

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4562

FISCAL
NOTE

BY DELEGATES ANDERSON, COWLES, J. KELLY,
HANSHAW (MR. SPEAKER), MILEY, HANSEN, MILLER,
EVANS, HIGGINBOTHAM, WESTFALL AND ESPINOSA

[Introduced January 28, 2020; Referred to the
Committee on Energy]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §24-2-10, relating to creating a program to further the development of
3 renewable energy resources and renewable energy facilities for solar energy by modifying
4 the powers and duties of the Public Service Commission; providing for legislative findings
5 and declarations; providing for definitions; providing for an application process and
6 program for multiyear comprehensive renewable energy facilities for electric utilities, as
7 defined, to plan, design, construct, purchase, own, and operate renewable energy
8 generating facilities, energy storage resources, or both, under specified conditions and
9 limitations; providing that annual energy output is to be offered for sale, sold, or contracted
10 to be sold to residential, commercial, or industrial customers, pursuant to a renewable
11 special contracts or renewable tariffs; providing for commission review and approval of
12 said programs; allowing cost recovery for said programs; providing for requirements for
13 said programs; providing for application requirements and contents in lieu of applications
14 for certificates of public convenience and necessity; providing for public notice at the
15 direction of the commission for anticipated rates and rate increases in interested counties;
16 providing for a hearing on applications within 90 days of notice; defining circumstances
17 when a hearing can be waived for lack of opposition; defining a time period of 150 days
18 within which the commission shall issue a final order after the application date; requiring
19 the commission to find the programs as in the public interest; requiring the commission,
20 after notice and hearing, to approve applications and allow cost recovery for just and
21 reasonable expenditures; establishing accounting methods, practices, rates of return,
22 calculations, dates, and procedures relevant for cost recovery; requiring a utility to place
23 in effect commission approved rates that include cost recovery with certain defined items;
24 defining concurrent cost recovery; requiring yearly application filings by the utility with the
25 commission regarding cost recovery; providing for an effective date on passage; and
26 providing for a sunset date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1o. Renewable Energy Facilities Program.

1 (a) The Legislature finds and declares that:

2 (1) West Virginia is rich in energy resources, which provide many advantages to the state,
3 its economy and its citizens;

4 (2) West Virginia's abundant mineral reserves have created, and will continue to create,
5 many benefits to the state and its citizens, including thousands of jobs, a strong tax base and a
6 low-cost, reliable source of electricity;

7 (3) Coal-fired plants supply over 90 percent of electricity generation to the citizens and
8 businesses of this state;

9 (4) Businesses that may otherwise locate or expand facilities in this state often require
10 that a portion of the state's electricity be generated via renewable sources;

11 (5) Creating a program for the development of certain renewable sources of electricity by
12 electric utilities will result in increased economic development opportunities in the state, create
13 jobs and enhance the use of the state's electricity generation; and

14 (6) Creating a program to authorize electric utilities to provide a portion of the state's
15 electricity needs through a process that allows them to plan, design, construct, purchase, own
16 and operate renewable electric generating facilities, energy storage resources, or both, pursuant
17 to this section is in the public interest of the state.

18 (b) Definitions – For the purpose of the section:

19 "Capital investments" include, but are not limited to, costs related to the planning, design,
20 construction, purchase and ownership of a renewable electric generating facilities, energy storage
21 resources, and interconnections with transmission and distribution facilities.

22 "Commission" or "Public Service Commission" means the Public Service Commission of
23 West Virginia.

24 “Electric utility” means any electric distribution company that sells electricity to retail
25 customers in this state under rates regulated by the commission. Unless specifically provided for
26 otherwise, for the purposes of this section, the term “electric utility” may not include rural electric
27 cooperatives, municipally-owned electric facilities or utilities serving less than 30,000 residential
28 electric customers in West Virginia.

29 “Eligible site” means any site in this state that has been previously used in electric
30 generation, industrial, manufacturing or mining operations, including, but not limited to,
31 brownfields, closed landfills, hazardous waste sites, former industrial sites, and former mining
32 sites. In the event that there is no available site that has been previously used in electric
33 generation, industrial, manufacturing or mining operations in the area to be served by a renewable
34 electric facilities program, an eligible site may include any suitable site in this state approved for
35 use in connection with a renewable electric facilities program by the Secretary of the Department
36 of Commerce.

37 “Energy storage resource” means infrastructure located on an eligible site that allows for
38 the energy absorption and release of electrical energy into the electric grid.

39 “Renewable electric facilities program” means a program proposed by an electric utility to
40 plan, design, construct, purchase, own, and operate renewable electric generating facilities,
41 energy storage resources, or both, pursuant to this section: *Provided*, That a renewable electric
42 facilities program may not consist solely of energy storage resources.

43 “Renewable electric generating facility” means infrastructure located on an eligible site
44 that generates electricity solely through solar photovoltaic methods or other solar methods.

45 (c) Electric utilities may file with the commission an application for a multiyear
46 comprehensive renewable energy facilities program that complies with the provisions of this
47 section for planning, designing, constructing, purchasing, owning, and operating renewable
48 electric generating facilities, energy storage resources, or both, by the electric utility. Subject to
49 commission review and approval, a renewable energy facilities program may be amended and

50 updated by the electric utility. The recovery of costs in support of the renewable energy facilities
51 program shall be allowed in the manner set forth in this section.

52 (d) Any renewable energy facilities program shall comply with the following requirements:

53 (1) An electric utility may purchase each renewable electric generating facility and each
54 energy storage resource from a developer of renewable electric generating facilities or energy
55 storage resources or construct such facilities on its own, as applicable. Any purchase of a
56 renewable electric generating facility or energy storage resources shall be subject to a competitive
57 procurement administered by the electric utility. An electric utility may select to purchase a
58 renewable electric generating facility, energy storage resource, or both, based on a myriad of
59 factors, including, but not limited to, price and nonprice criteria, which shall include, but not be
60 limited to, geographic distribution of generating capacity, areas of higher employment, or regional
61 economic development.

62 (2) An electric utility may elect to petition the commission, outside of a base rate case
63 proceeding, at any time for a prudency determination with respect to the purchase, construction
64 and ownership by the electric utility of one or more renewable electric generating facilities, energy
65 storage resources, or both. The commission's final order regarding any such petition shall be
66 entered by the commission within 150 days after the date of the filing of such petition.

67 (3) No renewable electric generating facility shall have a generating capacity greater than
68 50 megawatts until such time as 85 percent of that renewable electric generating facility's annual
69 energy output is being sold or is contracted to be sold to residential, commercial, or industrial
70 customers pursuant to a renewable special contract or renewable tariff, and, thereafter, any
71 expansion of that or another renewable energy generating facility's generating capacity shall
72 proceed in increments of up to 50 megawatts each until such time as 85 percent or more of that
73 renewable energy generating facility's aggregate, annual energy output is being sold or is
74 contracted to be sold to customers pursuant to a renewable special contract or renewable tariff;

75 (4) No single renewable electric generating facility shall have a generating capacity greater

76 than 200 megawatts;

77 (5) The cumulative generating capacity of all renewable electric generating facilities
78 operating at any given time, and for which rate recovery is provided by the commission under this
79 section, shall not exceed 400 megawatts among all investor-owned electric utilities in this state:
80 Provided, That the cumulative generating capacity of all renewable electric generating facilities
81 operating at any one time, and for which rate recovery is provided by the commission under this
82 section, shall not exceed 200 megawatts for all electric utilities within the state owned by the same
83 corporate parent company;

84 (6) The calculation of maximum megawatts of generating capacity for renewable electric
85 generating facilities established in this subsection shall not include the storage capacity of energy
86 storage resources;

87 (7) As part of the renewable energy facilities program, the electric utilities must offer the
88 energy output for sale to customers from all classes of service.

89 (e) Applications made under this section are in lieu of an application for a certificate of
90 public convenience and necessity pursuant to §24-2-11 of this code and shall contain the
91 following:

92 (1) A description of the renewable electric generating facilities, energy storage resources,
93 or both, in such detail as the commission prescribes, including, but not limited to, the generating
94 capacity and location of the facilities;

95 (2) A proposed concurrent cost recovery mechanism for actual and projected capital
96 investments in the renewable electric generating facilities, energy storage resources, or both, and
97 for operation and maintenance expenses and taxes associated with such facilities; and

98 (3) Other information that the applicant considers relevant or the commission requires.

99 (f) Upon filing of an application, the applicant shall publish, in the form the commission
100 directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate
101 increase under the proposal, by average percentage and dollar amount for customers within a

102 class of service, as a Class I legal advertisement in compliance with §59-3-1 et seq., of this code,
103 the publication area to be each county in which service is provided by the electric utility, a notice
104 of the filing of the application and that the commission shall hold a hearing on the application
105 within 90 days of the notice; unless no opposition to the rate change is received by the commission
106 within one week of the proposed hearing date, in which case the hearing can be waived, and the
107 commission shall issue a final order within 150 days of the application filing date.

108 (g) The planning, design, construction, purchase, ownership and operation of renewable
109 electric generating facilities, energy storage resources, or both, pursuant to this section is in the
110 public interest, and the commission shall so find when considering applications for renewable
111 energy facilities programs submitted by an electric utility pursuant to this section.

112 (h) Upon notice and hearing, if required by the commission, the commission shall approve
113 the applications made under this section and allow concurrent recovery of costs related to
114 the expenditures, as provided in subsection (i) of this section, if the commission finds that the
115 expenditures and the associated rate requirements are just and reasonable.

116 (i) Upon commission approval, electric utilities shall be authorized to implement renewable
117 electric facilities programs and to concurrently recover their costs, including a return on capital
118 investments, operation and maintenance, depreciation, and tax expenses directly attributable to
119 the renewable electric facilities program capital investments, if any, as provided in the following:

120 (1) An allowance for return shall be calculated by applying a rate of return to the
121 average planned net incremental increase to rate base attributable to the renewable electric
122 facilities program for the coming year, considering the projected amount and timing of capital
123 investments under the renewable electric facilities program plus any capital investments in
124 previous years of the program. The rate of return shall be determined by utilizing the rate of return
125 on equity authorized by the commission in the electric utility's most recent base rate case
126 proceeding or in the case of a settled base rate case, a rate of return on equity set forth in such
127 settlement or, if none is set forth in such settlement, the last commission authorized rate of return

128 on equity from a previous base rate case proceeding, and the projected cost of the electric utility's
129 debt during the period of the renewable electric facilities program to determine the weighted cost
130 of capital based upon the electric utility's capital structure.

131 (2) Income taxes applicable to the return allowed on the renewable electric facilities
132 program shall be calculated at the statutory rate for inclusion in rates.

133 (3) Incremental operation and maintenance, depreciation and property tax expenses
134 directly attributable to the renewable electric facilities program shall be estimated for the upcoming
135 year.

136 (4) Following commission approval of its application made under this section, an electric
137 utility shall place into effect rates that include an increment for concurrent cost recovery that
138 recovers the allowance for return, related income taxes at the statutory rate, operation and
139 maintenance, depreciation and property tax expenses associated with the electric utility's actual
140 and projected capital investments under the renewable electric facilities program for the upcoming
141 year, net of contributions to recovery of those incremental costs provided by customers who have
142 executed renewable special contracts, or who are taking power under renewable tariffs and are
143 served by the renewable electric facilities program investments, if any, ("incremental cost recovery
144 increment"). In each year subsequent to the order approving the renewable electric facilities
145 program and the incremental cost recovery increment, the electric utility shall file an
146 application with the commission setting forth a new proposed incremental cost
147 recovery increment for concurrent cost recovery of forecasted costs to be made in the subsequent
148 year, plus any under-recovery or minus any over-recovery of actual incremental costs attributable
149 to the renewable electric facilities program, for the preceding year.

150 (5) The renewable electric generating facilities, energy storage resources, or both,
151 constructed, purchased, contracted, owned, and installed pursuant to an application approved by
152 the commission shall be considered used and useful for rate recovery purposes as of the earliest
153 date consideration is paid for construction, purchases, contracts, ownerships, or installation.

154 (6) If an electric utility serves customers in more than one jurisdiction, and a jurisdiction
155 other than this state denies the electric utility recovery of the costs incurred pursuant to a
156 renewable electric facilities program approved by the commission and allocated to that
157 jurisdiction, the electric utility shall recover all of the costs of the renewable electric facilities
158 program from its West Virginia jurisdictional customers, and all attributes of the renewable electric
159 facilities program, including energy and capacity, shall be assigned to this state.

160 (j) The electric utility may make any accounting accruals necessary to establish a
161 regulatory asset or liability through which actual incremental costs incurred and costs recovered
162 through the rate mechanism are tracked.

163 (k) With respect to renewable electric facilities programs, electric utilities may defer
164 incremental operation and maintenance expenses attributable to regulatory and compliance-
165 related requirements introduced after the electric utility's last base rate case proceeding and not
166 included in the electric utility's current base rates in lieu of current recovery. In a future base rate
167 case, the commission shall allow recovery of such deferred costs amortized over a reasonable
168 period of time to be determined by the commission provided the commission finds that the costs
169 were reasonable and prudently incurred and were not reflected in rates in prior base rate cases.

170 (l) The provisions of this section shall expire on December 31, 2025. The expiration of
171 this section shall not affect the full and timely cost recovery associated with a renewable energy
172 facilities program for which an application has been filed with the commission pursuant to this
173 section on or before December 31, 2025, nor for any projects previously approved by the
174 commission pursuant to this section.

175 (m) The provisions of this section are effective on passage.

NOTE: The purpose of this bill is to create a program to further the development of renewable energy resources in this state for economic development.

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