

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2287

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BARACH

[Introduced February 10, 2021; Referred
to the Committee on Energy and Manufacturing then
the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §24-2-21, relating to the Modern Jobs Act, providing for solar energy
 3 production on formerly mined land and access to third party co-generation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-21. Solar Energy on Formerly Mined Land and Access to Third-Party Co-generation.

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 and third-party co-
 4 generation energy supplies by energy-intensive businesses located or locating within West
 5 Virginia in order to create economic opportunities and jobs;

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

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

13 (4) Nationwide, numerous large commercial, industrial, and manufacturing companies,
 14 and institutions of higher education and nonprofit organizations, have established corporate or
 15 institutional sustainability goals and guidelines, primarily geared toward the reduction of carbon
 16 dioxide and other greenhouse gas emissions through the implementation of energy efficiency
 17 measures and the deployment of renewable energy sources including solar energy;

18 (5) Because more than 90 percent of West Virginia’s electric power is generated from
 19 fossil fuels and construction of large-scale renewable energy generation facilities is constrained
 20 in West Virginia’s electricity market, West Virginia is unable to attract large commercial, industrial,

21 and manufacturing companies with corporate sustainability goals and guidelines;

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

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

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

31 (9) According to a 2018 analysis, the competitive advantage once provided to West
32 Virginia by low electricity rates has significantly eroded in the last decade, resulting in a
33 deterioration of West Virginia's nationwide position as a provider of low-cost electric service and
34 a substantial increase in rates for large commercial, industrial, and manufacturing customers and
35 institutions of higher education and nonprofit organizations;

36 (10) Allowing owners or operators, or both, of solar energy facilities sited on formerly
37 mined land to sell electricity to commercial, industrial, and manufacturing facilities and institutions
38 of higher education and nonprofit organizations, without being regulated as a public utility, will put
39 this undeveloped land into productive economic use and create jobs and tax revenues; and

40 (11) Allowing large commercial, industrial, and manufacturing facilities and institutions of
41 higher education and nonprofit organizations to purchase electricity generated at solar energy
42 facilities sited on formerly mined land or generated by other third-party co-generation projects in
43 West Virginia will permit these large commercial, industrial, and manufacturing facilities and
44 institutions of higher education and nonprofit organizations to remain economically competitive
45 and retain important jobs and economic contributions in West Virginia.

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

47 “Eligible land” means land within West Virginia for which a permit has been issued under
48 the West Virginia Surface Coal Mining and Reclamation Act pursuant to §22-3-1 et seq. of this
49 code or land listed on the Office of Surface Mining Reclamation and Enforcement’s Abandoned
50 Mine Land Inventory System;

51 “Eligible solar project” means a solar photovoltaic array having a nameplate capacity of
52 up to 200 megawatts that is installed upon eligible land and that can be interconnected with a
53 transmitting utility’s transmission or distribution system;

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

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

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

64 “Third-party co-generation project” means an industrial or manufacturing co-generation
65 project, regardless of fuel source, with a nameplate capacity up to 100 megawatts that is located
66 within West Virginia, owned and operated by a nonutility entity including a third-party nonutility
67 entity, that provides electric service from the co-generation project directly to a single large energy
68 consumer, or to no more than five large energy consumers located on the same or immediately
69 adjacent property;

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

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

77 (c) Authorizing wheeling agreements. —

78 (1) Upon procurement of the electrical output of an eligible solar project by a large energy
79 consumer, either through ownership of the solar project by the large energy consumer or through
80 a power purchase agreement between the large energy consumer and the owner or operator of
81 the eligible solar project or third-party co-generation project, the large energy consumer is entitled,
82 upon request, to have the electrical output transmitted or wheeled over the transmission and/or
83 distribution system of one or more transmitting utilities between: (A) The point of interconnection
84 between a transmitting utility’s transmission or distribution system and the eligible solar project;
85 and (B) the point of delivery at facilities of the large energy consumer located within West Virginia,
86 as designated by the large energy consumer.

87 (2) The wheeling agreement may include one or both of the following, as applicable:
88 (A) The rate set forth in the utility’s Open Access Transmission Tariff (OATT) on file with the
89 Federal Energy Regulatory Commission to the extent the utility’s transmission facilities are used,
90 (B) a wheeling rate to be determined by the Public Service Commission to the extent the utility’s
91 distribution facilities are used. The Public Service Commission, following a rate proceeding
92 pursuant to §24-2-1 et seq. of this code, shall determine the wheeling rate for a transmitting utility,
93 and the rates, terms and conditions applicable to the wheeling service shall be set forth in a tariff
94 sheet upon approval of the rates, terms and conditions by the Public Service Commission.
95 Further, the Public Service Commission shall establish the rates, terms, and conditions applicable
96 to the eligible solar or third-party co-generation project for any standby service that may be
97 required.

98 (d) Restriction on Cost Assignment and Recovery.--

99 (1) No electric utility may assign to, or recover from, its retail ratepayers any amount of
100 revenues actually or notionally lost as a result of the provision of service to large energy
101 consumers pursuant to this section through a surcharge mechanism or any other alternative or
102 extraordinary rate mechanism; such changes in revenues shall be addressed for recovery in the
103 electric utility's next full base rate proceeding under Public Service Commission rules.

104 (2) No electric utility may assign to, or recover from, its retail ratepayers any costs incurred
105 by the electric utility for investment required to accommodate the provision of transmission,
106 distribution, or wheeling of power pursuant to this section; such costs must be recovered from the
107 owner or operator of the eligible solar or third-party co-generation project.

108 (e) Not a public utility. —

109 (1) The sale of the electrical output of an eligible solar project or third-party co-generation
110 project to a large energy consumer shall not be considered the provision of electric service to the
111 public, retail electric service, or retail supply of electricity by the owner or operator of an eligible
112 solar project or third-party co-generation project, and neither the large energy consumer nor the
113 owner or operator of an eligible solar project or third-party co-generation project shall be
114 considered an electric supplier within the meaning of this chapter or in violation of exclusive
115 electric service rights arising therein.

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

120 (f) Renewable energy certificates. — Each eligible solar project under this section shall be
121 entitled to issue renewable energy certificates for each megawatt-hour of renewable electricity
122 generated by the project. The Public Service Commission shall promulgate rules to administer
123 the issuance, tracking, auditing, and other matters necessary for such certificates. Rules
124 promulgated under this authority are exempt from the legislative rule-making review procedures

125 established in §29A-3-1 et seq. of this code.

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

NOTE: The purpose of this bill is to encourage solar energy development on lands formerly used for mining and certain third-party co-generation projects, 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; authorizing the Public Service Commission to regulate the use of transmission and distribution lines to transport power from these facilities; providing that the solar operations and third-party co-generation projects are not regulated as a utility for providing electricity to these businesses; and authorizing the issuance of renewable energy certificates for renewable energy generated by eligible solar projects.

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