

HB 408

FILED

2009 DEC -7 PM 3:45

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FOURTH EXTRAORDINARY SESSION, 2009



# ENROLLED

## House Bill No. 408

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)



Passed November 19, 2009

In Effect Ninety Days From Passage

**E N R O L L E D**

**H. B. 408**

FILED

2009 DEC -7 PM 3:45

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

---

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

---

[Passed November 19, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §24-2F-3, §24-2F-4, §24-2F-5 and §24-2F-9 of the Code of West Virginia, 1931, as amended, all relating to the Alternative and Renewable Energy Portfolio Act; limiting the use of supercritical technology to qualify as advanced coal technology for the purpose of determining credits; allowing the use of advanced supercritical technology to qualify as advanced coal technology for the purpose of determining credits; allowing the Public Service Commission to certify additional advanced coal technologies; allowing for the utilization of an independent and industry-recognized alternative and renewable energy resource credit tracking system; exempting certain credit pricing data from disclosure under the freedom of information act; allowing for the utilization of an independent and industry-recognized entity to verify and certify greenhouse gas emission reduction or offset projects; allowing credits for certain energy efficiency and demand-side projects undertaken pursuant to federal requirements; and requiring a study of the economic impacts of the Alternative and Renewable Energy Portfolio Act on coal and coal mining.

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

That §24-2F-3, §24-2F-4, §24-2F-5 and §24-2F-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

**§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  
4    that 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, advanced supercritical technology  
9    as that technology is determined by the Public Service  
10   Commission, ultrasupercritical technology and pressurized  
11   fluidized bed technology and any other resource, method,  
12   project or technology certified by the commission as  
13   advanced coal technology.

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

20           (3) “Alternative energy resources” means any of the  
21   following resources, methods or technologies for the  
22   production or generation of electricity:

- 23 (A) Advanced coal technology;
- 24 (B) Coal bed methane;
- 25 (C) Natural gas;
- 26 (D) Fuel produced by a coal gasification or liquefaction  
27 facility;
- 28 (E) Synthetic gas;
- 29 (F) Integrated gasification combined cycle technologies;
- 30 (G) Waste coal;
- 31 (H) Tire-derived fuel;
- 32 (I) Pumped storage hydroelectric projects;
- 33 (J) Recycled energy, which means useful thermal,  
34 mechanical or electrical energy produced from: (i) Exhaust  
35 heat from any commercial or industrial process; (ii) waste  
36 gas, waste fuel or other forms of energy that would otherwise  
37 be flared, incinerated, disposed of or vented; and (iii)  
38 electricity or equivalent mechanical energy extracted from a  
39 pressure drop in any gas, excluding any pressure drop to a  
40 condenser that subsequently vents the resulting heat; and
- 41 (K) Any other resource, method, project or technology  
42 certified as an alternative energy resource by the Public  
43 Service Commission.
- 44 (4) "Alternative and renewable energy resource credit"  
45 or "credit" means a tradable instrument that is used to  
46 establish, verify and monitor the generation of electricity  
47 from alternative and renewable energy resource facilities,

48 energy efficiency or demand-side energy initiative projects or  
49 greenhouse gas emission reduction or offset projects.

50 (5) "Alternative energy resource facility" means a  
51 facility or equipment that generates electricity from  
52 alternative energy resources.

53 (6) "Commission" or "Public Service Commission"  
54 means the Public Service Commission of West Virginia as  
55 continued pursuant to section three, article one of this  
56 chapter.

57 (7) "Customer-generator" means an electric retail  
58 customer who owns and operates a customer-sited generation  
59 project utilizing an alternative or renewable energy resource  
60 or a net metering system in this state.

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

69 (9) "Energy efficiency or demand-side energy initiative  
70 project" means a project in this state that promotes customer  
71 energy efficiency or the management of customer  
72 consumption of electricity through the implementation of:

73 (A) Energy efficiency technologies, equipment,  
74 management practices or other strategies utilized by  
75 residential, commercial, industrial, institutional or  
76 government customers that reduce electricity consumption by  
77 those customers;

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

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

89 (D) Customer-sited generation, demand-response,  
90 energy efficiency or peak demand reduction capabilities,  
91 whether new or existing, that the customer commits for  
92 integration into the electric utility's demand-response, energy  
93 efficiency or peak demand reduction programs; or

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

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

107 (A) Methane capture and destruction from landfills, coal  
108 mines or farms;

109            (B) Forestation, afforestation or reforestation; and

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

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

120            (12) "Reclaimed surface mine" means a surface mine, as  
121 that term is defined in section three, article three, chapter  
122 twenty-two of this code, that is reclaimed or is being  
123 reclaimed in accordance with state or federal law.

124            (13) "Renewable energy resource" means any of the  
125 following resources, methods, projects or technologies for the  
126 production or generation of electricity:

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

128            (B) Solar thermal energy;

129            (C) Wind power;

130            (D) Run of river hydropower;

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

135 (F) Biomass energy, which means a technology by  
136 which electricity is produced from a nonhazardous organic  
137 material that is available on a renewable or recurring basis,  
138 including pulp mill sludge;

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

141 (H) Fuel cell technology, which means any  
142 electrochemical device that converts chemical energy in a  
143 hydrogen-rich fuel directly into electricity, heat and water  
144 without combustion; and

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

147 (14) "Renewable energy resource facility" means a  
148 facility or equipment that generates electricity from  
149 renewable energy resources.

150 (15) "Waste coal" means a technology by which  
151 electricity is produced by the combustion of the by-product,  
152 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, or use an independent and industry-recognized  
49 system, that shall track credit transactions and shall list the  
50 following information for each transaction: (i) The parties to  
51 the transaction; (ii) the number of credits sold or transferred;  
52 and (iii) the price paid. Information contained in the registry  
53 shall be available to the public, except that pricing  
54 information concerning individual transactions shall be  
55 confidential and exempt from disclosure under subdivision  
56 (5), subsection (a), section four, article one, chapter twenty-  
57 nine-b of this code.

58 (4) The commission may impose an administrative  
59 transaction fee on a credit transaction in an amount not to  
60 exceed the actual direct cost of processing the transaction by  
61 the commission.

62 (d) *Credits for certain emission reduction or offset*  
63 *projects. --*

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

73 gas emission reduction and offset project for credit in  
74 accordance with section six of this article.

75 (2) The commission shall consult and coordinate with  
76 the Secretary of the Department of Environmental Protection  
77 or an independent and industry-recognized entity to verify  
78 and certify greenhouse gas emission reduction or offset  
79 projects. The Secretary of the Department of Environmental  
80 Protection shall provide assistance and information to the  
81 Public Service Commission and may enter into interagency  
82 agreements with the commission to effectuate the purposes  
83 of this subsection.

84 (3) Notwithstanding the provisions of this subsection, an  
85 electric utility may not be awarded credits for a greenhouse  
86 gas emission reduction or offset project undertaken pursuant  
87 to any obligation under any other state law, policy or  
88 regulation.

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

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

103 (2) Notwithstanding the provisions of this subsection, an  
104 electric utility may not be awarded credit for an energy

105 efficiency or demand-side energy initiative project  
106 undertaken pursuant to any obligation under any other state  
107 law, policy or regulation.

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

1 (a) *General rule.* -- Each electric utility doing business  
2 in 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. No more than ten percent of the  
21 credits used each year to meet the compliance requirements  
22 of this section may be credits acquired from the generation or  
23 purchase of electricity generated from supercritical  
24 technology.

25 (c) *Twenty-five percent by 2025.* -- On and after January  
26 1, 2025, an electric utility shall each year own credits in an  
27 amount equal to at least twenty-five percent of the electric

28 energy sold by the electric utility to retail customers in this  
29 state in the preceding calendar year.

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

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

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

41 (e) *Double-counting of credits prohibited.* -- Any portion  
42 of electricity generated from an alternative or renewable  
43 energy resource facility that is used to meet another state's  
44 alternative energy, advanced energy, renewable energy or  
45 similar energy portfolio standard may not be used to meet the  
46 requirements of this section. An electric utility that is subject  
47 to an alternative energy, advanced energy, renewable energy  
48 or similar energy portfolio standard in any other state shall  
49 list, in the alternative and renewable energy portfolio  
50 standard compliance plan required under section six of this  
51 article, any such requirements and shall indicate how it  
52 satisfied those requirements. The electric utility shall provide  
53 in the annual progress report required under section six of  
54 this article any additional information required by the  
55 commission to prevent double-counting of credits.

56 (f) *Carryover.* -- An electric utility may apply any  
57 credits that are in excess of the alternative and renewable  
58 energy portfolio standard in any given year to the  
59 requirements for any future year portfolio standard:

60 *Provided*, That the electric utility determines to the  
61 satisfaction of the commission that such credits were in  
62 excess of the portfolio standard in a given year and that such  
63 credits have not previously been used for compliance with a  
64 portfolio standard.

65 (g) *Compliance assessments.* --

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

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

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

81 (2) Compliance assessments collected by the  
82 commission pursuant to this subsection shall be deposited  
83 into the Alternative and Renewable Energy Resources  
84 Research Fund established in section eleven of this article.

85 (h) *Force majeure.* --

86 (1) Upon its own initiative or upon the request of an  
87 electric utility, the commission may modify the portfolio  
88 standard requirements of an electric utility in a given year or  
89 years or recommend to the Legislature that the portfolio

90 standard requirements be eliminated if the commission  
91 determines that alternative or renewable energy resources are  
92 not reasonably available in the marketplace in sufficient  
93 quantities for the electric utility to meet the requirements of  
94 this article.

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

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

108 (4) Commission modification of an electric utility's  
109 portfolio standard requirements shall apply only to the  
110 portfolio standard in the year or years modified by the  
111 commission. Commission modification may not  
112 automatically reduce an electric utility's alternative and  
113 renewable energy portfolio standard requirements in future  
114 years.

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

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

**§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) assess  
17 the economic impacts of this article on coal and coal mining  
18 in West Virginia; (v) recommend methods to maintain or  
19 increase the relative competitiveness of the alternative and  
20 renewable energy resource market in this state; and (vi)  
21 recommend to the Legislature additional compliance goals  
22 for alternative and renewable energy portfolio standards  
23 beyond 2025.

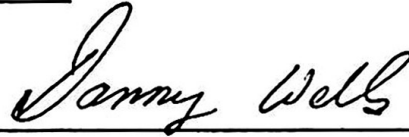
24           The commission shall report the initial results of its  
25 assessment to the Governor, the President of the Senate and  
26 the Speaker of the House of Delegates within three years of  
27 the effective date of this article and shall report the ongoing  
28 results of the assessment on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



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



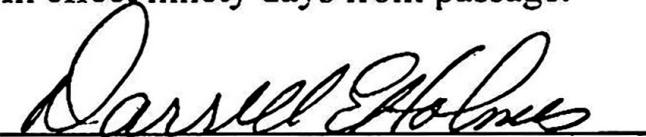
Chairman Senate Committee



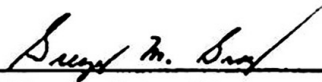
Chairman House Committee

Originating in the House.

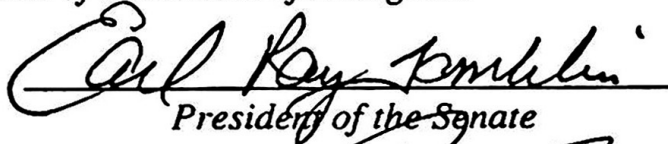
In effect ninety days from passage.



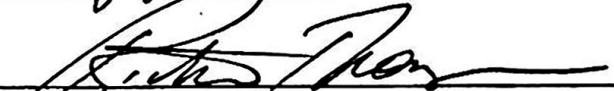
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 7<sup>th</sup> day of December, 2009.



Governor

PRESENTED TO THE  
GOVERNOR

NOV 25 2009

Time 10:30

*DM*