

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 420**

By Senators Helton, Bartlett, Azinger, and Hart

[Reported February 23, 2026, from the Committee on  
Energy, Industry, and Mining]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,  
2 designated §24-9-1, §24-9-2, §24-9-3, §24-9-4, §24-9-5, §24-9-6, §24-9-7, §24-9-8, §24-  
3 9-9, and §24-9-10, relating to creating the West Virginia First Energy Act; providing  
4 legislative findings, purpose, and definitions; setting certain minimum operational  
5 utilization goal for coal-fired generation and providing incentives for attainment; providing  
6 certain protections against premature termination of certain electric-generating facilities  
7 and placing limitation on announcements of such termination; restricting certain  
8 recoupment of certain expenditures associated with certain intermittent generation  
9 resources; requiring certain utilities to include in their integrated resource plans an analysis  
10 of coal and natural gas utilization, maintenance, and life extension; directing use of  
11 moneys in the Electric Grid Stabilization and Security Fund; requiring certain coordination  
12 between Public Service Commission and Public Energy Authority; expanding powers,  
13 duties, and responsibilities of Public Energy Authority; providing certain oversight of PJM  
14 market participation and resource planning; requiring certain electric utilities to perform  
15 operational analysis and maintain operational plan; providing operational plan criteria;  
16 providing certain Public Service Commission and Public Energy Authority oversight of  
17 operational plans; requiring certain electric utilities to maintain minimum supply of certain  
18 resources; providing certain reporting requirements; and requiring certain orders,  
19 directives, and requirements to implement the act.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 9. WEST VIRGINIA FIRST ENERGY ACT.**

**§24-9-1 West Virginia First Energy Act; legislative findings; purpose; definitions.**

- 1 (a) This article is and may be cited as the “West Virginia First Energy Act”.  
2 (b) The Legislature finds as follows:  
3 (1) Coal-fired and natural-gas-fired electric generation are essential to West Virginia’s  
4 reliability, affordability, and energy security;

5 (2) For decades, West Virginia maintained some of the most stable electric rates in the  
6 nation due to the consistent use of in-state coal generation;

7 (3) As the utilization of coal-fired generation has declined and greater dependence has  
8 developed on out-of-state and intermittent sources, West Virginia's electric rates have become  
9 increasingly volatile, threatening both affordability and reliability;

10 (4) United States President Donald J. Trump issued Executive Order Numbers 14156 and  
11 14154, declaring a National Energy Emergency, directing the federal government to unleash  
12 American energy production, and pledging to reverse federal initiatives and regulations that  
13 undermine domestic fossil energy, including coal, and to restore policies that support affordable,  
14 reliable energy production for American families and industry;

15 (5) President Trump's National Energy Emergency directives recognize that:

16 (A) Coal, natural gas, and other domestic fossil energy resources are central to national  
17 security, grid reliability, and economic competitiveness; and

18 (B) West Virginia's abundant coal and natural-gas resources provide the foundation of  
19 dispatchable generation needed to maintain year-round reliability, economic competitiveness, and  
20 protection from external market disruptions;

21 (6) President Trump, through his National Energy Dominance Council and the federal  
22 Environmental Protection Agency, is revamping all policies and regulations impacting coal-fired  
23 electric generators so they can run more efficiently, for greater duration at optimum operation, and  
24 thus contribute more to West Virginia's energy output, coal-related employment levels, and overall  
25 economic health;

26 (7) In enacting House Bill 2014 (2025 Regular Session), the Legislature incorporated  
27 provisions in §24-2-19 of this code requiring in-state coal-fired electric generators to file revised  
28 integrated resource plans specifying the necessary plant upgrades and improvements so their  
29 plants can operate well beyond their scheduled retirement dates at higher operating capacity  
30 levels;

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

35 (9) In 2023, the Public Energy Authority was reactivated to provide needed assistance to  
36 the state’s coal and natural gas industries and coal-based electric generation but has not been  
37 given the proper support and resources to achieve its purpose, intent, and desired results.

38 (c) The purpose of this article is to:

39 (1) Restore electric rate stability through the continued utilization of in-state coal  
40 generation;

41 (2) Preserve employment and investment in West Virginia’s coal and natural gas  
42 industries;

43 (3) Coordinate with the Electric Grid Stabilization and Security Fund to sustain dependable  
44 baseload and mid-load generation capacity statewide; and

45 (4) Empower the Public Energy Authority to collect and assemble real-time knowledge of  
46 in-state electric-generating facilities, their continuous output of power, and the upgrades  
47 completed or planned for plants to achieve a higher capacity factor and optimum performance;

48 (d) As used in this article:

49 “Coal-fired facility” means a coal-fired electric-generating facility that is regulated by the  
50 Public Service Commission;

51 “Dispatchable, non-intermittent replacement resource” means a coal-fired or natural gas-  
52 fired electric generating unit that is physically located in West Virginia and capable of continuous  
53 operation regardless of weather conditions or time of day;

54 “PJM” means the PJM Interconnection LLC regional transmission organization; and

55 “Public Energy Authority” means the West Virginia Public Energy Authority created in §5D-  
56 1-4 of this code.

**§24-9-2. Minimum operational utilization requirement for coal-fired generation.**

1           (a) Each coal-fired facility located in West Virginia that supplies regulated utilities shall  
2 strive to achieve a minimum 69 percent utilization rate, measured on a 12-month rolling average.

3           (b) This utilization standard does not apply to natural gas-fired generation, which serves as  
4 a load-following and reliability-balancing resource within the state’s dispatchable fleet.

5           (c) Monthly utilization data for coal-fired facilities shall be reported to the Public Service  
6 Commission and Public Energy Authority in a manner prescribed by rules promulgated by the  
7 commission in conjunction with the Public Energy Authority.

8           (d) A coal-fired facility’s failure to maintain the minimum utilization level constitutes  
9 noncompliance with this article.

10           (e) The commission, in consultation with the Public Energy Authority, shall promulgate  
11 rules within 100 days of the effective date of this section to establish a rate recovery program  
12 based on a utility’s good faith effort to maintain the 69 percent capacity factor program. At a  
13 minimum, the program shall assign a percentage of cost recovery to each range of compliance  
14 comprised of increments of 10 percentage points. Any time a utility is not generating electricity due  
15 to a planned outage for upgrades or necessary maintenance is not factored into the calculation  
16 used to measure compliance and corresponding rate recovery with this section.

**§24-9-3. Protection against premature retirement.**

1           (a) A utility may not retire, deactivate, or otherwise reduce the capacity of any coal-fired or  
2 natural gas-fired electric generating facility without prior approval of the Public Service  
3 Commission and Public Energy Authority. The commission may approve such an action only if it  
4 finds that:

5           (1) The change will not:

6           (A) Increase retail rates;

7           (B) Increase exposure to wholesale market volatility; and

8           (C) Reduce grid reliability or resource adequacy; and

9           (2) An in-state, dispatchable, non-intermittent replacement resource of equal or greater  
10 capacity is already operational and available on the West Virginia grid at the time of the proposed  
11 retirement, deactivation, or reduction.

12           (b) Unauthorized retirement, deactivation, or reduction is a violation of this section that is  
13 enforceable by the commission.

**§24-9-4. Restrictions on intermittent resource investment.**

1           (a) A utility regulated by the Public Service Commission may not include in rate base, seek  
2 regulated rate of return on, nor obtain cost recovery for any capital expenditure associated with  
3 construction, acquisition, expansion, or repowering of any new intermittent generation resource,  
4 including wind or solar.

5           (b) Any utility subject to but not in compliance with §24-9-2 or §24-9-3 of this code is  
6 prohibited from entering into a power purchase agreement for any new intermittent generation  
7 resource, including wind or solar.

8           (c) The commission may not approve cost recovery for intermittent resource generation  
9 unless the utility demonstrates that the investment:

10           (1) Does not increase retail rates;

11           (2) Does not increase reliance on PJM wholesale markets; and

12           (3) Does not reduce seasonal reliability.

13           (d) The burden of proof rests solely on the utility to demonstrate the provisions of  
14 subsection (c) of this section.

**§24-9-5. Rate increases contingent on compliance.**

1           The Public Service Commission may consider or approve any rate increase only as is  
2 consistent with the utility's compliance with §24-9-2 of this code.

**§24-9-6. Electric grid stabilization and security fund coordination.**

1           Notwithstanding any provision of this code to the contrary, moneys from the Electric Grid  
2 Stabilization and Security Fund, created in §5B-2N-1 et seq. of this code, shall be used to stabilize

3 generation costs and to support life-extension projects, fuel-security infrastructure, and grid-  
4 balancing measures, but may not be used for decommissioning or closing operating units.

**§24-9-7. Oversight of PJM market participation and resource planning.**

1 (a) The Public Service Commission and the Public Energy Authority shall evaluate each  
2 PJM capacity auction and ensure West Virginia generating units participate to maximize ratepayer  
3 benefit and limit exposure to market volatility. To the extent allowable by PJM market rules, any  
4 generating unit located in West Virginia with a capacity factor greater than 80% as listed by PJM  
5 on the date of enactment shall be designated an essential reliability resource for purposes of state  
6 oversight and participation.

7 (b) Each regulated utility shall include coal and natural gas utilization, maintenance, and  
8 life-extension analysis in its integrated resource plan.

9 (c) The commission shall promulgate rules or adopt orders to implement this section and  
10 ensure alignment with state reliability and affordability goals.

**§24-9-8. Public utility requirements; operation plans; reporting.**

1 (a) Any coal-fired utility shall perform an operational analysis of each coal-fired unit within  
2 its plan or system of generators to identify feasible and technological upgrades to improve  
3 performance and extend efficient plant life cycle.

4 (b) On or before January 1, 2027, each utility shall submit the findings of its operational  
5 analysis to the Public Service Commission and Public Energy Authority along with the operation  
6 plan required by this section. A utility's integrated resource plan required by §24-2-19 of this code  
7 will satisfy the initial submission requirement of this section. The operational plan shall be updated  
8 annually thereafter.

9 (c) The commission may not consider an application for cost recovery until the Public  
10 Energy Authority accepts the operational plan and determines that it is administratively complete  
11 and authentic.

12 (d) For purposes of fuel and grid resiliency and homeland security, on or before January 1,

13 2027, any utility generating electric power for industrial or residential consumption within the state  
14 shall establish, and thereafter maintain, a minimum 30-day supply of the base fuel used to  
15 generate electricity.

16 (e) Operational plan; minimum requirements. — At a minimum, the operational plan shall  
17 contain the following:

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

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

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

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

25 (5) The status of all upgrades completed, announced, or previously incorporated into the  
26 plan for any previous cycle;

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

30 (7) An up-to-date accounting of all expenditures or costs which have been recovered or for  
31 which an application for recovery has been submitted; and

32 (8) Information on any grants or low interest loans received from any state or federal  
33 agency.

34 (f) The commission shall coordinate with each utility and the Public Energy Authority and  
35 may require utilities to submit any documents, records, or data necessary to ensure accurate  
36 calculation and reporting under this article.

**§24-9-9. Additional duties of Public Energy Authority.**

2           (a) In addition to those specified in §5D-1-1 et seq. of this code, the Public Energy Authority  
3 has the following powers, duties, and responsibilities to ensure electric grid stability and homeland  
4 security:

5           (1) Meet with every public utility operating within this state to:

6           (A) Ascertain the general condition of each plant;

7           (B) Ascertain implementation of the operational plan;

8           (C) Consult with the plant operator to solicit any information required to verify progress  
9 completed on the most recently approved operational plan; and

10           (D) Verify the 30-day base fuel supply as required by §24-9-8 of this code; and

11           (2) At least annually, submit a report of its inspection findings and overall condition of public  
12 utilities operating within the state to the Department of Homeland Security's Division of  
13 Emergency Management, the Public Service Commission, and the Joint Committee on  
14 Government and Finance.

15           (b) Before any public utility publicly announces the retirement of a coal-fired unit, proposed  
16 shutdown of a coal-fired unit, closure of a plant, or proposed sale of a plant to another operator, the  
17 plant operator or public utility shall:

18           (1) Provide notice of the impending action to the Public Energy Authority, Department of  
19 Homeland Security's Division of Emergency Management, Public Service Commission, and Joint  
20 Committee on Government and Finance; and

21           (2) Receive approval for the impending action from the Public Energy Authority and Public  
22 Service Commission.

23           (c) The provisions of subsection (b) of this section do not apply where a plant would require  
24 emergency deenergization or shutdown for imminent danger or public safety.

**§24-9-10. Implementation.**

1           The Public Service Commission, in consultation with the Public Energy Authority, shall  
2 issue such general orders, directives, and requirements as are necessary to implement and

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- 3 enforce the provisions of this article. The commission may require utilities to file data, reports,
- 4 plans, or other information as necessary to ensure compliance with this article.