

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 583**

SENATORS RUCKER, BLAIR, SMITH, WELD, CLINE,  
MARONEY, ROBERTS, AND PALUMBO, *original sponsors*

[Passed March 5, 2020; in effect 90 days from  
passage]



1 AN ACT 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,  
9 requirements, and limitations; providing that solar energy output is to be offered for sale  
10 or sold to residential, commercial, or industrial customers under renewable special  
11 contracts or renewable tariffs; providing for commission review and approval of said  
12 programs; allowing cost recovery for said programs; providing for requirements for said  
13 programs; providing for application requirements and contents in lieu of applications for  
14 certificates of public convenience and necessity; providing for public notice at the direction  
15 of the commission for anticipated rates and rate increases in interested counties; providing  
16 for a hearing on applications within 90 days of notice; defining circumstances when a  
17 hearing can be waived for lack of opposition; defining a time period of 150 days within  
18 which the commission shall issue a final order after the application date; requiring the  
19 commission to find the programs as in the public interest; requiring the commission, after  
20 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  
25 the commission regarding cost recovery; defining when a project is to be considered used  
26 and useful; limiting cost recovery from any one customer to a maximum increase of \$1000

27 per month; providing for siting certificates for exempt wholesale solar-generation facilities  
28 to be processed in 150 days by the Public Service Commission; providing that no provision  
29 shall displace current levels of coal-fired generation capacity; and providing for a sunset  
30 date under conditions.

*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 currently supply over 90 percent of electricity generation to the  
8 citizens and 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 electricity that they purchase 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 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  
34 renewable electric facilities program, an eligible site may include any suitable site in this state  
35 approved for use in connection with a renewable electric facilities program by the Secretary of the  
36 Department 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  
57 competitive procurement administered by the electric utility. An electric utility may select to  
58 purchase a renewable electric-generating facility, energy storage resource, or both, based on a  
59 myriad of factors, including, but not limited to, price and nonprice criteria, which shall include, but  
60 not be limited to, geographic distribution of generating capacity, areas of higher employment, or  
61 regional 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 all  
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  
76 greater 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 and a description of the competitive purchase procurement  
95 process administered by the electric utility that is required under this section;

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

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

100 (f) Upon filing of an application, the applicant shall publish, in the form the commission  
101 directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate  
102 increase under the proposal, by average percentage and dollar amount for customers within a  
103 class of service, as a Class I legal advertisement in compliance with §59-3-1 *et seq.*, of this code,  
104 the publication area to be each county in which service is provided by the electric utility, a notice  
105 of the filing of the application and that the commission shall hold a hearing on the application  
106 within 90 days of the notice; unless no opposition to the rate change is received by the commission  
107 within one week of the proposed hearing date, in which case the hearing can be waived, and the  
108 commission shall issue a final order within 150 days of the application filing date.

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

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

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

122           (1) An allowance for return shall be calculated by applying a rate of return to the  
123 average planned net incremental increase to rate base attributable to the renewable electric  
124 facilities program for the coming year, considering the projected amount and timing of capital  
125 investments under the renewable electric facilities program plus any capital investments in  
126 previous years of the program. The rate of return shall be determined by utilizing the rate of return  
127 on equity and the capital structure authorized by the commission in the electric utility's most recent  
128 base rate case proceeding or in the case of a settled base rate case, a rate of return on equity set  
129 forth in or associated with such settlement or, if neither is set forth in or associated with such  
130 settlement, a rate of return on equity and a capital structure determined by the commission to be  
131 reasonable, and the projected average weighted cost of the electric utility's debt during the period  
132 of the renewable electric facilities program to determine the weighted cost of capital based upon  
133 the electric utility's capital structure determined as specified above.

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

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

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

148 program and the incremental cost-recovery increment, the electric utility shall file an application  
149 with the commission setting forth a new proposed incremental cost-recovery increment for  
150 concurrent cost recovery of forecasted costs to be made in the subsequent year, plus any under-  
151 recovery or minus any over-recovery of actual incremental costs attributable to the renewable  
152 electric facilities program, for the preceding year.

153 (5) The renewable electric-generating facilities, energy storage resources, or both,  
154 constructed, purchased, contracted, owned, installed, and in service pursuant to an application  
155 approved by the commission shall be considered used and useful for rate recovery purposes.  
156 Any concurrent cost recovery mechanism approved by the commission shall limit the amount of  
157 cost to be recovered from any individual customer of the electric utility to a maximum of \$1,000  
158 per month: *Provided*, That this limitation shall not impact the electric utility's ability to recover all  
159 costs incurred pursuant to this section from other customers. Customers who have executed  
160 renewable special contracts or are taking power under renewable tariffs pursuant to an approved  
161 renewable electric facilities program are not subject to any such limits imposed by the  
162 commission.

163 (6) If an electric utility serves customers in more than one jurisdiction, and a jurisdiction  
164 other than this state denies the electric utility recovery of the costs incurred pursuant to a  
165 renewable electric facilities program approved by the commission and allocated to that  
166 jurisdiction, the electric utility shall recover all of the costs of the renewable electric facilities  
167 program from its West Virginia jurisdictional customers if the commission finds that the  
168 expenditures and the associated rate requirements are just and reasonable, and all attributes of  
169 the renewable electric facilities program, including energy, capacity, and renewable energy credits  
170 shall be assigned to this state.

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

174 (k) With respect to renewable electric facilities programs, electric utilities may defer  
175 incremental operation and maintenance expenses attributable to regulatory and compliance-  
176 related requirements introduced after the electric utility's last base rate case proceeding and not  
177 included in the electric utility's current base rates or incremental cost-recovery increment in lieu  
178 of current recovery. In a future base rate case, the commission shall allow recovery of such  
179 deferred costs amortized over a reasonable period of time to be determined by the commission  
180 provided the commission finds that the costs were reasonable and prudently incurred and were  
181 not reflected in rates in prior base rate cases.

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

187 (m) Notwithstanding any provision of this article to the contrary, no provision herein this  
188 section shall displace any current levels of coal-fired generation capacity.

189 (n) Notwithstanding the provisions of §24-2-11c of this code, any person or entity: (1) Who  
190 is not an electric utility; (2) who intends to purchase or construct and operate an electric generating  
191 facility as an exempt wholesale generator under federal law; (3) who will generate electricity solely  
192 through solar photovoltaic or other solar methods; and (4) who, if desired, intends to purchase or  
193 construct and operate energy storage for such electricity may file an application with the Public  
194 Service Commission under this section in such detail and with such publication requirements as  
195 the commission may prescribe; and the commission shall hold a hearing, unless waived, within  
196 90 days of publication and issue a final order on a siting certificate or modification thereof within  
197 150 days of the application filing date. No other provision of this section shall apply to these  
198 exempt wholesale generators.



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

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2020.

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*Governor*