

1 **H. B. 2401**

2  
3 (By Delegates Fleischauer, Hatfield, Moore  
4 and Wells)

5  
6 [Introduced January 12, 2011; referred to the  
7 Committee on Energy, Industry and Labor, Economic  
8 Development and Small Business then the Judiciary.]  
9

10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §22-29-1, §22-29-2,  
12 §22-29-3 and §22-29-4, all relating to the phasing in of  
13 requirements for electric providers to add renewable energy  
14 systems to help protect and sustain the environment; providing  
15 definitions; requiring the establishment of portfolio  
16 standards for each provider and promulgation of enforcement  
17 rules by the Public Service Commission; and providing a  
18 severability clause.

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

20 That the Code of West Virginia, 1931, as amended, be amended  
21 by adding thereto a new article, designated §22-29-1, §22-29-2,  
22 §22-29-3 and §22-29-4, all to read as follows:

23 **ARTICLE 29. RENEWABLE PORTFOLIO STANDARDS SUSTAINABLE ENERGY ACT.**

24 **§22-29-1. Definitions.**

25 As used in this article:

1 (1) "Biomass" means organic matter that is available on a  
2 renewable basis. Biomass includes:

3 (a) Organic material from a plant that is planted exclusively  
4 for the purpose of electricity production. If the plant is  
5 produced on land that was in crop production on December 31, 2011;  
6 such plant is produced on land that is protected by the federal  
7 Conservation Reserve Program (CRP); and that crop production on  
8 Conservation Reserve Program lands does not prevent achievement of  
9 the water quality protection, soil erosion prevention, or wildlife  
10 habitat enhancement purposes for which the land was primarily set  
11 aside;

12 (b) Any solid, nonhazardous cellulosic waste material that is  
13 segregated from other waste materials, and which is derived from  
14 waste pallets, crates and dunnage or landscape or right-of-way tree  
15 trimmings, but not including municipal solid waste or post-consumer  
16 wastepaper;

17 (c) Any solid, nonhazardous cellulosic waste materials that is  
18 segregated from other waste materials, and which is derived from  
19 agriculture sources, including orchard tree crops, vineyards,  
20 grains, legumes, sugar and other crop byproducts or residues;

21 (d) Landfill methane; and

22 (e) Animal wastes.

23 Biomass does not include: Forestry resources; agricultural  
24 resource waste material necessary for maintaining soil fertility or

1 for preventing erosion; unsegregated solid waste; or paper that is  
2 commonly recycled.

3 (2) "Commission" means the Public Service Commission.

4 (3) "Provider of electric service" and "provider" means any  
5 person or entity that is in the business of selling electricity to  
6 retail customers in this state, regardless of whether the person or  
7 entity is otherwise subject to regulation by the commission.

8 "Provider" does not include the state or a subdivision of the  
9 state, rural electric cooperative, or a cooperative association,  
10 nonprofit corporation or association, or a provider of electric  
11 service which is declared to be a public utility and which provides  
12 service only to its members.

13 (4) "Renewable energy" means biomass, geothermal energy, solar  
14 energy, wind and low impact, small hydroelectric and micro hydro  
15 projects that produce less than 20 megawatts of electricity.

16 Renewable energy does not include coal, natural gas, oil,  
17 propane or any other fossil fuel or nuclear energy.

18 (5) "Renewable energy system" means a solar energy system that  
19 reduces the consumption of electricity in a facility or energy  
20 system or a system that uses renewable energy to generate  
21 electricity and transmits or distributes the electricity that it  
22 generates from renewable energy via:

23 (a) A power line dedicated to the transmission or distribution  
24 of electricity generated from renewable energy and which is

1 connected to a facility or system owned, operated or controlled by  
2 a provider of electric service; or

3 (b) A power line shared with not more than one facility or  
4 energy system generating electricity from nonrenewable energy and  
5 which is connected to a facility or system owned, operated or  
6 controlled by a provider of electric service.

7 (6) "Retail customer" means a customer that purchases  
8 electricity at retail. "Retail customer" includes the state and  
9 its subdivisions.

10 **§22-29-2. Establishment of portfolio standards.**

11 (a) For each provider of electric services, the commission  
12 shall establish a portfolio standard for renewable energy that  
13 shall require each provider to generate or acquire electricity from  
14 renewable energy systems in an amount that is:

15 (1) Not less than five percent of the total amount of  
16 electricity sold by the provider to its retail customers in this  
17 state during the years of 2013 and 2014;

18 (2) Not less than seven percent of the total amount of  
19 electricity sold by the provider to its retail customers in this  
20 state during the years of 2015 and 2016;

21 (3) Not less than nine percent of the total amount of  
22 electricity sold by the provider to its retail customers in this  
23 state during the years of 2017 and 2018;

24 (4) Not less than eleven percent of the total amount of

1 electricity sold by the provider to its retail customers in this  
2 state during the years of 2019 and 2020;

3 (5) Not less than thirteen percent of the total amount of  
4 electricity sold by the provider to its retail customers in this  
5 state during the years of 2021 and 2022;

6 (6) Not less than fifteen percent of the total amount of  
7 electricity sold by the provider to its retail customers in this  
8 state during the years of 2023 and every year thereafter.

9 (b) If, for the benefit of one or more of its retail customers  
10 in this state, the provider has subsidized, in whole or in part,  
11 the acquisition or installation of a solar energy system which  
12 qualifies as a renewable energy system and which reduces the  
13 consumption of electricity, the total reduction in the consumption  
14 of electricity during each year that results from the solar thermal  
15 energy system is deemed to be electricity that the provider  
16 generated or acquired from a renewable energy system for the  
17 purposes of complying with its portfolio standard.

18 (c) The commission may adopt regulations that establish a  
19 system of renewable energy credits, that is a trading mechanism  
20 that may be used by a provider to comply with its portfolio  
21 standard.

22 (d) The commission shall establish a renewable energy fund for  
23 the purpose of promoting renewable energy systems in the state.  
24 Any provider may comply with the requirements of this article by

1 paying two cents into the fund for every kilowatt-hour it sells to  
2 retail customers in this state.

3 (e) Each provider of electric service shall submit to the  
4 commission an annual report that provides information that relates  
5 to the actions taken by the provider to comply with its portfolio  
6 standard.

7 **§22-29-3. Enforcement.**

8 (a) The commission shall promulgate rules to carry out and  
9 enforce the provisions of this article. The rules may include any  
10 enforcement mechanisms which are necessary and reasonable to ensure  
11 that each provider of electric service complies with its portfolio  
12 standard. The enforcement mechanisms may include, without  
13 limitation, the imposition of administrative fines.

14 (b) In the aggregate, the administrative fines imposed against  
15 a provider for all violations of its portfolio standard for a year  
16 must not exceed the amount which is necessary and reasonable to  
17 ensure that the provider complies with its portfolio standard, as  
18 determined by the commission.

19 **§22-29-4. Severability.**

20 The provisions of this article are severable, and if any  
21 phrase, clause, sentence or provision is declared to be invalid or  
22 is preempted by federal law or regulation, the validity of the  
23 remainder of this article is not affected.

NOTE: The purpose of this bill is to phase in requirements for electric providers to add renewable energy systems to help protect and sustain the environment.

This article is new; therefore, it has been completely underscored.