

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 3037

BY DELEGATE ANDERSON

(BY REQUEST OF THE DEPARTMENT OF COMMERCE)

[Introduced March 14, 2017; Referred
to the Committee on Energy then Government
Organization.]

1 A BILL to amend and reenact §5B-2F-2 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §5D-1-4 of said code, all relating to removing the Division of Energy
 3 as an independent agency; redesignating the Division of Energy as the Office of Energy
 4 within the Development Office of the Department of Commerce; and designating the
 5 Secretary of Commerce, or his or her designee as the Chair of the West Virginia Public
 6 Energy Authority Board.

Be it enacted by the Legislature of West Virginia:

1 That §5B-2F-2 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §5D-1-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2F. DIVISION OFFICE OF ENERGY.

~~.§5B-2F-2. Purpose; office of Director for Energy Development; director to be member of
 Public Energy Authority; division to develop energy policy and development plan;
 contents of energy policy and development plan; and division office to promote
 energy initiatives.~~

1 (a) Effective July 1, 2007 2017, the Division of Energy is ~~created as a state agency under~~
 2 ~~the Department of Commerce~~ continued but is designated and shall be known as the Office of
 3 Energy, and assigned within the Development Office of the Department of Commerce. All
 4 references in this code to the Division of Energy shall be construed as references to the Office of
 5 Energy. The division office may receive federal funds. ~~The division shall be administered by a~~
 6 ~~director, who shall be appointed by the Governor, by and with the advice and consent of the~~
 7 ~~Senate, and shall continue to serve until his or her successor is appointed and qualified as~~
 8 ~~provided. The director shall be selected with special preference and consideration given to his or~~
 9 ~~her training, experience, capacity and interest in energy policy and development activities~~

10 (b) ~~Creation of the division~~ The office is intended to provide leadership for developing

11 energy policies emphasizing the increased efficiency of energy use, the increased development
12 and production of new and existing domestic energy sources, the increased awareness of energy
13 use on the environment and the economy, dependable, efficient and economical statewide energy
14 systems capable of supporting the needs of the state, increased energy self-sufficiency where
15 the ratio of indigenous to imported energy use is increased, reduce the ratio energy consumption
16 to economic activity and maintain low-cost energy. The energy policies and development plans
17 shall also provide direction for the private sector.

18 ~~(c) The director shall administer the daily operations of the Public Energy Authority~~
19 ~~provided under the provisions of chapter five-d of this code. The director shall also have authority~~
20 ~~over the Office of Coalfield Community Development, created by the provisions of article two-a of~~
21 ~~this chapter, and The office has authority over the energy efficiency program existing under the~~
22 ~~West Virginia Development Office. which are hereby transferred to the division. The director shall~~
23 ~~effectuate coordination of these entities relative to the purposes provided in this article~~

24 (d) The ~~division~~ office shall develop an energy policy and shall report the same back to
25 the Governor and the Joint Committee on Government and Finance before December 1, 2007.
26 The energy policy shall be a five-year plan setting forth the state's energy policies and shall
27 provide a direction for the private sector. Prior to the expiration of the energy policy, the ~~division~~
28 office shall begin review of the policy and submit a revised energy policy to the Governor and the
29 Joint Committee on Government and Finance six months before the expiration of the policy.

30 ~~(e) The director shall be a member of the Public Energy Authority and as such shall attend~~
31 ~~and participate in all official meetings and public hearings conducted under the auspices of the~~
32 ~~authority~~

33 (f) ~~(e)~~ The ~~division~~ office shall prepare and submit an annual energy development plan to
34 the Governor and the Joint Committee on Government and Finance on or before December 1 of
35 each year. The development plan shall relate to the ~~division's~~ office's implementation of the
36 energy policy and the activities of the ~~division~~ office during the previous year. The development

37 plan shall include any recommended legislation. The Public Energy Authority, the Office of
38 Coalfield Community Development, the energy efficiency program, the Department of
39 Environmental Protection and the Public Service Commission, in addition to their other duties
40 prescribed by this code, shall assist the ~~division and the director~~ office in the development of an
41 energy policy and related development plans. The energy development plan shall set forth the
42 plans for implementing the state's energy policy and shall provide a direction for the private sector.
43 The energy development plan shall recognize the powers of the Public Energy Authority as to
44 development and financing of projects under its jurisdiction and shall make such
45 recommendations as are reasonable and practicable for the exercise of such powers.

46 ~~(g)~~ (f) The ~~division~~ office shall hold public hearings and meetings with notice to receive
47 public input regarding proposed energy policies and development plans. The energy policy and
48 development plans required by subsections (d) and ~~(f)~~ (e) of this section shall address increased
49 efficiency of energy use, traditional and alternative energy, water as a resource and a component
50 of energy production, energy distribution systems, the siting of energy facilities, the increased
51 development and production of new and existing domestic energy sources, increased awareness
52 of energy use on the environment and the economy, energy infrastructure, the development and
53 implementation of renewable, clean, technically innovative and advanced energy projects in this
54 state. Projects may include, without limitation, solar and wind energy, low-impact hydro power,
55 geothermal, biomass, landfill gas, fuel cells, renewable hydrogen fuel technologies, waste coal,
56 coal mine methane, coal gasification to ultraclean fuels, solid waste to fuel grade ethanol and coal
57 liquefaction technologies.

58 ~~(h)~~ (g) The ~~division~~ office may propose rules for legislative approval in accordance with
59 the provisions of article three, chapter twenty-nine-a of this code designed to implement an energy
60 policy and development plan in accordance with the provisions of this chapter.

61 ~~(i)~~ (h) The energy policy and development plans required by subsections (d) and ~~(f)~~ (e) of
62 this section shall identify and report on the energy infrastructure in this state and include without

63 limitation energy infrastructure related to protecting the state's essential data, information systems
64 and critical government services in times of emergency, inoperativeness or disaster. In
65 consultation with the Director of the Division of Homeland Security and Emergency Management,
66 the ~~director of the division~~ office shall encourage the development of energy infrastructure and
67 strategic resources that will ensure the continuity of governmental operations in situations of
68 emergency, inoperativeness or disaster.

69 ~~(j)~~ (i) In preparing or revising the energy policy and development plan, the ~~division~~ office
70 may rely upon internal staff reports or the advice of outside advisors or consultants and may
71 procure such services with the consent of the Secretary of Commerce. The ~~division~~ office may
72 also involve national, state and local government leadership and energy experts.

73 ~~(k)~~ (j) The ~~division~~ office shall prepare an energy use database, including without limitation,
74 end-use applications and infrastructure needs for different classes of energy users including
75 residential, commercial and industrial users, data regarding the interdependencies and sources
76 of electricity, oil, coal, water and gas infrastructure, data regarding energy use of schools and
77 state-owned facilities and collect data on the impact of the energy policy and development plan
78 on the decisions and strategies of energy users of the state.

79 ~~(l)~~ (k) The ~~division~~ office shall promote collaboration between the state's universities and
80 colleges, private industry and nonprofit organizations to encourage energy research and leverage
81 available federal energy research and development resources.

82 ~~(m)~~ (l) The ~~division~~ office shall promote initiatives to enhance the nation's energy security
83 through research and development directed at transforming the state's energy resources into the
84 resources that fuel the nation.

85 ~~(n)~~ ~~The Performance Evaluation and Research Division of the Legislative Auditor's office~~
86 ~~shall perform an agency review of the Division of Energy in 2010 as part of its review of the~~
87 ~~Department of Commerce as set forth in article four, chapter ten of this code~~

88 ~~(o)~~ (m) The ~~division~~ office shall work with the President of the United States and his or her

89 administration to develop a plan that would allow West Virginia to become the leader in
 90 transitioning the United States to a new energy future.

91 ~~(p)~~ (n) The ~~division~~ office is to determine the best way for West Virginia to utilize its
 92 resources and any federal funding to develop the technologies that are necessary for such a
 93 transition.

94 ~~(q)~~ (o) The ~~division~~ office is to clearly articulate West Virginia's position on an energy
 95 solution for the United States that encompasses clean coal, natural gas, transtech energy
 96 technologies and renewable energy technologies.

97 ~~(r)~~ (p) The ~~division~~ office shall develop and distribute an informational program and policies
 98 that emphasize the importance of West Virginia energy resources and their positive impact on the
 99 eastern seaboard and the nation.

100 ~~(s)~~ (q) The ~~division~~ office shall monitor legal challenges to the energy industries in the
 101 state and submit a report quarterly to the Joint Committee on Government and Finance. The
 102 report shall contain information relating to any litigation that challenges any statute that could
 103 affect the production, distribution and utilization of natural resources of the state.

CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-4. West Virginia Public Energy Authority continued; West Virginia Public Energy Board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

1 (a) The West Virginia Public Energy Authority is continued. The authority is a
 2 governmental instrumentality of the state and a body corporate. The exercise by the authority of
 3 the powers conferred by this article and the carrying out of its purposes and duties are essential
 4 governmental functions and for a public purpose.

5 (b) The authority shall be controlled, managed and operated by a seven-member board

6 known as the West Virginia Public Energy Authority Board, which is continued. The seven
7 members include the ~~Director of the Division of Energy~~ Secretary of the Department of Commerce
8 or designee; the Secretary of the Department of Environmental Protection or designee; the
9 Director of the Economic Development Authority or designee; and four members representing the
10 general public. The public members are appointed by the Governor, by and with the advice and
11 consent of the Senate, for terms of one, two, three and four years, respectively.

12 (c) On June 30, 2007, the terms of all appointed members shall expire. Not later than July
13 1, 2007, the Governor shall appoint the public members required in subsection (b) of this section
14 to assume the duties of the office immediately, pending the advice and consent of the Senate.

15 (d) The successor of each appointed member is appointed for a four-year term. A vacancy
16 is filled by appointment by the Governor in the same manner as the original appointment. A
17 member appointed to fill a vacancy serves for the remainder of the unexpired term. Each board
18 member serves until a successor is appointed.

19 (e) No more than three of the public members may at any one time belong to the same
20 political party. No more than two public members may be employed by or associated with any
21 industry the authority is empowered to affect. One member shall be a person with significant
22 experience in the advocacy of environmental protection. Board members may be reappointed to
23 serve additional terms.

24 (f) All members of the board shall be citizens of the state. Before engaging in their duties,
25 each member of the board shall comply with the requirements of article one, chapter six of this
26 code and give bond in the sum of \$25,000 in the manner provided in article two of said chapter.
27 The Governor may remove any board member as provided in section four, article six of said
28 chapter.

29 (g) The ~~Director of the Division of Energy shall serve~~ Secretary of the Department of
30 Commerce or designee serves as chair. The board annually elects one of its members as vice
31 chair and appoints a secretary-treasurer who need not be a member of the board.

32 (h) Four members of the board constitute a quorum and the affirmative vote of the majority
33 of members present at any meeting is necessary for any action taken by vote of the board. A
34 vacancy in the membership of the board does not impair the rights of a quorum by such vote to
35 exercise all the rights and perform all the duties of the board and the authority.

36 (i) The person appointed as secretary-treasurer, including a board member if so
37 appointed, shall give bond in the sum of \$50,000 in the manner provided in article two, chapter
38 six of this code.

39 (j) Each public member shall be reimbursed for reasonable expenses incurred in the
40 discharge of official duties. All expenses incurred by the board shall be paid in a manner
41 consistent with guidelines of the Travel Management Office of the Department of Administration
42 and are payable solely from funds of the authority or from funds appropriated for such purpose
43 by the Legislature. Liability or obligation is not incurred by the authority beyond the extent to which
44 moneys are available from funds of the authority or from such appropriations.

45 (k) In addition to such other duties and responsibilities as may be prescribed in this code,
46 the ~~Director of the Division~~ Office of Energy is responsible for managing and administering the
47 daily functions of the authority and for performing all other functions necessary to the effective
48 operation of the authority.

NOTE: The purpose of this bill is to remove the Division of Energy as an independent agency and redesignate the Division of Energy as the Office of Energy within the Development Office of the Department of Commerce, and designate the Secretary of Commerce, or his or her designee, as Chair of the West Virginia Public Energy Authority Board.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.