WEST virginia legislature

2021 regular session

**FISCAL NOTE**

Introduced

House Bill 2713

By Delegates Criss, Evans and Mandt

[Introduced February 23, 2021; Referred to the Committee on Energy and Manufacturing then the Judiciary]

A BILL to amend and reenact §5D-1-2 and §5D-1-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §24-2-21, all relating to the Public Energy Authority Act of West Virginia; required environmental pollution controls for coal-fired power plants; providing legislative findings; providing expedited recovery process for coal-fired power plants owned by electric utilities in West Virginia; and providing procedures to ensure that no more coal-fired plants close and long-term state prosperity is maintained.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-2. Purpose and intent.

The Legislature finds and declares that:

(a) ~~That~~ The long-term health and economy of the United States will depend upon the availability of reliable sources of energy;

(b) T~~hat~~ The State of West Virginia has abundant reserves of coal, natural gas and other natural resources;

(c) T~~hat~~ The economy of the State of West Virginia needs a reliable and dependable market for the state’s coal, natural gas and other natural resources and the by-products thereof;

(d) T~~hat~~ The State of West Virginia needs to encourage the efficient utilization and disposition of by-products resultant from the production of natural resources;

(e) T~~hat~~ With all due regard to the protection of the environment and husbandry of the natural resources of this state, the health, happiness, safety, right of gainful employment and general welfare of the citizens of this state will be promoted by the establishment and operation of coal fired electric generating plants and transmission facilities and the establishment and operation of natural gas transmission projects and/or other energy projects; and

(f) ~~That~~ The means and measures herein authorized for the financing, building and operation of the facilities described in subsection (e) are, as a matter of public policy, for the public purpose of the state.

(g) Over 562 coal-fired electric units nationally have been forced to close;

(h) Eighteen coal-fired electric units within West Virginia’s borders have been forced to;

(i) Markets for West Virginia coal have been severely diminished due to the closure of regional coal plants to the point that West Virginia coal shipments have been reduced from 162 coal plants a decade ago to only 50 plants today;

(j) West Virginia coal mines are forced to close, and West Virginia coal miners are forced out of work and homeland security and homeland defense measures are compromised and matters of long-term economic health, grid stability, and resiliency are threatened; and

(k) It is imperative the State of West Virginia take immediate steps to reverse these undesirable trends to ensure that no more coal-fired plants close, no additional coal jobs are lost, and long-term state prosperity is maintained.

Accordingly, the public energy authority created herein ~~shall be authorized to~~ may initiate such directives and take such measures as may be necessary to effectuate the public purpose of this chapter.

§5D-1-5. Powers, duties, and responsibilities of authority generally; termination of certain powers.

The West Virginia Public Energy Authority ~~has and~~ may exercise all powers necessary or appropriate to execute its corporate purpose. The authority may:

(1) Adopt, amend, and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules to implement and make effective its powers and duties, such rules to be promulgated in accordance with ~~the provisions of~~ §29A-3-1 *et seq.* of this code.

(2) Adopt and use an official seal and alter the same at pleasure.

(3) Maintain a principal office and, if necessary, regional sub-offices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under this article. Any actions against the authority shall be brought in the circuit court of Kanawha County.

(5) Foster, encourage and promote the mineral development industry. The authority is encouraged to maximize the use of the West Virginia mineral development industry but is not prohibited from utilizing nonstate mineral resources.

(6) Represent the state with respect to national initiatives concerning the mineral development industry and international marketing activities affecting the mineral development industry.

(7) Engage in strategic planning to enable the state to cope with changes affecting or which may affect the mineral development industry.

(8) Acquire, whether by purchase, construction, gift, lease, lease-purchase or otherwise, any electric power project or natural gas transmission project. In the event that an electric power project to be constructed pursuant to this article is designed to utilize coal wastes for the generation of electricity or the production of other energy, such project shall also be capable of using coal as its primary energy input: *Provided,* That it shall be demonstrated to the authority’s satisfaction that quantities of coal wastes exist in amounts sufficient to provide energy input for such project for the term of the bonds or notes issued by the authority to finance the project and are accessible to the project.

(9) Lease, lease with an option by the lessee to purchase, sell, by installment sale or otherwise, or otherwise dispose of, to persons other than governmental agencies, any or all of its electric power projects or natural gas transmission projects for such rentals or amounts and upon such terms and conditions as the Public Energy Authority Board may ~~deem~~ consider advisable.

(10) Finance one or more electric power projects or natural gas transmission projects by making secured loans to persons other than governmental agencies to provide funds for the acquisition, by purchase, construction or otherwise, of any such project or projects.

(11) Issue bonds for the purpose of financing the cost of acquisition and construction of one or more electric power projects or natural gas transmission projects or any additions, extensions or improvements thereto which will be sold, leased with an option by the lessee to purchase, leased or otherwise disposed of to persons other than governmental agencies or for the purpose of loaning the proceeds thereof to persons other than governmental agencies for the acquisition and construction of said projects or both. ~~Such~~ The bonds shall be issued and the payment of such bonds secured in the manner provided by the applicable provisions of §13-2C-7 through 13 and §13-2C-17 of this code: *Provided,* That the principal and interest on ~~such~~ the bonds shall be payable out of the revenues derived from the lease, lease with an option by the lessee to purchase, sale or other disposition of or from loan payments in connection with the electric power project or natural gas transmission project for which the bonds are issued, or any other revenue derived from such electric power project or natural gas transmission project.

(12) ~~In the event that~~ If the electric power project or natural gas transmission project is to be owned by a governmental agency, apply to the economic development authority for the issuance of bonds payable solely from revenues as provided in §32-15-1 *et seq.* of this code: *Provided,* That the economic development authority ~~shall~~ may not issue any such bonds except by an act of general law: *Provided, however,* That the authority shall require that in the construction of any such project, prevailing wages shall be paid as part of a project-specific agreement which also takes into account terms and conditions contained in the West Virginia - Ohio Valley market retention and recovery agreement or a comparable agreement.

(13) Acquire by gift or purchase, hold, and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(14) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter 54 of this code, such real property or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it ~~deems~~ considers necessary for carrying out the provisions of this article and compensation shall be paid for public or private lands so taken; and the authority may sell any of the real property or parts thereof or rights therein, rights-of-way, property, rights, easements and interests acquired hereunder in such manner and upon such terms and conditions as the authority ~~deems~~ considers proper: *Provided,* That if the authority determines that land or an interest therein acquired by the authority through the exercise of the power of eminent domain for the purpose of this article is no longer necessary or useful for such purposes, and if the authority desires to sell ~~such~~ the land or interest therein, the authority shall first offer to sell ~~such~~ the land or interest to the owner or owners from whom it was acquired, at a price equal to its fair market value: *Provided, however,* That if the prior owner or owners shall decline to reacquire the land or interest therein, the authority ~~shall be authorized to~~ may dispose of ~~such~~ the property by direct sale, auction or competitive bidding. In no case ~~shall~~ may ~~such~~ the land or an interest therein acquired under this subdivision be sold for less than its fair market value. This article does not authorize the authority to take or disturb property or facilities belonging to any public utility or to a common carrier, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, except for the acquisition of easements or rights-of-way which will not unreasonably interfere with the operation of the property or facilities of ~~such~~ the public utility or common carrier, and ~~in the event of the~~ if there is a taking or disturbance of property or facilities of public utility or common carrier, provision shall be made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the authority.

The term real property as used in this article is defined to include lands, structures, franchises and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within the said term, and includes also any and all interests in such property less than full title, such as easements, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages for such real estate.

For the purposes of this section, fair market value shall be determined by an appraisal made by an independent person or firm chosen by the authority. The appraisal shall be performed using the principles contained in the Uniform Appraisal Standards for Federal Land Acquisitions published under the auspices of the Interagency Land Acquisition Conference, United States Government Printing Office, 1972.

(15) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers: *Provided,* That if any electric power project or natural gas transmission project is to be constructed by a person other than a governmental agency, and with whom the authority has contracted to lease, sell or finance such project upon its completion, then the authority ~~shall~~ may not be required to comply with the provisions of §5-22-1 *et seq.* of this code requiring the solicitation of competitive bids for the construction of such a project.

(16) Employ managers, superintendents, and other employees, and retain or contract with consulting engineers, financial consultants, accountants, architects, attorneys and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof shall be payable solely from the proceeds of bonds issued by the economic development authority, from the proceeds of bonds issued by or loan payments, lease payments or other payments received by the authority, from revenues and from funds appropriated for ~~such~~ that purpose by the Legislature.

(17) Receive and accept from any federal agency, or any other source, grants for or in aid of the construction of any project or for research and development with respect to electric power projects, natural gas transmission projects or other energy projects, and receive and accept aid or contribution from any source of money, property, labor, or other things of value to be held, used and applied only for the purpose for which such grants and contributions are made.

(18) Purchase property coverage and liability insurance for any electric power project or natural gas transmission project or other energy project and for the principal office and sub offices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance which may be provided for under a resolution authorizing the issuance of bonds or in any trust agreement securing the same.

(19) Charge, alter, and collect transportation fees and other charges for the use or services of any natural gas transmission project as provided in this article.

(20) Charge and collect fees or other charges from any energy project undertaken as a result of this article.

(21) When the electric power project is owned and operated by the authority, charge reasonable fees in connection with the making and providing of electric power and the sale thereof to corporations, states, municipalities, or other entities in the furtherance of the purposes of this article.

(22) Purchase and sell electricity or other energy produced by an electric power project in and out of the State of West Virginia.

(23) Enter into wheeling contracts for the transmission of electric power over the authority’s or another party’s lines.

(24) Make and enter into contracts for the construction of a project facility and joint ownership with another utility and the provisions of this article shall not constrain the authority from participating as a joint partner therein.

(25) Make and enter into joint ownership agreements.

(26) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds issued by the economic development authority pursuant to ~~the provisions of~~ §31-15-1 *et seq.* of this code or bonds issued by the authority.

(27) Broker the purchase of natural gas for resale to end-users: *Provided,* That whenever there are local distribution company pipelines already in place the authority shall arrange to transport the gas through such pipelines at the rates approved by the Public Service Commission of West Virginia.

(28) Engage in market research, feasibility studies, commercial research, and other studies and research pertaining to electric power projects and natural gas transmission projects or any other functions of the authority pursuant to this article.

(29) Enter upon any lands, waters and premises in the state for the purpose of making surveys and examinations as it may deem necessary or convenient for the purpose of this article, and such entry ~~shall~~ may not be ~~deemed~~ determined a trespass, nor ~~shall~~ may an entry for such purposes be ~~deemed~~ considered an entry under any condemnation proceedings which may be then pending and the authority shall make reimbursement for any actual damages resulting to such lands, waters and premises as a result of ~~such~~ those activities.

(30) Participate in any reorganization proceeding pending pursuant to the United States Code (being the act of congress establishing a uniform system of bankruptcy throughout the United States, as amended) or any receivership proceeding in a state or federal court for the reorganization or liquidation of a responsible buyer or responsible tenant. The authority may file its claim against any such responsible buyer or responsible tenant in any of the foregoing proceedings, vote upon any question pending therein, which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such responsible buyer or responsible tenant or of any entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

(31) Make or enter into management contracts with a second party or parties to operate any electric power project or any gas transmission project and associated facilities, or other related energy project, either during construction or permanent operation.

(32) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

(33) Nothing herein ~~shall~~ may be construed to permit the transportation of gas produced outside of this state through a natural gas transmission project.

(34) The authority shall, after consultation with other agencies of state government having environmental regulatory functions, promulgate legislative rules pursuant to §29A-3-1 *et seq.* of this code, to establish standards and principles to be applied to all projects in assessing the effects of projects on the environment: *Provided,* That when a proposed project requires an environmental impact statement pursuant to the National Environmental Policy Act of 1969, a copy of the environmental impact statement shall be filed with the authority and be made available prior to any final decision or final approval of any project and prior to the conducting of any public hearings regarding the project, and in any such case, no assessment pursuant to the legislative rule need be made.

(35) To coordinate with the Public Service Commission of West Virginia, West Virginia Environmental Protection, and the West Virginia Division of Homeland Security and Emergency Management, the review and approval of comprehensive operational plans and other reports and information required by §24-2-20 of this code.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-21. Required environmental pollution controls for coal-fired power plants; findings; expedited recovery process.

(a) The Legislature hereby finds that:

(1) Coal-fired power plants owned by electric utilities in West Virginia provide electric utility customers in the state with reliable and affordable energy;

(2) West Virginia’s access to coal reserves has provided the citizens of the state with access to an energy resource that is affordable and accessible to coal-fired power plants in West Virginia;

(3) Electric utilities in the state have made considerable investments in coal-fired plants to comply with numerous environmental regulations;

(4) Electric utilities in West Virginia continue to modify and install environmental pollution controls on power plants to comply with federal and state environmental regulatory requirements to ensure that those facilities can continue to operate and serve the citizens of the state with reliable and affordable energy;

(5) Efforts to comply with environmental regulatory mandates owned by electric utilities used to generate electricity in the state involve the investment of capital and the incurrence of associated incremental costs. Because the utilities are required to install environmental pollution control equipment to comply with federal and state environmental regulations, the electric utilities should be permitted to recover the incremental rate of return including the Affordable Clean Energy plan promulgated by the United States Environmental Protection Act in June 2019, related income taxes, depreciation and property taxes associated with the environmental control equipment that the utilities are required to install on power plants without waiting for a full base rate tariff filing, as more described in subsection (f) of this section.

(6) Matters generally related to homeland security and national defense are of paramount importance to West Virginia and its residents and coal-fired power plants provide optimal protection and resiliency toward state security and uninterrupted power supplies for household, industrial, and military applications;

(7) West Virginia coal has solidified its place in our country’s history for its unconditional participation and sacrifices in both World Wars by our many native sons who have bravely defended our country and by generating the power to make the steel to build the tanks and battleships that affords us the liberties and freedoms benefiting every American today;

(8) West Virginia coal-fired plants continue to provide base load generation critical for maintaining slow, steady generation that produces power on a continuous cycle and ensures grid stability, and protects against overloads and power shortages;

(9) West Virginia coal and electricity generated in West Virginia are relied upon throughout an 18-state region thus playing a vital role in regional homeland security;

(10) West Virginia’s coal fleet, comprised of nine individual plants and 25 units, is fueled on average by a total of 28 million tons annually and accounts for over $2 billion of economic activity and sustains 3,500 mining jobs, 2,000 plant worker jobs and hundreds of millions of dollars of payroll and tax dollars locally; and,

(11) The role of West Virginia and West Virginia coal in regional homeland security is as important today as heretofore, thus, it is incumbent for our state to continue to provide leadership in this increasingly critical area in order to sustain and protect our regional electric supplies.

(b) Legislative purpose:

(1) To encourage in-state power producers to maintain 2019 levels of coal consumed by their West Virginia fleet of coal plants;

(2) Provide upgrade cost recovery measures and incentives for in-state power producers to upgrade existing plants to ensure optimal efficiencies and extended operational plant life with improved heat rates, better emission controls, and improved overall performance.

(3) Compel in-state power producers to file compliance plans every three years with the Public Service Commission and Public Energy Authority pursuant to §5D-1-1 *et seq.* of this code which shall specify their fuel supply and total distribution of electricity, how 2019 coal consumption levels will be maintained, all necessary upgrades to be made in next three-year cycle; status of all upgrades completed, announced or previously incorporated into the plan for the previous cycle or cycles, an accounting of all expenditures or cost which have been recovered pursuant to this section, which may be incorporated into “Integrated Resource Plans”;

(4) Require state utility compliance with the Environmental Protection Act’s Affordable Clean Energy rule by June 30, 2021;

(5) Compel in-state power producers to maintain a 90-day “base fuel” supply on site;

(6) Empower the Public Service Commission and Public Energy Authority pursuant to §5D-1-1 *et seq.* of this code to enforce the provisions of this section and to generally oversee the implementation of this article.

(c) Requirements of Electric Utilities:

(1) Effective immediately, all coal-fired utilities shall continue to consume, at a minimum, the same level or tonnage of coal as the amount consumed or burned to generate electricity in the calendar year 2019;

(2) Effective immediately, all coal-fired utilities shall undertake a comprehensive operational analysis of each coal-fired unit within its plan or system of generators to ascertain all feasible and technological upgrades to improve performance and extend efficient plant life cycle;

(3) The findings of the comprehensive operational analysis shall be submitted to the West Virginia Public Service Commission and to the West Virginia Public Energy Authority pursuant to §5D-1-1 *et seq.* of this code along with each three-year comprehensive compliance plan, pursuant with the requirements set forth in subsection (d) of this section beginning with the first filing on January 1, 2021, and every three years thereafter;

(4) No application for cost recovery pursuant to section (d) of this section may be considered until the compliance plan required in subsection (3) of this section is accepted and determined administratively complete and authentic as determined by rule of the Public Service Commission.

(5) On or before January 1, 2022, all utilities generating electric power for industrial or residential consumption within the State of West Virginia shall establish and maintain a minimum of a 90-day supply of the base fuel used to generate electricity.

(6) On or before June 30, 2021, all utilities generating electric power for industrial or residential consumption within the State of West Virginia shall file with the West Virginia Department of Environmental Protection a detailed compliance plan for the United States Environmental Protection Plan’s Affordable Clean Energy final rule filed in June, 2019, which shall be forwarded to United States Environmental Protection within 30-days of submission.

(d) Comprehensive Operational Plan; Minimum Requirements.

At a minimum the Comprehensive Operational Plan shall contain the following:

(1) The plant fuel supply for the generation of electricity;

(2) The total distribution of electricity for each plant;

(3) How 2019 coal consumption levels are to be maintained for each plant including all fuel supply contracts and a complete listing of fuel suppliers;

(4) All necessary plant upgrades to be proposed, started, or completed over the ensuing three-year cycle along with all pertinent contractors including a copy of the scope of work and beginning and completion dates;

(5) Status of all upgrades completed, announced, or previously incorporated into the plan for the previous cycle or cycles;

(6) A maintenance schedule of all routine, scheduled, or planned maintenance along with a record of all nonplanned or nonscheduled events leading to or causing emergency or needed maintenance; and,

(7) An up-to-date accounting of all expenditures or costs which have been recovered pursuant to this section or applied for subsection (f).

(e) Requirements of the Public Service Commission:

(1) Upon receipt of the comprehensive operational plan, the Public Serve Commission shall review the plan within 60 days of submittal and within 30 days provide each public utility a written response as to the administrative completeness of the comprehensive operational plan. (2) Within 120 days, the Public Service Commission shall approve or deny the comprehensive operational plan and provide a written response including any supportive evidence of its approval or denial decision;

(3) The commission shall visit every public utility operating within the State of West Virginia bi-annually but not within the same or consecutive quarters to ascertain the general condition of each plant, the implementation of the comprehensive operational plan, and to consult with the plant operator;

(4) During each visit, the commission shall solicit such reports or information to verify the accuracy and progress completed on the previously approved comprehensive operational plan. The commission shall also verify the 90 base fuel supply required by subsection (c)(5) of this section is maintained.

(5) The commission shall report its inspection findings and overall condition of in-state public utilities at least annually to the West Virginia Office of Homeland Security and Emergency Management, West Virginia Department of Environmental Protection, West Virginia Public Energy Authority, and to the Legislature’s Joint Committee on Government and Finance.

(6) Before any public utility announces the retirement of a coal-fired unit, the proposed shutdown of a coal-fired unit, the closure of the plant, or the proposed sale of a plant to another operator, the plant operator or public utility shall give notice to the West Virginia Office of Homeland Security and Emergency Management, West Virginia Department of Environmental Protection, West Virginia Public Energy Authority and to the Legislature’s Joint Committee on Government and Finance and receive unanimous permission from them: *Provided,* That any matter before the commission or final order therefrom that involves a coal plant closure occurring within 180 days of the effective date of this section shall be reviewed to ensure consistency within this section and if found to be inconsistent shall be modified to ensure consistency.

(f) Electric utilities may file with the commission an application for the expedited recovery of costs for the installation of environmental pollution control projects that will be installed to comply with federal or state environmental requirements. The recovery of costs in support of the environmental pollution control equipment to be installed shall be allowed in the manner set forth in this section if the equipment to be installed and related rates are found to be just, reasonable and based on prudent investments that are required or used and useful to the utilities’ West Virginia ratepayers.

(c) The application is in lieu of a proceeding pursuant to §24-2-11 of this code and shall contain the following:

(1) A description of the environmental pollution control equipment to be installed, to include costs associated with or incidental to the reduction or control of emissions, effluents, or compliance with environmental requirements, the projected cost and timing of the installation of equipment and facilities that the applicant proposes to replace, construct, modernize and/or improve;

(2) The projected net cost, on an annual basis, of the replacement, construction, or improvements;

(3) The projected starting and completion dates for construction of the environmental pollution control equipment;

(4) The projected cost of debt for the environmental pollution control equipment funding and the projected capital structure for coal-fired boiler modernization and improvement program funding;

(5) Testimony, exhibits, or other evidence that demonstrates the necessary regulatory compliance for the environmental pollution control equipment in order to provide and maintain adequate, efficient, safe, reliable, and reasonably priced electrical generation;

(6) A proposed cost recovery mechanism consistent with this section; and

(7) Other information the applicant considers relevant or the commission requires.

(d) Upon filing of the application, the applicant shall publish, in the form the commission directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate increase under the proposal, by average percentage and dollar amount for customers within a class of service, as a Class I legal advertisement in compliance with §59-3-1 *et seq.* of this code, the publication area to be each county in which service is provided by the electrical utility, a notice of the filing of the application and that the commission shall hold a hearing on the application within 120 days of the notice; unless no opposition to the application is received by the commission within one week of the proposed hearing date, in which case the hearing can be waived, and issue a final order within 180 days of the application filing date.

(e) Upon notice and hearing, if required by the commission, the commission shall approve the application for environmental pollution control equipment and allow expedited recovery of costs related to the expenditures as provided in subsection (f) of this section if the commission finds that the expenditures and the associated rate requirements are just, reasonable, prudent, not contrary to the West Virginia public interest and will allow for the provision and maintenance of adequate, efficient, safe, reliable, and reasonably priced electricity generated from coal.

(f) Upon commission approval, electric utilities shall be authorized to recover related incremental capital and operation and maintenance costs, net of contributions, by recovery of return, depreciation, and tax expenses attributable to the installation and operation of the environmental pollution control equipment from electric utility’s customers, if any, as provided in the following:

(1) An allowance for return shall be calculated by applying a rate of return to the average planned net incremental increase to rate base attributable to the installation of environmental pollution control equipment for the coming year, considering the projected amount and timing of expenditures to install and operate the pollution control equipment plus any expenditures in previous years that were dedicated to the installation and operation of the pollution control equipment. The rate of return shall be determined by utilizing the rate of return on equity authorized by the commission in the electric utility’s most recent rate case proceeding or in the case of a settled rate case, a rate of return on equity as determined by the commission, and the projected cost of the electric utility's debt during the installation of the pollution control equipment to determine the weighted cost of capital based upon the electric utility’s capital structure.

(2) Income taxes at the corporate statutory income rates applicable to the return allowed on pollution control equipment shall be calculated for inclusion in rates.

(3) Incremental depreciation and property tax expenses directly attributable to the pollution control equipment shall be estimated for the upcoming year.

(4) Following commission approval of the installation of the pollution control equipment, an electric utility shall place into effect rates that include an increment that recovers the allowance for return, operation and maintenance expense, related income taxes, depreciation, and property tax expenses associated with the installation and operation of the environmental pollution control equipment.

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

NOTE: The purpose of this bill is to provide procedures to ensure that no more coal-fired plants close, and long-term state prosperity is maintained. The bill requires environmental pollution controls for coal-fired power plants and provides expedited recovery process for coal-fired power plants owned by electric utilities in West Virginia.

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