

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5528

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Fehrenbacher, T. Clark, Hansen, Rowe, Young and
Hott

[Introduced February 8, 2024; Referred to the
Committee on Energy and Manufacturing]

1 A BILL to amend and reenact §24-2-1o of the Code of West Virginia, 1931, as amended, relating to
2 the renewable energy facilities program; modifying the allowable incremental size increase
3 from 50 to 100 megawatts of generating capacity by regulated utilities under the program;
4 and eliminating the sunset provision of the renewable energy facilities program.

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 that
10 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 and
16 operate renewable electric-generating facilities, energy storage resources, or both, pursuant to
17 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 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~~ 100 megawatts until such time as 85 percent of that renewable electric-generating facility's
69 annual energy output is being sold or is contracted to be sold to residential, commercial, or
70 industrial customers pursuant to a renewable special contract or renewable tariff, and, thereafter,

71 any expansion of that or another renewable energy-generating facility's generating capacity shall
72 proceed in increments of up to ~~50~~ 100 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
80 state: *Provided*, That the cumulative generating capacity of all renewable electric-generating
81 facilities operating at any one time, and for which rate recovery is provided by the commission
82 under this section, shall not exceed 200 megawatts for all electric utilities within the state owned by
83 the same 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 of
105 the filing of the application and that the commission shall hold a hearing on the application within
106 90 days of the notice; unless no opposition to the rate change is received by the commission within
107 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 (j) 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
149 application with the commission setting forth a new proposed incremental cost recovery increment
150 for concurrent cost recovery of forecasted costs to be made in the subsequent year, plus any
151 under-recovery or minus any over-recovery of actual incremental costs attributable to the
152 renewable 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. Any
156 concurrent cost recovery mechanism approved by the commission shall limit the amount of cost to
157 be recovered from any individual customer of the electric utility to a maximum of \$1,000 per
158 month: *Provided*, That this limitation shall not impact the electric utility's ability to recover all costs
159 incurred pursuant to this section from other customers. Customers who have executed renewable
160 special contracts or are taking power under renewable tariffs pursuant to an approved renewable
161 electric facilities program are not subject to any such limits imposed by the commission.

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

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

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

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

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

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

NOTE: The purpose of this bill is to remove certain caps on renewable energy generating facilities and to remove the sunset date from this section.

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