

HB 103

FILED

2009 JUN 17 PM 4: 32

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST EXTRAORDINARY SESSION, 2009



**ENROLLED**

**House Bill No. 103**

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]



Passed June 2, 2009

In Effect July 1, 2009

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(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)  
[BY REQUEST OF THE EXECUTIVE]

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[Passed June 2, 2009; in effect July 1, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §24-2F-1, §24-2F-2, §24-2F-3, §24-2F-4, §24-2F-5, §24-2F-6, §24-2F-7, §24-2F-8, §24-2F-9, §24-2F-10, §24-2F-11 and §24-2F-12, all relating to an alternative and renewable energy portfolio standard; setting forth legislative findings; defining terms; establishing standards for the sale of electricity generated from alternative and renewable energy resources; providing for compliance assessments; creating a system of tradable alternative and renewable energy resource credits; providing for the awarding of credits based upon electricity generated or purchased from alternative and renewable energy resource facilities; providing for the awarding of credits for certain greenhouse emissions reduction and offset projects; providing for the awarding of credits for certain energy efficiency and demand-side energy initiative projects; requiring application to the Public Service Commission for approval of alternative and renewable energy portfolio standard compliance plans; setting forth minimum requirements for compliance plan applications; requiring Public Service Commission approval of compliance plan applications; requiring annual progress reports; providing for incentive rate

making for investments in new alternative and renewable energy resource facilities in West Virginia; requiring the Public Service Commission to adopt certain net metering and interconnection rules and standards; authorizing interagency agreements; requiring an ongoing assessment of alternative and renewable energy resources in West Virginia; requiring Public Service Commission to consider adopting portfolio standards for certain electric cooperatives and other electric facilities or utilities; requiring Public Service Commission to consider extending alternative and renewable resource credits to electric distribution companies or electric generation suppliers other than electric utilities; establishing the Alternative and Renewable Energy Resources Research Fund; providing for the awarding of matching grants for certain research projects; and authorizing the Public Service Commission to promulgate rules.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §24-2F-1, §24-2F-2, §24-2F-3, §24-2F-4, §24-2F-5, §24-2F-6, §24-2F-7, §24-2F-8, §24-2F-9, §24-2F-10, §24-2F-11 and §24-2F-12, all to read as follows:

**ARTICLE 2F. ALTERNATIVE AND RENEWABLE  
ENERGY PORTFOLIO STANDARD.**

**§24-2F-1. Short title.**

- 1 This article may be known and cited as the Alternative
- 2 and Renewable Energy Portfolio Act.

**§24-2F-2. Legislative findings.**

- 1 The Legislature finds that:

2 (1) West Virginia has served the nation for many years as  
3 a reliable source of electrical power;

4 (2) The nation is on a rapid course of action to produce  
5 electrical power with an ever decreasing amount of  
6 emissions;

7 (3) To continue lowering the emissions associated with  
8 electrical production, and to expand the state's economic  
9 base, West Virginia should encourage the development of  
10 more efficient, lower-emitting and reasonably priced  
11 alternative and renewable energy resources;

12 (4) The development of a robust and diverse portfolio of  
13 electric-generating capacity is needed for West Virginia to  
14 continue its success in attracting new businesses and jobs.  
15 This portfolio must include the use of alternative and  
16 renewable energy resources at new and existing facilities;

17 (5) West Virginia has considerable natural resources that  
18 could support the development of alternative and renewable  
19 energy resource facilities at a reasonable price;

20 (6) Alternative and renewable energy resources can be  
21 utilized now to meet state and federal environmental  
22 standards, including those reasonably anticipated to be  
23 mandated in the future; and

24 (7) It is in the public interest for the state to encourage the  
25 construction of alternative and renewable energy resource  
26 facilities that increase the capacity to provide for current and  
27 anticipated electric energy demand at a reasonable price.

#### **§24-2F-3. Definitions.**

1 Unless the context clearly requires a different meaning,  
2 as used in this article:

3 (1) “Advanced coal technology” means a technology that  
4 is used in a new or existing energy generating facility to  
5 reduce airborne carbon emissions associated with the  
6 combustion or use of coal and includes, but is not limited to,  
7 carbon dioxide capture and sequestration technology,  
8 supercritical technology, ultrasupercritical technology and  
9 pressurized fluidized bed technology.

10 (2) “Alternative and renewable energy portfolio standard”  
11 or “portfolio standard” means a requirement in any given  
12 year that requires an electric utility to own credits in an  
13 amount equal to a certain percentage of electric energy sold  
14 in the preceding calendar year by the electric utility to retail  
15 customers in this state.

16 (3) “Alternative energy resources” means any of the  
17 following resources, methods or technologies for the  
18 production or generation of electricity:

19 (A) Advanced coal technology;

20 (B) Coal bed methane;

21 (C) Natural gas;

22 (D) Fuel produced by a coal gasification or liquefaction  
23 facility;

24 (E) Synthetic gas;

25 (F) Integrated gasification combined cycle technologies;

26 (G) Waste coal;

27 (H) Tire-derived fuel;

28 (I) Pumped storage hydroelectric projects;

29 (J) Recycled energy, which means useful thermal,  
30 mechanical or electrical energy produced from:(i) Exhaust  
31 heat from any commercial or industrial process; (ii) waste  
32 gas, waste fuel or other forms of energy that would otherwise  
33 be flared, incinerated, disposed of or vented; and (iii)  
34 electricity or equivalent mechanical energy extracted from a  
35 pressure drop in any gas, excluding any pressure drop to a  
36 condenser that subsequently vents the resulting heat; and

37 (K) Any other resource, method, project or technology  
38 certified as an alternative energy resource by the Public  
39 Service Commission.

40 (4)“Alternative and renewable energy resource credit” or  
41 “credit” means a tradable instrument that is used to establish,  
42 verify and monitor the generation of electricity from  
43 alternative and renewable energy resource facilities, energy  
44 efficiency or demand-side energy initiative projects or  
45 greenhouse gas emission reduction or offset projects.

46 (5)“Alternative energy resource facility” means a facility  
47 or equipment that generates electricity from alternative  
48 energy resources.

49 (6) “Commission” or “Public Service Commission”  
50 means the Public Service Commission of West Virginia as  
51 continued pursuant to section three, article one of this  
52 chapter.

53 (7) “Customer-generator” means an electric retail  
54 customer who owns and operates a customer-sited generation  
55 project utilizing an alternative or renewable energy resource  
56 or a net metering system in this state.

57       (8) “Electric utility” means any electric distribution  
58 company or electric generation supplier that sells electricity  
59 to retail customers in this state. Unless specifically provided  
60 for otherwise, for the purposes of this article, the term  
61 “electric utility” may not include rural electric cooperatives,  
62 municipally-owned electric facilities or utilities serving less  
63 than thirty thousand residential electric customers in West  
64 Virginia.

65       (9) “Energy efficiency or demand-side energy initiative  
66 project” means a project in this state that promotes customer  
67 energy efficiency or the management of customer  
68 consumption of electricity through the implementation of:

69       (A) Energy efficiency technologies, equipment,  
70 management practices or other strategies utilized by  
71 residential, commercial, industrial, institutional or  
72 government customers that reduce electricity consumption by  
73 those customers;

74       (B) Load management or demand response technologies,  
75 equipment, management practices, interruptible or curtailable  
76 tariffs, energy storage devices or other strategies in  
77 residential, commercial, industrial, institutional and  
78 government customers that shift electric load from periods of  
79 higher demand to periods of lower demand;

80       (C) Industrial by-product technologies consisting of the  
81 use of a by-product from an industrial process, including, but  
82 not limited to, the reuse of energy from exhaust gases or  
83 other manufacturing by-products that can be used in the  
84 direct production of electricity at the customer’s facility;

85       (D) Customer-sited generation, demand-response, energy  
86 efficiency or peak demand reduction capabilities, whether  
87 new or existing, that the customer commits for integration

88 into the electric utility's demand-response, energy efficiency  
89 or peak demand reduction programs; or

90 (E) Infrastructure and modernization projects that help  
91 promote energy efficiency, reduce energy losses or shift load  
92 from periods of higher demand to periods of lower demand,  
93 including the modernization of metering and communications  
94 (also known as "smart grid"), distribution automation, energy  
95 storage, distributed energy resources and investments to  
96 promote the electrification of transportation.

97 (10) "Greenhouse gas emission reduction or offset  
98 project" means a project to reduce or offset greenhouse gas  
99 emissions from sources in this state other than the electric  
100 utility's own generating and energy delivery operations.  
101 Greenhouse gas emission reduction or offset projects include,  
102 but are not limited to:

103 (A) Methane capture and destruction from landfills, coal  
104 mines or farms;

105 (B) Forestation, afforestation or reforestation; and

106 (C) Nitrous oxide or carbon dioxide sequestration  
107 through reduced fertilizer use or no-till farming.

108 (11) "Net metering" means measuring the difference  
109 between electricity supplied by an electric utility and  
110 electricity generated from an alternative or renewable energy  
111 resource facility owned or operated by an electric retail  
112 customer when any portion of the electricity generated from  
113 the alternative or renewable energy resource facility is used  
114 to offset part or all of the electric retail customer's  
115 requirements for electricity.

116 (12) "Reclaimed surface mine" means a surface mine, as  
117 that term is defined in section three, article three, chapter

118 twenty-two of this code, that is reclaimed or is being  
119 reclaimed in accordance with state or federal law.

120 (13) "Renewable energy resource" means any of the  
121 following resources, methods, projects or technologies for the  
122 production or generation of electricity:

123 (A) Solar photovoltaic or other solar electric energy;

124 (B) Solar thermal energy;

125 (C) Wind power;

126 (D) Run of river hydropower;

127 (E) Geothermal energy, which means a technology by  
128 which electricity is produced by extracting hot water or steam  
129 from geothermal reserves in the earth's crust to power steam  
130 turbines that drive generators to produce electricity;

131 (F) Biomass energy, which means a technology by which  
132 electricity is produced from a nonhazardous organic material  
133 that is available on a renewable or recurring basis, including  
134 pulp mill sludge;

135 (G) Biologically derived fuel including methane gas,  
136 ethanol not produced from corn, or biodiesel fuel;

137 (H) Fuel cell technology, which means any  
138 electrochemical device that converts chemical energy in a  
139 hydrogen-rich fuel directly into electricity, heat and water  
140 without combustion; and

141 (I) Any other resource, method, project or technology  
142 certified by the commission as a renewable energy resource.

143 (14) "Renewable energy resource facility" means a  
144 facility or equipment that generates electricity from  
145 renewable energy resources.

146 (15) "Waste coal" means a technology by which  
147 electricity is produced by the combustion of the by-product,  
148 waste or residue created from processing coal (such as gob).

**§24-2F-4. Awarding of alternative and renewable energy  
resource credits.**

1 (a) *Credits established.* -- The Public Service  
2 Commission shall establish a system of tradable credits to  
3 establish, verify and monitor the generation and sale of  
4 electricity generated from alternative and renewable energy  
5 resource facilities. The credits may be traded, sold or used to  
6 meet the portfolio standards established in section five of this  
7 article.

8 (b) *Awarding of credits.* -- Credits shall be awarded as  
9 follows:

10 (1) An electric utility shall be awarded one credit for  
11 each megawatt hour of electricity generated or purchased  
12 from an alternative energy resource facility located within the  
13 geographical boundaries of this state or located outside of the  
14 geographical boundaries of this state but within the service  
15 territory of a regional transmission organization, as that term  
16 is defined in 18 C.F.R. §35.34, that manages the transmission  
17 system in any part of this state;

18 (2) An electric utility shall be awarded two credits for  
19 each megawatt hour of electricity generated or purchased  
20 from a renewable energy resource facility located within the  
21 geographical boundaries of this state or located outside of the  
22 geographical boundaries of this state but within the service

23 territory of a regional transmission organization, as that term  
24 is defined in 18 C.F.R. §35.34, that manages the transmission  
25 system in any part of this state;

26 (3) An electric utility shall be awarded three credits for  
27 each megawatt hour of electricity generated or purchased  
28 from a renewable energy resource facility located within the  
29 geographical boundaries of this state if the renewable energy  
30 resource facility is sited upon a reclaimed surface mine; and

31 (4) A customer-generator shall be awarded one credit for  
32 each megawatt hour of electricity generated from an  
33 alternative energy resource facility and shall be awarded two  
34 credits for each megawatt hour of electricity generated from  
35 a renewable energy resource facility.

36 (c) *Acquiring of credits permitted.* --

37 (1) An electric utility may meet the alternative and  
38 renewable energy portfolio standards set forth in this article  
39 by purchasing additional credits. Credits may be bought or  
40 sold by an electric utility or customer-generator or banked  
41 and used to meet an alternative and renewable energy  
42 portfolio standard requirement in a subsequent year.

43 (2) Each credit transaction shall be reported by the  
44 selling entity to the Public Service Commission on a form  
45 provided by the commission.

46 (3) As soon as reasonably possible after the effective  
47 date of this section, the commission shall establish a registry  
48 of data that shall track credit transactions and shall list the  
49 following information for each transaction: (i) The parties to  
50 the transaction; (ii) the number of credits sold or transferred;  
51 and (iii) the price paid. Information contained in the registry  
52 shall be available to the public.

53           (4) The commission may impose an administrative  
54 transaction fee on a credit transaction in an amount not to  
55 exceed the actual direct cost of processing the transaction by  
56 the commission.

57           (d) *Credits for certain emission reduction or offset*  
58 *projects. —*

59           (1) The commission may award credits to an electric  
60 utility for greenhouse gas emission reduction or offset  
61 projects. For each ton of carbon dioxide equivalent reduced  
62 or offset as a result of an approved greenhouse gas emission  
63 reduction project, the commission shall award an electric  
64 utility one credit: *Provided*, That the emissions reductions  
65 and offsets are verifiable and certified in accordance with  
66 rules promulgated by the commission: *Provided, however*,  
67 That the commission has previously approved the greenhouse  
68 gas emission reduction and offset project for credit in  
69 accordance with section six of this article.

70           (2) The commission shall consult and coordinate with  
71 the Secretary of the Department of Environmental Protection  
72 to verify and certify greenhouse gas emission reduction or  
73 offset projects. The Secretary of the Department of  
74 Environmental Protection shall provide assistance and  
75 information to the Public Service Commission and may enter  
76 into interagency agreements with the commission to  
77 effectuate the purposes of this subsection.

78           (3) Notwithstanding the provisions of this subsection, an  
79 electric utility may not be awarded credits for a greenhouse  
80 gas emission reduction or offset project undertaken pursuant  
81 to any obligation under any other state law, policy or  
82 regulation.

83           (e) *Credits for certain energy efficiency and demand-*  
84 *side energy initiative projects. --*

85 (1) The commission may award credits to an electric  
86 utility for investments in energy efficiency and demand-side  
87 energy initiative projects. For each megawatt hour of  
88 electricity conserved as a result of an approved energy  
89 efficiency or demand-side energy initiative project, the  
90 commission shall award one credit: *Provided*, That the  
91 amount of electricity claimed to be conserved is verifiable  
92 and certified in accordance with rules promulgated by the  
93 commission: *Provided, however*, That the commission has  
94 approved the energy efficiency or demand-side energy  
95 initiative project for credit in accordance with section six of  
96 this article.

97 (2) Notwithstanding the provisions of this subsection, an  
98 electric utility may not be awarded credit for an energy  
99 efficiency or demand-side energy initiative project  
100 undertaken pursuant to any obligation under any other state  
101 or federal law, policy or regulation.

**§24-2F-5. Alternative and renewable energy portfolio standard;  
compliance assessments.**

1 (a) *General rule.* -- Each electric utility doing business in  
2 this state shall be required to meet the alternative and  
3 renewable energy portfolio standards set forth in this section.  
4 In order to meet these standards, an electric utility each year  
5 shall own an amount of credits equal to a certain percentage  
6 of electricity, as set forth in subsections (c) and (d) of this  
7 section, sold by the electric utility in the preceding year to  
8 retail customers in West Virginia.

9 (b) *Counting of credits towards compliance.* — For the  
10 purpose of determining an electric utility's compliance with  
11 the alternative and renewable energy portfolio standards set  
12 forth in subsections (c) and (d) of this section, each credit  
13 shall equal one megawatt hour of electricity sold by an

14 electric utility in the preceding year to retail customers in  
15 West Virginia. Furthermore, a credit may not be used more  
16 than once to meet the requirements of this section. No more  
17 than ten percent of the credits used each year to meet the  
18 compliance requirements of this section may be credits  
19 acquired from the generation or purchase of electricity  
20 generated from natural gas.

21 (c) *Twenty-five percent by 2025.* -- On and after January  
22 1, 2025, an electric utility shall each year own credits in an  
23 amount equal to at least twenty-five percent of the electric  
24 energy sold by the electric utility to retail customers in this  
25 state in the preceding calendar year.

26 (d) *Interim portfolio standards.* --

27 (1) For the period beginning January 1, 2015, and ending  
28 December 31, 2019, an electric utility shall each year own  
29 credits in an amount equal to at least ten percent of the  
30 electric energy sold by the electric utility to retail customers  
31 in this state in the preceding calendar year; and

32 (2) For the period beginning January 1, 2020, and ending  
33 December 31, 2024, an electric utility shall each year own  
34 credits in an amount equal to at least fifteen percent of the  
35 electric energy sold by the electric utility to retail customers  
36 in this state in the preceding calendar year.

37 (e) *Double-counting of credits prohibited.* -- Any portion  
38 of electricity generated from an alternative or renewable  
39 energy resource facility that is used to meet another state's  
40 alternative energy, advanced energy, renewable energy or  
41 similar energy portfolio standard may not be used to meet the  
42 requirements of this section. An electric utility that is subject  
43 to an alternative energy, advanced energy, renewable energy  
44 or similar energy portfolio standard in any other state shall

45 list, in the alternative and renewable energy portfolio  
46 standard compliance plan required under section six of this  
47 article, any such requirements and shall indicate how it  
48 satisfied those requirements. The electric utility shall provide  
49 in the annual progress report required under section six of  
50 this article any additional information required by the  
51 commission to prevent double-counting of credits.

52 (f) *Carryover.* -- An electric utility may apply any credits  
53 that are in excess of the alternative and renewable energy  
54 portfolio standard in any given year to the requirements for  
55 any future year portfolio standard: *Provided,* That the  
56 electric utility determines to the satisfaction of the  
57 commission that such credits were in excess of the portfolio  
58 standard in a given year and that such credits have not  
59 previously been used for compliance with a portfolio  
60 standard.

61 (g) *Compliance assessments.* —

62 (1) On or after January 1, 2015, and each year thereafter,  
63 the commission shall determine whether each electric utility  
64 doing business in this state is in compliance with this section.  
65 If, after notice and a hearing, the commission determines that  
66 an electric utility has failed to comply with an alternative and  
67 renewable energy portfolio standard, the commission shall  
68 impose a compliance assessment on the electric utility which  
69 shall equal at least the lesser of the following:

70 (A) Fifty dollars multiplied by the number of additional  
71 credits that would be needed to meet an alternative and  
72 renewable energy portfolio standard in a given year; or

73 (B) Two hundred percent of the average market value of  
74 credits sold in a given year multiplied by the number of  
75 additional credits needed to meet the alternative and  
76 renewable energy portfolio standard for that year.

77           (2) Compliance assessments collected by the commission  
78 pursuant to this subsection shall be deposited into the  
79 Alternative and Renewable Energy Resources Research Fund  
80 established in section eleven of this article.

81           (h) *Force majeure.* --

82           (1) Upon its own initiative or upon the request of an  
83 electric utility, the commission may modify the portfolio  
84 standard requirements of an electric utility in a given year or  
85 years or recommend to the Legislature that the portfolio  
86 standard requirements be eliminated if the commission  
87 determines that alternative or renewable energy resources are  
88 not reasonably available in the marketplace in sufficient  
89 quantities for the electric utility to meet the requirements of  
90 this article.

91           (2) In making its determination, the commission shall  
92 consider whether the electric utility made good faith efforts  
93 to acquire sufficient credits to comply with the requirements  
94 of this article. Such good faith efforts shall include, but are  
95 not limited to, banking excess credits, seeking credits through  
96 competitive solicitations and seeking to acquire credits  
97 through long-term contracts. The commission shall assess  
98 the availability of credits on the open market. The  
99 commission may also require that the electric utility solicit  
100 credits before a request for modification may be granted.

101           (3) If an electric utility requests a modification of its  
102 portfolio standard requirements, the commission shall make  
103 a determination as to the request within sixty days.

104           (4) Commission modification of an electric utility's  
105 portfolio standard requirements shall apply only to the  
106 portfolio standard in the year or years modified by the  
107 commission. Commission modification may not

108 automatically reduce an electric utility's alternative and  
109 renewable energy portfolio standard requirements in future  
110 years.

111 (5) If the commission modifies an electric utility's  
112 portfolio standard requirements, the commission may also  
113 require the electric utility to acquire additional credits in  
114 subsequent years equivalent to the requirements reduced by  
115 the commission in accordance with this subsection.

116 (i) Termination - The provisions of this section shall have  
117 no force and effect after June 30, 2026.

**§24-2F-6. Alternative and renewable energy portfolio standard  
compliance plan; application; approval; and  
progress report.**

1 (a) On or before January 1, 2011, each electric utility  
2 subject to the provisions of this article shall prepare an  
3 alternative and renewable energy portfolio standard  
4 compliance plan and shall file an application with the  
5 commission seeking approval of such plan.

6 (b) A portfolio standard compliance plan shall include:

7 (1) Statistics and information concerning the electric  
8 utility's sales to retail customers in West Virginia during the  
9 preceding ten calendar years;

10 (2) A calculation of the electric utility's projected yearly  
11 sales to retail customers for the years 2011-2025;

12 (3) A calculation of the expected number of credits  
13 required to meet the portfolio standards set forth in this  
14 article;

15 (4) An anticipated time line for the development,  
16 purchase or procurement of credits sufficient to meet the  
17 portfolio standards set forth in this article;

18 (5) A nonbinding estimate of the costs to comply with the  
19 portfolio standards set forth in this article;

20 (6) A description of any greenhouse gas emission  
21 reduction or offset projects or energy efficiency and demand-  
22 side energy initiative projects the electric utility proposes to  
23 undertake for credit in accordance with this article;

24 (7) A list of any requirements and a description of how  
25 the electric utility satisfied or will satisfy those requirements  
26 if an electric utility is subject to an alternative energy,  
27 advanced energy, renewable energy or similar energy  
28 portfolio standard in any other state; and

29 (8) Such further information as required by the  
30 commission.

31 (c) Upon the filing of an application for approval of a  
32 portfolio standard compliance plan, and after hearing and  
33 proper notice, the commission may, in its discretion, approve  
34 or disapprove, or approve in part or disapprove in part, the  
35 application: *Provided*, That the commission, after giving  
36 proper notice and receiving no protest within thirty days after  
37 the notice is given, may waive formal hearing on the  
38 application. Notice shall be published as a Class I legal  
39 advertisement in compliance with the provisions of article  
40 three, chapter fifty-nine of this code, and shall be given in a  
41 manner and in such form as may be prescribed by the  
42 commission.

43 (d) The commission shall, following proper notice and  
44 hearing, if any, render a final decision on any application

45 filed pursuant to this section within two hundred seventy  
46 days of the filing of the application.

47 (c) If, and to the extent, the commission determines that  
48 a portfolio standard compliance plan has a reasonable  
49 expectation of achieving the portfolio standard requirements  
50 at a reasonable cost to electric customers in this state, the  
51 commission shall approve the plan. In establishing that the  
52 requisite standard for approval of a portfolio standard  
53 compliance plan is met, the burden of proof shall be upon the  
54 applicant.

55 (f) In the event the commission disapproves of an  
56 application filed pursuant to this section, in whole or in part,  
57 the commission shall specify its reason or reasons for  
58 disapproval. Any portion of the application not approved by  
59 the commission shall be modified and resubmitted by the  
60 applicant.

61 (g) Either upon an application of the electric utility, a  
62 petition by a party or the commission's own motion, a  
63 compliance plan proceeding may be reopened for the purpose  
64 of considering and making, if appropriate, alterations to the  
65 plan.

66 (h) Approval of the compliance plan does not eliminate  
67 the need for an electric utility to otherwise obtain required  
68 approvals, including, but not limited to, certificates to  
69 construct, consent to enter into affiliated contracts and  
70 recovery of compliance costs. Furthermore, nothing in this  
71 article shall be interpreted to alter or amend the existing  
72 power and authority of the commission.

73 (i) Approval of the compliance plan does not relieve an  
74 electric utility from its obligation to pay a compliance  
75 assessment pursuant to the provisions of section five of this

76 article if it fails to comply with the portfolio standards set  
77 forth therein.

78 (j) Within a year of the commission's approval of an  
79 electric utility's compliance plan, and every year thereafter,  
80 the electric utility shall submit to the commission an annual  
81 progress report. The progress report shall include the electric  
82 utility's sales to retail customers in West Virginia during the  
83 previous calendar year; the amount of energy the electric  
84 utility has generated, purchased or procured from alternative  
85 or renewable energy resources; a comparison of the budgeted  
86 and actual costs as compared to the estimated cost of the  
87 portfolio standard compliance plan; any information required  
88 by the commission to prevent the double-counting of credits;  
89 and any further information required by the commission.

90 (k) The commission shall impose a special assessment on  
91 all electric utilities required to file a compliance plan. The  
92 assessments shall be prorated among the covered electric  
93 utilities on the basis of kilowatt hours of retail sales in West  
94 Virginia and shall be due and payable on September 1 of  
95 each year. The amount of revenue collected pursuant to this  
96 subsection may not exceed \$200,000 in the first year  
97 following the effective date of this article and may not exceed  
98 \$100,000 in successive years. The funds generated from the  
99 assessments shall be used exclusively to offset all reasonable  
100 direct and indirect costs incurred by the commission in  
101 administering the provisions of this article.

**§24-2F-7. Cost recovery and rate incentives for electric utility  
investment in alternative and renewable energy  
resources.**

1 (a) An electric utility shall have the right to recover the  
2 costs of complying with the alternative and renewable energy  
3 portfolio standards set forth in this article in a manner

4 prescribed by the commission. Although the commission  
5 may approve costs that exceed the costs of current utility  
6 generation or purchased power, the electric utility has the  
7 burden to demonstrate that the costs are reasonable and  
8 represent the least cost of compliance. Notwithstanding any  
9 provision of this code to the contrary, an electric utility may  
10 not recover in rates the costs of compliance assessments  
11 imposed under this article.

12 (b) Upon a finding that it is in the public interest of this  
13 state, as provided in section one, article one of this chapter,  
14 the commission may authorize incentive rate-making  
15 allowances for electric utility investment in the construction  
16 of new alternative or renewable energy resource facilities in  
17 West Virginia to encourage investments in the use and  
18 development of alternative or renewable energy resource  
19 facilities.

20 (c) The commission shall determine, at such time and in  
21 such proceeding, form and manner as is considered  
22 appropriate by the commission, the extent to which any  
23 electric utility investment qualifies for the incentive rate  
24 making pursuant to this section.

#### **§24-2F-8. Net metering and interconnection standards.**

1 (a) The commission shall adopt a rule requiring that all  
2 electric utilities provide a rebate or discount at fair value, to  
3 be determined by the commission, to customer-generators for  
4 any electricity generation that is delivered to the utility under  
5 a net metering arrangement.

6 (b) The commission shall also consider adopting, by rule,  
7 a requirement that all sellers of electricity to retail customers  
8 in the state, including rural electric cooperatives, municipally  
9 owned electric facilities or utilities serving less than thirty

10 thousand residential electric customers in this state, offer net  
11 metering rebates or discounts to customer-generators.

12 (c) The commission shall institute a general investigation  
13 for the purpose of adopting rules pertaining to net metering  
14 and the interconnection of eligible electric generating  
15 facilities intended to operate in parallel with an electric  
16 utility's system. As part of its investigation, the commission  
17 shall take into consideration rules of other states within the  
18 applicable region of the regional transmission organization,  
19 as that term is defined in 18 C.F.R. §35.34, that manages a  
20 utility's transmission system in any part of this state.  
21 Furthermore, the commission shall consider increasing the  
22 allowed kilowatt capacity for commercial customer-  
23 generators to an amount not to exceed five hundred kilowatts  
24 and for industrial customer-generators to an amount not to  
25 exceed two megawatts. The commission shall further  
26 consider interconnection standards for combined heat and  
27 power.

28 (d) The commission shall promulgate these rules within  
29 twelve months of the effective date of this article.

**§24-2F-9. Interagency agreements; alternative and renewable  
energy resource planning assessment.**

1 (a) *Interagency agreements.* -- The commission may  
2 enter into interagency agreements with the Department of  
3 Environmental Protection and the Division of Energy to carry  
4 out the responsibilities set forth in this article.

5 (b) *Alternative and renewable energy resource planning*  
6 *assessment.* -- The commission, in cooperation with the  
7 Department of Environmental Protection and the Division of  
8 Energy, shall conduct an ongoing alternative and renewable  
9 energy resource planning assessment for this state that shall,

10 at a minimum: (i) Identify current and operating alternative  
11 and renewable energy resource facilities in this state; (ii)  
12 assess the potential to add future generating capacity in this  
13 state from alternative and renewable energy resource  
14 facilities; (iii) assess the conditions of the alternative and  
15 renewable energy resource marketplace, including costs  
16 associated with alternative and renewable energy; (iv)  
17 recommend methods to maintain or increase the relative  
18 competitiveness of the alternative and renewable energy  
19 resource market in this state; and (v) recommend to the  
20 Legislature additional compliance goals for alternative and  
21 renewable energy portfolio standards beyond 2025.

22 The commission shall report the initial results of its  
23 assessment to the Governor, the President of the Senate and  
24 the Speaker of the House of Delegates within three years of  
25 the effective date of this article and shall report the ongoing  
26 results of the assessment on a yearly basis thereafter, except  
27 that on or before January 1, 2012, the commission, in  
28 collaboration with the Public Energy Authority, shall report  
29 the initial results of its assessment to the Joint Committee on  
30 Government and Finance.

**§24-2F-10. Portfolio requirements for rural electric  
cooperatives, municipally owned electric  
facilities or utilities serving less than thirty  
thousand residential electric customers in West  
Virginia; and alternative and renewable energy  
resource credits for nonutility generators.**

1 (a) The commission shall consider adopting, by rule,  
2 alternative and renewable energy portfolio requirements for  
3 rural electric cooperatives, municipally owned electric  
4 facilities or utilities serving less than thirty thousand  
5 residential electric customers in this state. The commission  
6 shall institute a general investigation for the purpose of  
7 adopting such requirements.

8 (b) The commission shall consider extending, by rule, the  
9 awarding of alternative and renewable energy resource  
10 credits in accordance with the provisions of section four of  
11 this article to electric distribution companies or electric  
12 generation suppliers other than electric utilities. As part of its  
13 investigation, the commission shall examine any  
14 modifications to the statutory and regulatory structure  
15 necessary to permit the participation of such non-utility  
16 generators in the system of tradable credits authorized by this  
17 article. If the commission determines that statutory  
18 modifications to this article or other provisions of this code  
19 are necessary to permit such participation, the commission  
20 shall notify the Governor and the Legislature of the findings  
21 of its investigation and proposed legislation necessary to  
22 effectuate its recommendations.

**§24-2F-11. Alternative and renewable energy resources grant program.**

1 (a) There is hereby established in the State Treasury a  
2 special revolving fund to be jointly administered by the  
3 Public Service Commission and the Division of Energy  
4 which shall be designated the "Alternative and Renewable  
5 Energy Resources Research Fund." Moneys in the fund shall  
6 be used to award matching grants for demonstration,  
7 commercialization, research and development projects  
8 relating to alternative and renewable energy resources and  
9 energy efficiency technologies.

10 (b) The fund shall consist of any moneys appropriated by  
11 the Legislature, any compliance assessments collected by the  
12 commission, any gifts, bequests or other contributions to the  
13 fund from private entities or electric customers and any  
14 interest or other return on the moneys in the fund. Any  
15 moneys remaining in the account at the end of a fiscal year,  
16 including accrued interest, do not revert to the General  
17 Revenue Fund and remain in the account.

18 (c) Any donations to the fund collected by an electric  
19 generation supplier or electric distribution company shall be  
20 forwarded to the Public Service Commission and the  
21 commission shall deposit such moneys in the fund.

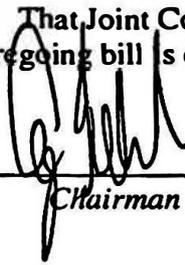
22 (d) The Division of Energy shall provide for the  
23 distribution of moneys from the fund in the form of matching  
24 grants to state institutions of higher education for  
25 demonstration, commercialization, research and development  
26 projects relating to alternative and renewable energy  
27 resources and energy efficiency technologies. The Division  
28 of Energy shall consult with and receive recommendations  
29 from the Public Energy Authority, the Economic  
30 Development Authority and the Department of  
31 Environmental Protection to establish eligibility criteria for  
32 the awarding of grant moneys under this section. The  
33 Division of Energy may update said criteria as necessary to  
34 comply with the requirements of this section.

35 (e) Within two years of the effective date of this section,  
36 and each year thereafter, the Division of Energy shall file a  
37 report with the Governor, the President of the Senate and the  
38 Speaker of the House of Delegates containing, at a minimum:  
39 (i) A description of all actions taken by the Division of  
40 Energy pursuant to this section; (ii) an accounting of total  
41 deposits into and expenditures from the fund during the  
42 previous twelve months; and (iii) a description of any  
43 projects that received a distribution from the fund during the  
44 preceding twelve months, including the projects' objectives,  
45 current status and results, if any.

#### **§24-2F-12. Rule-making authority.**

1 The commission shall promulgate rules in accordance  
2 with section seven, article one, chapter twenty-four of this  
3 code to effectuate the purposes of this article.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

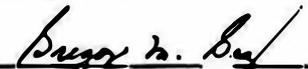
  
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Chairman Senate Committee

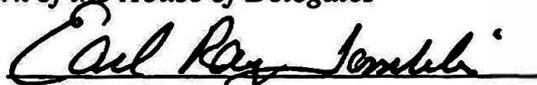
  
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Chairman House Committee

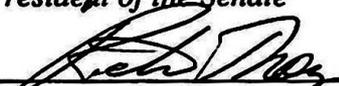
Originating in the House.

In effect July 1, 2009.

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 17<sup>th</sup>  
day of June, 2009.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

JUN 16 2009

Time 9:10am