that is generated  
9 from a renewable energy system located on an individual's, businesses', or local government's real  
10 property that is also provided electricity generated by an electric light and power company. A system  
11 located on a leasehold interest does not qualify under this definition. "Customer-generated  
12 electricity" does not include electricity generated by an electric light and power company with  
13 greater than one thousand megawatt hours of annual sales or a gas distribution business.

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

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

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

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

22 (7) "Renewable energy system" means a solar, biomass, geothermal, hydroelectric or wind

1 energy system used for producing electricity.

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

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

6 (10) "Solar module" means the smallest nondivisible self-contained physical structure  
7 housing interconnected photovoltaic cells and providing a single direct current electrical output.

8 (11) "Standards for interconnection to the electric distribution system" means technical,  
9 engineering, operational, safety, and procedural requirements for interconnection to the electric  
10 distribution system of an electric light and power company.

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

12 **§5B-2I-4. Investment cost recovery incentive for customer-generated electricity from**  
13 **renewable energy systems.**

14 (a) Any individual, business, or local governmental entity, not in the electric light and power  
15 business or the gas distribution business, may apply to the electric light and power company serving  
16 the situs of the system, each fiscal year beginning July 1, 2015, for an investment cost recovery  
17 incentive for each kilowatt-hour from a customer-generated electricity renewable energy system  
18 installed on its property that is not interconnected to the electric distribution system. No incentive  
19 may be paid for kilowatt-hours generated before July 1, 2014, or after June 30, 2022.

20 (b) Electric light and power companies serving eighty percent of the total customer load in  
21 the state shall adopt uniform standards by January 1, 2016, for interconnection to the electric  
22 distribution system. Any individual, business, or local governmental entity, not in the electric light

1 and power business or the gas distribution business, may apply to an electric light and power  
2 company serving the situs of the system, each fiscal year, for an investment cost recovery incentive  
3 for each kilowatt-hour from a customer-generated electricity renewable energy system installed on  
4 its property that is not interconnected to the electric distribution system and from a  
5 customer-generated electricity renewable energy system installed on its property that is  
6 interconnected to the electric distribution system. No incentive may be paid for kilowatt-hours  
7 generated before July 1, 2014, or after June 30, 2022.

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

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

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

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

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

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

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

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

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

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

22 (D) That the electricity can be transformed or transmitted for entry into or operation in

1 parallel with electricity transmission and distribution systems; and

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

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

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

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

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

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

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

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

21 (3)(A) Persons receiving incentive payments shall keep for a period of five years, suitable  
22 records as may be necessary to determine the amount of incentive applied for and received. The

1 records shall be open for examination at any time upon notice by the electric light and power  
2 company that made the payment. If upon examination of any records or from other information  
3 obtained by the company or the Tax Department, it appears that an incentive has been paid in an  
4 amount that exceeds the correct amount of incentive payable, the business may assess against the  
5 person the amount found to have been paid in excess of the correct amount of incentive payable and  
6 shall add thereto interest on the amount. Interest shall be assessed in the manner that the department  
7 assesses interest upon delinquent tax.

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

10 (e) The investment cost recovery incentive may be paid \$.15 per economic development  
11 kilowatt-hour unless requests exceed the amount authorized for credit to the participating electric  
12 light and power company. For the purposes of this section, the rate paid for the investment cost  
13 recovery incentive may be multiplied by the following factors:

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

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

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

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

22 (g) If requests for the investment cost recovery incentive exceed the amount of funds

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

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

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

8 **§5B-2I-5. Sales of customer-generated electricity from renewable energy systems to electric**  
9 **light and power companies.**

10 Any individual, business, or local governmental entity, not in the electric light and power  
11 business or the gas distribution business, may contract with the electric light and power company  
12 servicing the situs of the system, each fiscal year beginning July 1, 2015, to sell to the company  
13 kilowatt-hours from a customer-generated electricity renewable energy system installed on its  
14 property that is interconnected to the electric distribution system at the following rates:

15 (1) For ten year contracts the rate is \$.15 per kilowatt hour;

16 (2) For twenty year contracts the rate is \$.32 per kilowatt hour; and

17 (3) For electricity generated from solar modules, solar inverters or solar energy systems  
18 manufactured in the state the rate is \$.54 per kilowatt hour.

19 **§5B-2I-6. Tax credit.**

20 (a) An electric light and power company is allowed a credit against taxes due under article  
21 twenty-four, chapter eleven of this code in an amount equal to investment cost recovery incentive  
22 payments made in any fiscal year under section four of this article. The credit shall be taken in a

1 form and manner as required by the Tax Department. The credit under this section for the fiscal year  
 2 shall not exceed twenty-five one-hundredths of one percent of the businesses' taxable power sales  
 3 or \$25,000, whichever is greater. The credit may not exceed the tax that would otherwise be due  
 4 under this chapter. Refunds shall not be granted in the place of credits. Expenditures not used to  
 5 earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

6 (b) The right to earn tax credits under this section expires June 30, 2022. Credits may not  
 7 be claimed after June 30, 2023.

8 **§5B-2I-7. Reporting to the Legislature.**

9 Using existing sources of information, the Tax Department shall report to the Legislature by  
 10 December 1, 2018. The report shall measure the impacts of this article, including the total number  
 11 of solar, biomass, geothermal, hydroelectric and wind energy systems manufacturing companies in  
 12 the state, any change in the number of solar, biomass, geothermal, hydroelectric and wind energy  
 13 system manufacturing companies in the state, and, where relevant, the effect on job creation, the  
 14 number of jobs created for West Virginia residents, and such other factors as the Tax Department  
 15 selects.

16 **CHAPTER 11. TAXATION.**

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

18 **§11-24-11c. Credit for the purchase of electricity from renewable energy systems.**

19 (a) Pursuant to section six, article two-i, chapter five-b of this code, an electric light and  
 20 power company is allowed a credit against taxes due under this article in an amount equal to  
 21 investment cost recovery incentive payments made in any fiscal year under section four, article two-i,  
 22 chapter five-b of this code. The credit shall be taken in a form and manner as required by the Tax

1 Department. The credit under this section for the fiscal year shall not exceed twenty-five  
2 one-hundredths of one percent of the businesses' taxable power sales or \$25,000, whichever is  
3 greater. The credit may not exceed the tax that would otherwise be due under this article. Refunds  
4 shall not be granted in the place of credits. Expenditures not used to earn a credit in one fiscal year  
5 may not be used to earn a credit in subsequent years.

6 (b) The right to earn tax credits under this section expires June 30, 2023. Credits may not  
7 be claimed after June 30, 2024.

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, 2023, and credits may not be taken after June 30, 2024. The bill also provides that customers who generate electricity from renewable sources may sell electricity to electric light and power companies.

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