

**ENGROSSED**

**H. B. 4346**

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

[Introduced January 28, 2014; referred to the  
Committee on Energy then the Judiciary.]

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

*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 section, designated §22-5-20, to read as  
follows:

**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 cofiring other fuels with coal, or limiting the utilization of the  
8 unit.

9       (c) Standards of performance for existing natural gas-fired  
10 electric generating units. -- Except as provided in subsection (d),  
11 the standard of performance established for existing gas-fired  
12 electric generating units under subsection (a) shall be based upon:

13       (1) The best system of emission reduction which, taking into  
14 account the cost of achieving the reduction and any nonair quality  
15 health and environmental impact and energy requirements, has been  
16 adequately demonstrated for natural gas-fired electric generating  
17 units that are subject to the standard of performance;

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

21       (3) Efficiency and other measures that can be undertaken at  
22 the unit to reduce carbon dioxide emissions from the unit without  
23 switching from natural gas to other lower-carbon fuels or limiting  
24 the utilization of the unit.

1       (d) Flexibility in establishing standards of performance. --  
2 In developing a flexible state plan to achieve targeted reductions  
3 in greenhouse gas emissions, the Department of Environmental  
4 Protection shall endeavor to establish an achievable standard of  
5 performance for any existing fossil fuel-fired electric generating  
6 unit, and examine whether less stringent performance standards or  
7 longer compliance schedules may be implemented or adopted for  
8 existing fossil fuel-fired electric generating units in comparison  
9 to the performance standards established for new, modified or  
10 reconstructed generating units, based on the following:

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

13       (2) Non air quality health and environmental impacts;

14       (3) Projected energy requirements;

15       (4) Market-based considerations in achieving performance  
16 standards;

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

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

21       (7) The absolute cost of applying the performance standard to  
22 the unit;

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

24       (9) The economic impacts of closing the unit, including

1 expected job losses, if the unit is unable to comply with the  
2 performance standard;

3 (10) Any other factors specific to the unit that make  
4 application of a modified or less stringent standard or a longer  
5 compliance schedule more reasonable; and

6 (11) Whether other reductions in greenhouse gases could be  
7 potentially achieved by other measures, including but not limited  
8 to reduction of overall energy requirements or implementation of  
9 additional conservation measures, to meet targeted goals and  
10 objectives.

11 (e) Implementing standards of performance. -- The Department  
12 of Environmental Protection may, to the extent permissible,  
13 establish and implement performance standards for existing fossil  
14 fuel fired electric generating unit through regulatory mechanisms  
15 that provide flexibility in complying with the standards, including  
16 the averaging of emissions, emissions trading, or other alternative  
17 implementation measures that are determined to further the  
18 interests of West Virginia and its citizens.

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

1 goals and parameters set forth in this section.