

HB 103

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

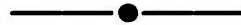
WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 2009



ENROLLED

House Bill No. 103

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]



Passed June 2, 2009

In Effect July 1, 2009

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H. B. 103

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(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)
[BY REQUEST OF THE EXECUTIVE]

[Passed June 2, 2009; in effect July 1, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §24-2F-1, §24-2F-2, §24-2F-3, §24-2F-4, §24-2F-5, §24-2F-6, §24-2F-7, §24-2F-8, §24-2F-9, §24-2F-10, §24-2F-11 and §24-2F-12, all relating to an alternative and renewable energy portfolio standard; setting forth legislative findings; defining terms; establishing standards for the sale of electricity generated from alternative and renewable energy resources; providing for compliance assessments; creating a system of tradable alternative and renewable energy resource credits; providing for the awarding of credits based upon electricity generated or purchased from alternative and renewable energy resource facilities; providing for the awarding of credits for certain greenhouse emissions reduction and offset projects; providing for the awarding of credits for certain energy efficiency and demand-side energy initiative projects; requiring application to the Public Service Commission for approval of alternative and renewable energy portfolio standard compliance plans; setting forth minimum requirements for compliance plan applications; requiring Public Service Commission approval of compliance plan applications; requiring annual progress reports; providing for incentive rate

making for investments in new alternative and renewable energy resource facilities in West Virginia; requiring the Public Service Commission to adopt certain net metering and interconnection rules and standards; authorizing interagency agreements; requiring an ongoing assessment of alternative and renewable energy resources in West Virginia; requiring Public Service Commission to consider adopting portfolio standards for certain electric cooperatives and other electric facilities or utilities; requiring Public Service Commission to consider extending alternative and renewable resource credits to electric distribution companies or electric generation suppliers other than electric utilities; establishing the Alternative and Renewable Energy Resources Research Fund; providing for the awarding of matching grants for certain research projects; and authorizing the Public Service Commission to promulgate rules.

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 §24-2F-1, §24-2F-2, §24-2F-3, §24-2F-4, §24-2F-5, §24-2F-6, §24-2F-7, §24-2F-8, §24-2F-9, §24-2F-10, §24-2F-11 and §24-2F-12, all to read as follows:

**ARTICLE 2F. ALTERNATIVE AND RENEWABLE
ENERGY PORTFOLIO STANDARD.**

§24-2F-1. Short title.

- 1 This article may be known and cited as the Alternative
- 2 and Renewable Energy Portfolio Act.

§24-2F-2. Legislative findings.

- 1 The Legislature finds that:

2 (1) West Virginia has served the nation for many years as
3 a reliable source of electrical power;

4 (2) The nation is on a rapid course of action to produce
5 electrical power with an ever decreasing amount of
6 emissions;

7 (3) To continue lowering the emissions associated with
8 electrical production, and to expand the state's economic
9 base, West Virginia should encourage the development of
10 more efficient, lower-emitting and reasonably priced
11 alternative and renewable energy resources;

12 (4) The development of a robust and diverse portfolio of
13 electric-generating capacity is needed for West Virginia to
14 continue its success in attracting new businesses and jobs.
15 This portfolio must include the use of alternative and
16 renewable energy resources at new and existing facilities;

17 (5) West Virginia has considerable natural resources that
18 could support the development of alternative and renewable
19 energy resource facilities at a reasonable price;

20 (6) Alternative and renewable energy resources can be
21 utilized now to meet state and federal environmental
22 standards, including those reasonably anticipated to be
23 mandated in the future; and

24 (7) It is in the public interest for the state to encourage the
25 construction of alternative and renewable energy resource
26 facilities that increase the capacity to provide for current and
27 anticipated electric energy demand at a reasonable price.

§24-2F-3. Definitions.

1 Unless the context clearly requires a different meaning,
2 as used in this article:

3 (1) “Advanced coal technology” means a technology that
4 is used in a new or existing energy generating facility to
5 reduce airborne carbon emissions associated with the
6 combustion or use of coal and includes, but is not limited to,
7 carbon dioxide capture and sequestration technology,
8 supercritical technology, ultrasupercritical technology and
9 pressurized fluidized bed technology.

10 (2) “Alternative and renewable energy portfolio standard”
11 or “portfolio standard” means a requirement in any given
12 year that requires an electric utility to own credits in an
13 amount equal to a certain percentage of electric energy sold
14 in the preceding calendar year by the electric utility to retail
15 customers in this state.

16 (3) “Alternative energy resources” means any of the
17 following resources, methods or technologies for the
18 production or generation of electricity:

19 (A) Advanced coal technology;

20 (B) Coal bed methane;

21 (C) Natural gas;

22 (D) Fuel produced by a coal gasification or liquefaction
23 facility;

24 (E) Synthetic gas;

25 (F) Integrated gasification combined cycle technologies;

26 (G) Waste coal;

27 (H) Tire-derived fuel;

28 (I) Pumped storage hydroelectric projects;

29 (J) Recycled energy, which means useful thermal,
30 mechanical or electrical energy produced from:(i) Exhaust
31 heat from any commercial or industrial process; (ii) waste
32 gas, waste fuel or other forms of energy that would otherwise
33 be flared, incinerated, disposed of or vented; and (iii)
34 electricity or equivalent mechanical energy extracted from a
35 pressure drop in any gas, excluding any pressure drop to a
36 condenser that subsequently vents the resulting heat; and

37 (K) Any other resource, method, project or technology
38 certified as an alternative energy resource by the Public
39 Service Commission.

40 (4) “Alternative and renewable energy resource credit” or
41 “credit” means a tradable instrument that is used to establish,
42 verify and monitor the generation of electricity from
43 alternative and renewable energy resource facilities, energy
44 efficiency or demand-side energy initiative projects or
45 greenhouse gas emission reduction or offset projects.

46 (5) “Alternative energy resource facility” means a facility
47 or equipment that generates electricity from alternative
48 energy resources.

49 (6) “Commission” or “Public Service Commission”
50 means the Public Service Commission of West Virginia as
51 continued pursuant to section three, article one of this
52 chapter.

53 (7) “Customer-generator” means an electric retail
54 customer who owns and operates a customer-sited generation
55 project utilizing an alternative or renewable energy resource
56 or a net metering system in this state.

57 (8) “Electric utility” means any electric distribution
58 company or electric generation supplier that sells electricity
59 to retail customers in this state. Unless specifically provided
60 for otherwise, for the purposes of this article, the term
61 “electric utility” may not include rural electric cooperatives,
62 municipally-owned electric facilities or utilities serving less
63 than thirty thousand residential electric customers in West
64 Virginia.

65 (9) “Energy efficiency or demand-side energy initiative
66 project” means a project in this state that promotes customer
67 energy efficiency or the management of customer
68 consumption of electricity through the implementation of:

69 (A) Energy efficiency technologies, equipment,
70 management practices or other strategies utilized by
71 residential, commercial, industrial, institutional or
72 government customers that reduce electricity consumption by
73 those customers;

74 (B) Load management or demand response technologies,
75 equipment, management practices, interruptible or curtailable
76 tariffs, energy storage devices or other strategies in
77 residential, commercial, industrial, institutional and
78 government customers that shift electric load from periods of
79 higher demand to periods of lower demand;

80 (C) Industrial by-product technologies consisting of the
81 use of a by-product from an industrial process, including, but
82 not limited to, the reuse of energy from exhaust gases or
83 other manufacturing by-products that can be used in the
84 direct production of electricity at the customer’s facility;

85 (D) Customer-sited generation, demand-response, energy
86 efficiency or peak demand reduction capabilities, whether
87 new or existing, that the customer commits for integration

88 into the electric utility's demand-response, energy efficiency
89 or peak demand reduction programs; or

90 (E) Infrastructure and modernization projects that help
91 promote energy efficiency, reduce energy losses or shift load
92 from periods of higher demand to periods of lower demand,
93 including the modernization of metering and communications
94 (also known as "smart grid"), distribution automation, energy
95 storage, distributed energy resources and investments to
96 promote the electrification of transportation.

97 (10) "Greenhouse gas emission reduction or offset
98 project" means a project to reduce or offset greenhouse gas
99 emissions from sources in this state other than the electric
100 utility's own generating and energy delivery operations.
101 Greenhouse gas emission reduction or offset projects include,
102 but are not limited to:

103 (A) Methane capture and destruction from landfills, coal
104 mines or farms;

105 (B) Forestation, afforestation or reforestation; and

106 (C) Nitrous oxide or carbon dioxide sequestration
107 through reduced fertilizer use or no-till farming.

108 (11) "Net metering" means measuring the difference
109 between electricity supplied by an electric utility and
110 electricity generated from an alternative or renewable energy
111 resource facility owned or operated by an electric retail
112 customer when any portion of the electricity generated from
113 the alternative or renewable energy resource facility is used
114 to offset part or all of the electric retail customer's
115 requirements for electricity.

116 (12) "Reclaimed surface mine" means a surface mine, as
117 that term is defined in section three, article three, chapter

118 twenty-two of this code, that is reclaimed or is being
119 reclaimed in accordance with state or federal law.

120 (13) "Renewable energy resource" means any of the
121 following resources, methods, projects or technologies for the
122 production or generation of electricity:

123 (A) Solar photovoltaic or other solar electric energy;

124 (B) Solar thermal energy;

125 (C) Wind power;

126 (D) Run of river hydropower;

127 (E) Geothermal energy, which means a technology by
128 which electricity is produced by extracting hot water or steam
129 from geothermal reserves in the earth's crust to power steam
130 turbines that drive generators to produce electricity;

131 (F) Biomass energy, which means a technology by which
132 electricity is produced from a nonhazardous organic material
133 that is available on a renewable or recurring basis, including
134 pulp mill sludge;

135 (G) Biologically derived fuel including methane gas,
136 ethanol not produced from corn, or biodiesel fuel;

137 (H) Fuel cell technology, which means any
138 electrochemical device that converts chemical energy in a
139 hydrogen-rich fuel directly into electricity, heat and water
140 without combustion; and

141 (I) Any other resource, method, project or technology
142 certified by the commission as a renewable energy resource.

143 (14) "Renewable energy resource facility" means a
144 facility or equipment that generates electricity from
145 renewable energy resources.

146 (15) "Waste coal" means a technology by which
147 electricity is produced by the combustion of the by-product,
148 waste or residue created from processing coal (such as gob).

**§24-2F-4. Awarding of alternative and renewable energy
resource credits.**

1 (a) *Credits established.* -- The Public Service
2 Commission shall establish a system of tradable credits to
3 establish, verify and monitor the generation and sale of
4 electricity generated from alternative and renewable energy
5 resource facilities. The credits may be traded, sold or used to
6 meet the portfolio standards established in section five of this
7 article.

8 (b) *Awarding of credits.* -- Credits shall be awarded as
9 follows:

10 (1) An electric utility shall be awarded one credit for
11 each megawatt hour of electricity generated or purchased
12 from an alternative energy resource facility located within the
13 geographical boundaries of this state or located outside of the
14 geographical boundaries of this state but within the service
15 territory of a regional transmission organization, as that term
16 is defined in 18 C.F.R. §35.34, that manages the transmission
17 system in any part of this state;

18 (2) An electric utility shall be awarded two credits for
19 each megawatt hour of electricity generated or purchased
20 from a renewable energy resource facility located within the
21 geographical boundaries of this state or located outside of the
22 geographical boundaries of this state but within the service

23 territory of a regional transmission organization, as that term
24 is defined in 18 C.F.R. §35.34, that manages the transmission
25 system in any part of this state;

26 (3) An electric utility shall be awarded three credits for
27 each megawatt hour of electricity generated or purchased
28 from a renewable energy resource facility located within the
29 geographical boundaries of this state if the renewable energy
30 resource facility is sited upon a reclaimed surface mine; and

31 (4) A customer-generator shall be awarded one credit for
32 each megawatt hour of electricity generated from an
33 alternative energy resource facility and shall be awarded two
34 credits for each megawatt hour of electricity generated from
35 a renewable energy resource facility.

36 (c) *Acquiring of credits permitted.* --

37 (1) An electric utility may meet the alternative and
38 renewable energy portfolio standards set forth in this article
39 by purchasing additional credits. Credits may be bought or
40 sold by an electric utility or customer-generator or banked
41 and used to meet an alternative and renewable energy
42 portfolio standard requirement in a subsequent year.

43 (2) Each credit transaction shall be reported by the
44 selling entity to the Public Service Commission on a form
45 provided by the commission.

46 (3) As soon as reasonably possible after the effective
47 date of this section, the commission shall establish a registry
48 of data that shall track credit transactions and shall list the
49 following information for each transaction: (i) The parties to
50 the transaction; (ii) the number of credits sold or transferred;
51 and (iii) the price paid. Information contained in the registry
52 shall be available to the public.

53 (4) The commission may impose an administrative
54 transaction fee on a credit transaction in an amount not to
55 exceed the actual direct cost of processing the transaction by
56 the commission.

57 (d) *Credits for certain emission reduction or offset*
58 *projects. —*

59 (1) The commission may award credits to an electric
60 utility for greenhouse gas emission reduction or offset
61 projects. For each ton of carbon dioxide equivalent reduced
62 or offset as a result of an approved greenhouse gas emission
63 reduction project, the commission shall award an electric
64 utility one credit: *Provided*, That the emissions reductions
65 and offsets are verifiable and certified in accordance with
66 rules promulgated by the commission: *Provided, however*,
67 That the commission has previously approved the greenhouse
68 gas emission reduction and offset project for credit in
69 accordance with section six of this article.

70 (2) The commission shall consult and coordinate with
71 the Secretary of the Department of Environmental Protection
72 to verify and certify greenhouse gas emission reduction or
73 offset projects. The Secretary of the Department of
74 Environmental Protection shall provide assistance and
75 information to the Public Service Commission and may enter
76 into interagency agreements with the commission to
77 effectuate the purposes of this subsection.

78 (3) Notwithstanding the provisions of this subsection, an
79 electric utility may not be awarded credits for a greenhouse
80 gas emission reduction or offset project undertaken pursuant
81 to any obligation under any other state law, policy or
82 regulation.

83 (e) *Credits for certain energy efficiency and demand-*
84 *side energy initiative projects. --*

85 (1) The commission may award credits to an electric
86 utility for investments in energy efficiency and demand-side
87 energy initiative projects. For each megawatt hour of
88 electricity conserved as a result of an approved energy
89 efficiency or demand-side energy initiative project, the
90 commission shall award one credit: *Provided*, That the
91 amount of electricity claimed to be conserved is verifiable
92 and certified in accordance with rules promulgated by the
93 commission: *Provided, however*, That the commission has
94 approved the energy efficiency or demand-side energy
95 initiative project for credit in accordance with section six of
96 this article.

97 (2) Notwithstanding the provisions of this subsection, an
98 electric utility may not be awarded credit for an energy
99 efficiency or demand-side energy initiative project
100 undertaken pursuant to any obligation under any other state
101 or federal law, policy or regulation.

**§24-2F-5. Alternative and renewable energy portfolio standard;
compliance assessments.**

1 (a) *General rule.* -- Each electric utility doing business in
2 this state shall be required to meet the alternative and
3 renewable energy portfolio standards set forth in this section.
4 In order to meet these standards, an electric utility each year
5 shall own an amount of credits equal to a certain percentage
6 of electricity, as set forth in subsections (c) and (d) of this
7 section, sold by the electric utility in the preceding year to
8 retail customers in West Virginia.

9 (b) *Counting of credits towards compliance.* — For the
10 purpose of determining an electric utility's compliance with
11 the alternative and renewable energy portfolio standards set
12 forth in subsections (c) and (d) of this section, each credit
13 shall equal one megawatt hour of electricity sold by an

14 electric utility in the preceding year to retail customers in
15 West Virginia. Furthermore, a credit may not be used more
16 than once to meet the requirements of this section. No more
17 than ten percent of the credits used each year to meet the
18 compliance requirements of this section may be credits
19 acquired from the generation or purchase of electricity
20 generated from natural gas.

21 (c) *Twenty-five percent by 2025.* -- On and after January
22 1, 2025, an electric utility shall each year own credits in an
23 amount equal to at least twenty-five percent of the electric
24 energy sold by the electric utility to retail customers in this
25 state in the preceding calendar year.

26 (d) *Interim portfolio standards.* --

27 (1) For the period beginning January 1, 2015, and ending
28 December 31, 2019, an electric utility shall each year own
29 credits in an amount equal to at least ten percent of the
30 electric energy sold by the electric utility to retail customers
31 in this state in the preceding calendar year; and

32 (2) For the period beginning January 1, 2020, and ending
33 December 31, 2024, an electric utility shall each year own
34 credits in an amount equal to at least fifteen percent of the
35 electric energy sold by the electric utility to retail customers
36 in this state in the preceding calendar year.

37 (e) *Double-counting of credits prohibited.* -- Any portion
38 of electricity generated from an alternative or renewable
39 energy resource facility that is used to meet another state's
40 alternative energy, advanced energy, renewable energy or
41 similar energy portfolio standard may not be used to meet the
42 requirements of this section. An electric utility that is subject
43 to an alternative energy, advanced energy, renewable energy
44 or similar energy portfolio standard in any other state shall

45 list, in the alternative and renewable energy portfolio
46 standard compliance plan required under section six of this
47 article, any such requirements and shall indicate how it
48 satisfied those requirements. The electric utility shall provide
49 in the annual progress report required under section six of
50 this article any additional information required by the
51 commission to prevent double-counting of credits.

52 (f) *Carryover.* -- An electric utility may apply any credits
53 that are in excess of the alternative and renewable energy
54 portfolio standard in any given year to the requirements for
55 any future year portfolio standard: *Provided,* That the
56 electric utility determines to the satisfaction of the
57 commission that such credits were in excess of the portfolio
58 standard in a given year and that such credits have not
59 previously been used for compliance with a portfolio
60 standard.

61 (g) *Compliance assessments.* —

62 (1) On or after January 1, 2015, and each year thereafter,
63 the commission shall determine whether each electric utility
64 doing business in this state is in compliance with this section.
65 If, after notice and a hearing, the commission determines that
66 an electric utility has failed to comply with an alternative and
67 renewable energy portfolio standard, the commission shall
68 impose a compliance assessment on the electric utility which
69 shall equal at least the lesser of the following:

70 (A) Fifty dollars multiplied by the number of additional
71 credits that would be needed to meet an alternative and
72 renewable energy portfolio standard in a given year; or

73 (B) Two hundred percent of the average market value of
74 credits sold in a given year multiplied by the number of
75 additional credits needed to meet the alternative and
76 renewable energy portfolio standard for that year.

77 (2) Compliance assessments collected by the commission
78 pursuant to this subsection shall be deposited into the
79 Alternative and Renewable Energy Resources Research Fund
80 established in section eleven of this article.

81 (h) *Force majeure.* --

82 (1) Upon its own initiative or upon the request of an
83 electric utility, the commission may modify the portfolio
84 standard requirements of an electric utility in a given year or
85 years or recommend to the Legislature that the portfolio
86 standard requirements be eliminated if the commission
87 determines that alternative or renewable energy resources are
88 not reasonably available in the marketplace in sufficient
89 quantities for the electric utility to meet the requirements of
90 this article.

91 (2) In making its determination, the commission shall
92 consider whether the electric utility made good faith efforts
93 to acquire sufficient credits to comply with the requirements
94 of this article. Such good faith efforts shall include, but are
95 not limited to, banking excess credits, seeking credits through
96 competitive solicitations and seeking to acquire credits
97 through long-term contracts. The commission shall assess
98 the availability of credits on the open market. The
99 commission may also require that the electric utility solicit
100 credits before a request for modification may be granted.

101 (3) If an electric utility requests a modification of its
102 portfolio standard requirements, the commission shall make
103 a determination as to the request within sixty days.

104 (4) Commission modification of an electric utility's
105 portfolio standard requirements shall apply only to the
106 portfolio standard in the year or years modified by the
107 commission. Commission modification may not

108 automatically reduce an electric utility's alternative and
109 renewable energy portfolio standard requirements in future
110 years.

111 (5) If the commission modifies an electric utility's
112 portfolio standard requirements, the commission may also
113 require the electric utility to acquire additional credits in
114 subsequent years equivalent to the requirements reduced by
115 the commission in accordance with this subsection.

116 (i) Termination - The provisions of this section shall have
117 no force and effect after June 30, 2026.

**§24-2F-6. Alternative and renewable energy portfolio standard
compliance plan; application; approval; and
progress report.**

1 (a) On or before January 1, 2011, each electric utility
2 subject to the provisions of this article shall prepare an
3 alternative and renewable energy portfolio standard
4 compliance plan and shall file an application with the
5 commission seeking approval of such plan.

6 (b) A portfolio standard compliance plan shall include:

7 (1) Statistics and information concerning the electric
8 utility's sales to retail customers in West Virginia during the
9 preceding ten calendar years;

10 (2) A calculation of the electric utility's projected yearly
11 sales to retail customers for the years 2011-2025;

12 (3) A calculation of the expected number of credits
13 required to meet the portfolio standards set forth in this
14 article;

15 (4) An anticipated time line for the development,
16 purchase or procurement of credits sufficient to meet the
17 portfolio standards set forth in this article;

18 (5) A nonbinding estimate of the costs to comply with the
19 portfolio standards set forth in this article;

20 (6) A description of any greenhouse gas emission
21 reduction or offset projects or energy efficiency and demand-
22 side energy initiative projects the electric utility proposes to
23 undertake for credit in accordance with this article;

24 (7) A list of any requirements and a description of how
25 the electric utility satisfied or will satisfy those requirements
26 if an electric utility is subject to an alternative energy,
27 advanced energy, renewable energy or similar energy
28 portfolio standard in any other state; and

29 (8) Such further information as required by the
30 commission.

31 (c) Upon the filing of an application for approval of a
32 portfolio standard compliance plan, and after hearing and
33 proper notice, the commission may, in its discretion, approve
34 or disapprove, or approve in part or disapprove in part, the
35 application: *Provided*, That the commission, after giving
36 proper notice and receiving no protest within thirty days after
37 the notice is given, may waive formal hearing on the
38 application. Notice shall be published as a Class I legal
39 advertisement in compliance with the provisions of article
40 three, chapter fifty-nine of this code, and shall be given in a
41 manner and in such form as may be prescribed by the
42 commission.

43 (d) The commission shall, following proper notice and
44 hearing, if any, render a final decision on any application

45 filed pursuant to this section within two hundred seventy
46 days of the filing of the application.

47 (c) If, and to the extent, the commission determines that
48 a portfolio standard compliance plan has a reasonable
49 expectation of achieving the portfolio standard requirements
50 at a reasonable cost to electric customers in this state, the
51 commission shall approve the plan. In establishing that the
52 requisite standard for approval of a portfolio standard
53 compliance plan is met, the burden of proof shall be upon the
54 applicant.

55 (f) In the event the commission disapproves of an
56 application filed pursuant to this section, in whole or in part,
57 the commission shall specify its reason or reasons for
58 disapproval. Any portion of the application not approved by
59 the commission shall be modified and resubmitted by the
60 applicant.

61 (g) Either upon an application of the electric utility, a
62 petition by a party or the commission's own motion, a
63 compliance plan proceeding may be reopened for the purpose
64 of considering and making, if appropriate, alterations to the
65 plan.

66 (h) Approval of the compliance plan does not eliminate
67 the need for an electric utility to otherwise obtain required
68 approvals, including, but not limited to, certificates to
69 construct, consent to enter into affiliated contracts and
70 recovery of compliance costs. Furthermore, nothing in this
71 article shall be interpreted to alter or amend the existing
72 power and authority of the commission.

73 (i) Approval of the compliance plan does not relieve an
74 electric utility from its obligation to pay a compliance
75 assessment pursuant to the provisions of section five of this

76 article if it fails to comply with the portfolio standards set
77 forth therein.

78 (j) Within a year of the commission's approval of an
79 electric utility's compliance plan, and every year thereafter,
80 the electric utility shall submit to the commission an annual
81 progress report. The progress report shall include the electric
82 utility's sales to retail customers in West Virginia during the
83 previous calendar year; the amount of energy the electric
84 utility has generated, purchased or procured from alternative
85 or renewable energy resources; a comparison of the budgeted
86 and actual costs as compared to the estimated cost of the
87 portfolio standard compliance plan; any information required
88 by the commission to prevent the double-counting of credits;
89 and any further information required by the commission.

90 (k) The commission shall impose a special assessment on
91 all electric utilities required to file a compliance plan. The
92 assessments shall be prorated among the covered electric
93 utilities on the basis of kilowatt hours of retail sales in West
94 Virginia and shall be due and payable on September 1 of
95 each year. The amount of revenue collected pursuant to this
96 subsection may not exceed \$200,000 in the first year
97 following the effective date of this article and may not exceed
98 \$100,000 in successive years. The funds generated from the
99 assessments shall be used exclusively to offset all reasonable
100 direct and indirect costs incurred by the commission in
101 administering the provisions of this article.

**§24-2F-7. Cost recovery and rate incentives for electric utility
investment in alternative and renewable energy
resources.**

1 (a) An electric utility shall have the right to recover the
2 costs of complying with the alternative and renewable energy
3 portfolio standards set forth in this article in a manner

4 prescribed by the commission. Although the commission
5 may approve costs that exceed the costs of current utility
6 generation or purchased power, the electric utility has the
7 burden to demonstrate that the costs are reasonable and
8 represent the least cost of compliance. Notwithstanding any
9 provision of this code to the contrary, an electric utility may
10 not recover in rates the costs of compliance assessments
11 imposed under this article.

12 (b) Upon a finding that it is in the public interest of this
13 state, as provided in section one, article one of this chapter,
14 the commission may authorize incentive rate-making
15 allowances for electric utility investment in the construction
16 of new alternative or renewable energy resource facilities in
17 West Virginia to encourage investments in the use and
18 development of alternative or renewable energy resource
19 facilities.

20 (c) The commission shall determine, at such time and in
21 such proceeding, form and manner as is considered
22 appropriate by the commission, the extent to which any
23 electric utility investment qualifies for the incentive rate
24 making pursuant to this section.

§24-2F-8. Net metering and interconnection standards.

1 (a) The commission shall adopt a rule requiring that all
2 electric utilities provide a rebate or discount at fair value, to
3 be determined by the commission, to customer-generators for
4 any electricity generation that is delivered to the utility under
5 a net metering arrangement.

6 (b) The commission shall also consider adopting, by rule,
7 a requirement that all sellers of electricity to retail customers
8 in the state, including rural electric cooperatives, municipally
9 owned electric facilities or utilities serving less than thirty

10 thousand residential electric customers in this state, offer net
11 metering rebates or discounts to customer-generators.

12 (c) The commission shall institute a general investigation
13 for the purpose of adopting rules pertaining to net metering
14 and the interconnection of eligible electric generating
15 facilities intended to operate in parallel with an electric
16 utility's system. As part of its investigation, the commission
17 shall take into consideration rules of other states within the
18 applicable region of the regional transmission organization,
19 as that term is defined in 18 C.F.R. §35.34, that manages a
20 utility's transmission system in any part of this state.
21 Furthermore, the commission shall consider increasing the
22 allowed kilowatt capacity for commercial customer-
23 generators to an amount not to exceed five hundred kilowatts
24 and for industrial customer-generators to an amount not to
25 exceed two megawatts. The commission shall further
26 consider interconnection standards for combined heat and
27 power.

28 (d) The commission shall promulgate these rules within
29 twelve months of the effective date of this article.

**§24-2F-9. Interagency agreements; alternative and renewable
energy resource planning assessment.**

1 (a) *Interagency agreements.* -- The commission may
2 enter into interagency agreements with the Department of
3 Environmental Protection and the Division of Energy to carry
4 out the responsibilities set forth in this article.

5 (b) *Alternative and renewable energy resource planning
6 assessment.* -- The commission, in cooperation with the
7 Department of Environmental Protection and the Division of
8 Energy, shall conduct an ongoing alternative and renewable
9 energy resource planning assessment for this state that shall,

10 at a minimum: (i) Identify current and operating alternative
11 and renewable energy resource facilities in this state; (ii)
12 assess the potential to add future generating capacity in this
13 state from alternative and renewable energy resource
14 facilities; (iii) assess the conditions of the alternative and
15 renewable energy resource marketplace, including costs
16 associated with alternative and renewable energy; (iv)
17 recommend methods to maintain or increase the relative
18 competitiveness of the alternative and renewable energy
19 resource market in this state; and (v) recommend to the
20 Legislature additional compliance goals for alternative and
21 renewable energy portfolio standards beyond 2025.

22 The commission shall report the initial results of its
23 assessment to the Governor, the President of the Senate and
24 the Speaker of the House of Delegates within three years of
25 the effective date of this article and shall report the ongoing
26 results of the assessment on a yearly basis thereafter, except
27 that on or before January 1, 2012, the commission, in
28 collaboration with the Public Energy Authority, shall report
29 the initial results of its assessment to the Joint Committee on
30 Government and Finance.

**§24-2F-10. Portfolio requirements for rural electric
cooperatives, municipally owned electric
facilities or utilities serving less than thirty
thousand residential electric customers in West
Virginia; and alternative and renewable energy
resource credits for nonutility generators.**

1 (a) The commission shall consider adopting, by rule,
2 alternative and renewable energy portfolio requirements for
3 rural electric cooperatives, municipally owned electric
4 facilities or utilities serving less than thirty thousand
5 residential electric customers in this state. The commission
6 shall institute a general investigation for the purpose of
7 adopting such requirements.

8 (b) The commission shall consider extending, by rule, the
9 awarding of alternative and renewable energy resource
10 credits in accordance with the provisions of section four of
11 this article to electric distribution companies or electric
12 generation suppliers other than electric utilities. As part of its
13 investigation, the commission shall examine any
14 modifications to the statutory and regulatory structure
15 necessary to permit the participation of such non-utility
16 generators in the system of tradable credits authorized by this
17 article. If the commission determines that statutory
18 modifications to this article or other provisions of this code
19 are necessary to permit such participation, the commission
20 shall notify the Governor and the Legislature of the findings
21 of its investigation and proposed legislation necessary to
22 effectuate its recommendations.

§24-2F-11. Alternative and renewable energy resources grant program.

1 (a) There is hereby established in the State Treasury a
2 special revolving fund to be jointly administered by the
3 Public Service Commission and the Division of Energy
4 which shall be designated the "Alternative and Renewable
5 Energy Resources Research Fund." Moneys in the fund shall
6 be used to award matching grants for demonstration,
7 commercialization, research and development projects
8 relating to alternative and renewable energy resources and
9 energy efficiency technologies.

10 (b) The fund shall consist of any moneys appropriated by
11 the Legislature, any compliance assessments collected by the
12 commission, any gifts, bequests or other contributions to the
13 fund from private entities or electric customers and any
14 interest or other return on the moneys in the fund. Any
15 moneys remaining in the account at the end of a fiscal year,
16 including accrued interest, do not revert to the General
17 Revenue Fund and remain in the account.

18 (c) Any donations to the fund collected by an electric
19 generation supplier or electric distribution company shall be
20 forwarded to the Public Service Commission and the
21 commission shall deposit such moneys in the fund.


22 (d) The Division of Energy shall provide for the
23 distribution of moneys from the fund in the form of matching
24 grants to state institutions of higher education for
25 demonstration, commercialization, research and development
26 projects relating to alternative and renewable energy
27 resources and energy efficiency technologies. The Division
28 of Energy shall consult with and receive recommendations
29 from the Public Energy Authority, the Economic
30 Development Authority and the Department of
31 Environmental Protection to establish eligibility criteria for
32 the awarding of grant moneys under this section. The
33 Division of Energy may update said criteria as necessary to
34 comply with the requirements of this section.

35 (e) Within two years of the effective date of this section,
36 and each year thereafter, the Division of Energy shall file a
37 report with the Governor, the President of the Senate and the
38 Speaker of the House of Delegates containing, at a minimum:
39 (i) A description of all actions taken by the Division of
40 Energy pursuant to this section; (ii) an accounting of total
41 deposits into and expenditures from the fund during the
42 previous twelve months; and (iii) a description of any
43 projects that received a distribution from the fund during the
44 preceding twelve months, including the projects' objectives,
45 current status and results, if any.

§24-2F-12. Rule-making authority.

1 The commission shall promulgate rules in accordance
2 with section seven, article one, chapter twenty-four of this
3 code to effectuate the purposes of this article.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



Chairman House Committee

Originating in the House.

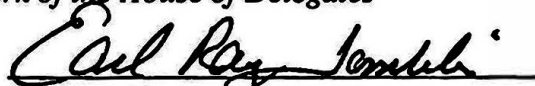
In effect July 1, 2009.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 1th
day of June, 2009.



Governor

PRESENTED TO THE
GOVERNOR

JUN 16 2009

Time 9:10am