

WEST VIRGINIA LEGISLATURE

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Introduced

House Bill 3239

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Committee on Energy and Manufacturing]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designating §24-2I-1, §24-2I-2, §24-2I-3 §24-2I-4 and §24-2I-5, all relating to electric
 3 energy production; legislative findings and declarations; definitions; promoting the long-
 4 term development of a more diversified energy generation and production portfolio in this
 5 state; providing for the long term development of a diversified energy portfolio that
 6 includes additional renewable energy generating facilities; encouraging the development
 7 of cleaner burning fuel technologies that reduce our state’s carbon footprint; establishing
 8 long-term goals which can be reasonably achieved for electric power generation
 9 diversification; creating an energy diversification study commission to review the status
 10 of the electric generation facilities located in our state; requiring the study commission to
 11 report its findings and recommendations on how the established goals can be achieved
 12 to the Joint Committee on Government and Finance, including recommendations for any
 13 additional legislation needed to meet the established goals; and requiring annual
 14 reporting requirements for each electric utility in this state advise the study commission,
 15 and in turn the Legislature, of their individual and collective progress toward meeting the
 16 established goals.

Be it enacted by the Legislature of West Virginia:

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2I. THE WEST VIRGINIA ENERGY DIVERSITY ACT

§24-2I-1. Title.

1 This article shall be known as “The West Virginia Energy Diversity Act”.

§24-2I-2. Legislative findings.

1 The Legislature finds and declares that:

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

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

7 (3) The electric generating facilities throughout West Virginia have historically
8 represented a vital part of both the regional and national electric power grid, with its multiple
9 interconnections with transmission and distribution facilities that are part of a regional network
10 relied upon to meet the shared energy needs of West Virginia, Ohio, Pennsylvania, Kentucky,
11 Virginia, Maryland, North Carolina, Tennessee, Delaware, New Jersey, Illinois, Indiana,
12 Michigan and the District of Columbia;

13 (4) Coal-fired plants currently supply over 90 percent of electricity generation to the
14 citizens and businesses of this state;

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

17 (6) There is an undeniable national shift away from the percentage of power generated
18 by coal-fired plants;

19 (7) As coal-fired plants reach the end of their useful life, they are often replaced or
20 displaced by other more environmentally favorable types of electric generation, including electric
21 generation plants which rely on renewable energy sources and other types of electric generation
22 plants powered by fuels which produce lower levels of carbon based emissions;

23 (8) It is in the public interest for West Virginia to remain a major player in the future
24 generation of power on both a regional and national scale as our aging coal-fired plants are
25 either retired or replaced by other forms of electricity generation in this country;

26 (9) Creating a program for the development of certain renewable sources of electricity
27 and other forms of electric generation by electric utilities will result in increased economic
28 development opportunities in the state, create jobs and enhance the use of the state's electricity
29 generation;

30 (10) It is reasonable and appropriate to establish a study commission to examine the
31 current state of electricity generation in this state, to gather information from electric generators
32 in this state concerning the projected remaining useful life of their existing coal-fired plants, and
33 their future plans and progress toward developing other forms of electricity generation as aging
34 coal-fired plants are approaching the end of their useful life;

35 (11) The policies and legislation promulgated by the West Virginia Legislature should
36 encourage the development of a more diversified energy production portfolio so our state will be
37 better positioned to meet the future electricity generation needs of our region and our country for
38 decades to come; and

39 (12) It is in the overall public interest for our state to establish reasonably achievable
40 targets for a more diversified energy production portfolio, to place our state in a better position
41 to respond to future opportunities for growth and expansion, and to maintain West Virginia's
42 standing as one of the nation's primary energy producing states for future generations.

§24-2I-3. Definitions.

1 For the purposes of the article:

2 "Alternative energy resources" means any of the following resource, methods or
3 technologies for the production or generation of electricity:

4 (1) Advanced coal technology;

5 (2) Coal bed methane;

6 (3) Natural gas, including any component of raw natural gas;

7 (4) Fuel produced by a coal gasification or liquefaction facility;

8 (5) Synthetic gas;

9 (6) Integrated gasification combined cycle technologies; and

10 (7) Pumped storage hydroelectric project

11 "Commission" or "Public Service Commission" means the Public Service Commission of
12 West Virginia.

13 “Co-owned plant” or “co-owned generating facility” means and includes a plant that is
14 partly owned by the electric utility, and can mean and include generating facilities that are jointly
15 owned and operated or are partly owned by the electric utility, including cogeneration facilities.

16 “Electric utility” means any electric distribution company that sells electricity to retail
17 customers in this state under rates regulated by the commission. Unless specifically provided
18 for otherwise, for the purposes of this article, the term “electric utility” may not include rural
19 electric cooperatives, municipally-owned electric facilities or utilities serving fewer than 30,000
20 residential electric customers in West Virginia.

21 “Energy diversity portfolio index” refers to the percentage of an electric utility’s energy
22 portfolio in a calendar year that is generated by the electric utility’s West Virginia based sources
23 of production and generation other than by a coal-fired plant. The production and generation
24 represented by this index may include production by generation facilities located in West
25 Virginia which utilize any renewable energy source or any alternative energy sources other than
26 coal.

27 “Energy portfolio” means the combined total energy capacity generated, produced and
28 sold in a calendar year by all production plants or facilities located in the State of West Virginia
29 which are either owned or co-owned by an electric utility, and its production is sold to any
30 customer or entity for consumption in West Virginia or any other state.

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

33 “Generate”, “generating” or “generation of” electric energy means the production of
34 electric energy.

35 “Generator” means a person owning, controlling, or operating a facility that produces
36 electric energy for sale.

37 “Renewable electric facilities program” means a program proposed by an electric utility
38 to plan, design, construct, purchase, own, and operate renewable electric generating facilities,

39 energy storage resources, or both, pursuant to this section: *Provided*, That a renewable electric
40 facilities program may not consist solely of energy storage resources.

41 “Renewable electric generating facility” means infrastructure located on an eligible site
42 that generates electricity using a renewable energy resource.

43 “Renewable energy resource” means any of the following resources, methods, projects
44 or technologies for the production or generation of electricity:

45 (1) Solar photovoltaic or other solar electric energy;

46 (2) Solar thermal energy;

47 (3) Wind power;

48 (4) Run of river hydropower;

49 (5) Geothermal energy, which means a technology by which electricity is produced by
50 extracting hot water or steam from geothermal reserves in the earth’s crust to power steam
51 turbines that drive generators to produce electricity;

52 (6) Biomass energy, which means a technology by which electricity is produced from a
53 nonhazardous organic material that is available on a renewable or recurring basis, including
54 pulp mill sludge;

55 (7) Biologically derived fuel including methane gas, ethanol or biodiesel fuel;

56 (8) Fuel cell technology, which means any electrochemical device that converts chemical
57 energy in a hydrogen-rich fuel directly into electricity, heat and water without combustion; and

58 (9) Recycled energy, which means useful thermal, mechanical or electrical energy
59 produced from:

60 (A) Exhaust heat from any commercial or industrial process;

61 (B) Waste gas, waste fuel or other forms of energy that would otherwise be flared,
62 incinerated, disposed of or vented; and

63 (C) Electricity or equivalent mechanical energy extracted from a pressure drop in any
64 gas, excluding any pressure drop to a condenser that subsequently vents the resulting heat.

65 “Study Commission” means the West Virginia Energy Diversity Study Commission
66 created pursuant to the provisions of this article.

§24-2I-4. Energy diversity goals and targets.

1 (a) On or before January 1, 2030, the total percentage of energy generated by each
2 West Virginia electric utility, as represented by its energy diversity index, shall be no less than
3 10 percent.

4 (b) On or before January 1, 2040, the total percentage of energy generated by each
5 West Virginia electric utility, as represented by its energy diversity index, shall be no less than
6 25 percent.

7 (c) On or before January 1, 2050, the total percentage of energy generated by each
8 West Virginia electric utility, as represented by its energy diversity index, shall be no less than
9 35 percent.

10 (d) In calculating the energy diversity index for each electric utility, the utility shall only
11 refer to and consider the electric production and generation from generating facilities that are
12 owned and operated in the state of West Virginia. The levels of production generated by those
13 facilities shall include the total power generated by that facility, regardless of whether that power
14 was sold to and used in West Virginia or used in another state. The resulting index should
15 represent the percentage of the utility’s total generation capacity that is actually generated
16 during the year by West Virginia facilities that use renewable resources to generate electricity,
17 or alternative energy resources other than coal, compared to the combined total power
18 generated by West Virginia based generating facilities produced and sold by all means of
19 generation.

§24-2I-5. West Virginia Energy Diversity Study Commission; composition, powers,
responsibilities and duties.

1 (a) There is hereby created the West Virginia Energy Diversity Study Commission which
2 is created for the purpose of studying and reporting back to the Joint Committee on Government

3 and Finance on the following subject matters:

4 (1) Request and evaluate information from each electric utility in this state concerning
5 the generating capacity of each electric generation facility in this state, including a projection of
6 each facility's remaining useful life, based on their best projections and available data;

7 (2) Request and evaluate information from each electric utility in this state regarding their
8 future plans and progress towards developing other forms of electricity generation as aging
9 coal-fired plants are approaching the end of their useful life.

10 (3) An evaluation of the potential to locate and construct additional electric power
11 generation facilities in this state which wholly or partially utilize natural gas as a primary fuel
12 source;

13 (4) Identifying areas of the state where additional electric power generation facilities
14 may be located which utilize renewable energy sources of energy, or which utilize an alternative
15 fuel other than coal which produces lower levels of carbon emissions than a coal fired plant;

16 (5) Identifying existing plant locations where it may be economically and technically
17 feasible to wholly or partially replace or convert a coal burning electric generation facility to a
18 renewable electric generating facility or to an electric generation facility which utilizes another
19 source of alternative fuel supply in the future;

20 (6) An examination of whether existing interconnections and other aspects of the current
21 electrical grid which have been developed and are in use by existing coal fired plants could also
22 be readily utilized by other types of electric generation facilities located on or near the sites of
23 existing plants as the existing plants are retired or taken out of service; and

24 (7) Determine the existing energy diversity index for each electric utility in this state; and

25 (8) Recommend and propose legislation changes deemed necessary or appropriate to
26 encourage the development of a more diversified energy production portfolio in our state, so it
27 will be better positioned to meet the future electricity generation needs of our region and our
28 country in the year 2030 and beyond.

29 (b) The study commission shall consist of the following 16 members, who shall be
30 appointed and comprised as follows:

31 (1) Five members appointed by the Governor, one of whom shall be a professional
32 engineer experienced in the design and construction of electrical generating facilities; one of
33 whom shall be an expert in the area of renewable energy resources; one who is an expert in the
34 area of alternative fuel sources; one of whom shall be an expert in the operation and structure of
35 the electrical grid which includes the state of West Virginia; and one citizen representative;

36 (2) The chairperson of the Public Service Commission, or his or her designee, who will
37 serve as chair of the commission;

38 (3) One member representing the West Virginia Development Office, appointed by the
39 Secretary of Commerce;

40 (4) One member representing the interests of large industrial consumers in this state;

41 (5) One member representing the interests of large commercial customers in this state;

42 (6) One member representing the interests of residential customers in this state;

43 (7) One member representing the interests of cities and counties in this state;

44 (8) One member representing the interests of natural gas pipeline companies operating
45 in this state;

46 (9) One member representing the interests of natural gas producers in this state;

47 (10) One member representing the interests of the coal industry in this state;

48 (11) One nonvoting member appointed by the President of the Senate; and

49 (12) One nonvoting member appointed by the Speaker of the House of Delegates.

50 (c) In the performance of its examination of these issues and in furtherance of its duties,
51 the study commission may enlist and obtain the full cooperation and assistance of the Public
52 Service Commission to seek and obtain records, information and reports from electric utilities
53 and other regulated entities pursuant to the provisions of this chapter.

54 (d) Reports by the study commission created by this section shall be submitted annually

- 55 to the Joint Committee on Government and Finance on or before December 15 of each year,
56 beginning December 15, 2022.

NOTE: The purpose of this bill is to create a new article in the code to establish an orderly and comprehensive planning and review process for evaluating and responding to changing trends in electrical power generation. It is intended to provide for a more orderly transition of jobs and resources in the state as existing coal-fired electric generating facilities approach the end of their useful life. It promotes the development of a more diversified electric generation portfolio in the state of West Virginia that includes the additional statewide capacity to generate power which utilizes renewable energy resources and alternative fuels. The bill creates reasonably achievable targets for diversifying West Virginia's energy production utilizing West Virginia resources and West Virginia workers. It also includes the creation of a study commission to monitor and examine plans and progress towards achieving those goals, and to make appropriate reports and recommendations for the Legislature's review and consideration.

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