

WEST VIRGINIA LEGISLATURE

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Introduced

House Bill 2589

FISCAL
NOTE

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[Introduced January 22, 2019; Referred
to the Committee on Technology and Infrastructure
then Energy.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §24-2-20, relating to siting certain solar energy projects on formerly mined land
3 in West Virginia; authorizing transmission or wheeling agreements to transmit the
4 electrical output from certain solar energy projects to large energy consumers within West
5 Virginia; making legislative findings; defining terms; creating an exception to the general
6 regulatory structure for solar energy project owners or operators and large energy
7 consumers purchasing the output therefrom so that they are not deemed public utilities;
8 authorizing affected electric utilities to recover reasonable charges for transmission,
9 distribution, and other related services; and authorizing the promulgation of rules exempt
10 from the regular legislative review process.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-20. Solar Energy on Formerly Mined Land.

1 (a) Legislative findings. —

2 (1) It is in the public interest to encourage development of solar energy on formerly mined
3 land in West Virginia and to facilitate the procurement of solar energy by energy-intensive
4 businesses located or locating within West Virginia in order to create economic opportunities and
5 jobs;

6 (2) The competitive advantage formerly held by West Virginia due to its historically low-
7 cost electricity rates for residential, business, and industrial customers has significantly eroded in
8 recent years;

9 (3) Energy-intensive commercial, industrial, and manufacturing consumers of electricity
10 create jobs, provide a substantial tax base, and enhance the productive capacity,
11 competitiveness, and economic opportunities for West Virginia and its citizens;

12 (4) Nationwide, numerous large commercial, industrial, and manufacturing companies
13 have established corporate sustainability goals and guidelines, primarily geared toward the

14 reduction of carbon dioxide and other greenhouse gas emissions through the implementation of
15 energy efficiency measures and the deployment of renewable energy sources including solar
16 energy;

17 (5) Because more than 90 percent of West Virginia's electric power is generated from
18 fossil fuels and construction of large-scale renewable energy generation facilities is constrained
19 in West Virginia's electricity market, West Virginia is unable to attract large commercial, industrial,
20 and manufacturing companies with corporate sustainability goals and guidelines;

21 (6) The development of large-scale solar energy projects requires a significant amount of
22 land;

23 (7) According to a 2011 analysis, West Virginia had more than 550 square miles of
24 formerly surface-mined land, and less than two percent of this land had been put into productive
25 use;

26 (8) According to a 2017 analysis, West Virginia had 219 square miles of formerly mined
27 land and other degraded land that is viable for large-scale solar energy production based on a
28 number of factors including site size, proximity to electricity infrastructure, and solar irradiance
29 levels; and

30 (9) Allowing large commercial, industrial, and manufacturing companies to transmit
31 electricity generated at solar energy facilities sited on formerly mined land by using transmission
32 and distribution facilities of electric utilities to their commercial, industrial, and manufacturing
33 facilities within West Virginia will put this undeveloped land into productive economic use and
34 create jobs and tax revenues.

35 (b) Definitions. — As used in this section:

36 "Eligible land" means land within West Virginia for which a permit has been issued under
37 the West Virginia Surface Coal Mining and Reclamation Act pursuant to §22-3-1 et seq. of this
38 code or land listed on the Office of Surface Mining Reclamation and Enforcement's Abandoned
39 Mine Land Inventory System;

40 “Eligible solar project” means a solar photovoltaic array having a nameplate capacity of
41 one megawatt or more that is installed upon eligible land for which a certificate of public
42 convenience and necessity authorizing the installation was issued by the Public Service
43 Commission pursuant to §24-2-11 of this code, and that is interconnected with a transmitting
44 utility’s transmission or distribution system;

45 “Entity” means any business entity, including, but not limited to, a corporation, partnership,
46 limited liability company, or sole proprietorship;

47 “Large energy consumer” means a commercial, industrial, or manufacturing entity or an
48 institution of higher education or a nonprofit organization located or to be located in West Virginia
49 that has a normal maximum electrical requirement of one megawatt or more per month of actual
50 demand in the past 12 months, or projected normal maximum electrical requirements of 1
51 megawatt or more per month, of electric power at its West Virginia facilities;

52 “Power purchase agreement” means a contractual arrangement under which the owner
53 or operator of an eligible solar project sells the electrical output of the project to a large energy
54 consumer;

55 “Transmitting utility” means an electric utility that owns and operates transmission and
56 distribution lines within West Virginia and that is regulated as a public utility by the Public Service
57 Commission; and

58 “Wheeling agreement” means an agreement between the owner or operator of an eligible
59 solar project and one or more transmitting utilities within West Virginia under which electricity
60 generated at the eligible solar project is transmitted for delivery to a large energy consumer served
61 by the transmitting utility or utilities.

62 (c) Authorizing wheeling agreements. —

63 (1) Upon procurement of the electrical output of an eligible solar project by a large energy
64 consumer, either through ownership of the solar project by the large energy consumer or through
65 a power purchase agreement between the large energy consumer and the owner or operator of

66 the eligible solar project, the large energy consumer is entitled, upon request, to have the electrical
67 output transmitted or wheeled over the transmission and/or distribution system of one or more
68 transmitting utilities between: (A) The point of interconnection between a transmitting utility's
69 transmission or distribution system and the eligible solar project and (B) the point of delivery at
70 facilities of the large energy consumer located within West Virginia, as designated by the large
71 energy consumer.

72 (2) The rates to be charged by a transmitting utility for wheeling service provided to a large
73 energy consumer shall be: (A) The rate set forth in the utility's Open Access Transmission Tariff
74 (OATT) on file with the Federal Energy Regulatory Commission to the extent the utility's
75 transmission facilities are used, and (B) a wheeling rate to be determined by the Public Service
76 Commission to the extent the utility's distribution facilities are used. The Public Service
77 Commission, following a rate proceeding pursuant to §24-2-1 *et seq.* of this code, shall determine
78 the wheeling rate for a transmitting utility, and the rates, terms and conditions applicable to the
79 wheeling service shall be set forth in a tariff sheet upon approval of the rates, terms and conditions
80 by the Public Service Commission.

81 (d) Not a public utility. —

82 (1) The sale of the electrical output of an eligible solar project to a large energy consumer
83 shall not be considered the provision of electric service to the public, retail electric service, or
84 retail supply of electricity by the owner or operator of an eligible solar project, and neither the large
85 energy consumer nor the owner or operator of an eligible solar project shall be considered an
86 electric supplier within the meaning of this chapter or in violation of exclusive electric service rights
87 arising therein.

88 (2) Except as explicitly provided in subdivision (1), subsection (c) and subdivision (1),
89 subsection (d) of this section, nothing in this section shall be construed as modifying the
90 restrictions in this chapter on the sale, offer for sale, or distribution of retail electric service in this
91 state.

92 (e) Rule-making authority. — The Public Service Commission may promulgate rules, as
93 necessary, to implement the provisions of this section. Rules promulgated under this authority are
94 exempt from the legislative rule-making review procedures established in §29A-3-1 et seq. of this
95 code.

NOTE: The purpose of this bill is to encourage solar energy development on lands formerly used for mining, to provide electricity for commercial, industrial and manufacturing businesses or institutions of higher education or nonprofit organizations that are located in or will locate operations in West Virginia is available; authorizing the Public Service Commission to regulate the use of transmission lines to transport power from these facilities; and providing that the solar operations are not regulated as a utility for providing electricity to these businesses.

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