

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

**Introduced**

### **House Bill 2713**

**FISCAL  
NOTE**

BY DELEGATES CRISS, EVANS AND MANDT

[Introduced February 23, 2021; Referred to the  
Committee on Energy and Manufacturing then the  
Judiciary]

1 A BILL to amend and reenact §5D-1-2 and §5D-1-5 of the Code of West Virginia, 1931, as  
 2 amended; and to amend said code by adding thereto a new section, designated §24-2-  
 3 21, all relating to the Public Energy Authority Act of West Virginia; required environmental  
 4 pollution controls for coal-fired power plants; providing legislative findings; providing  
 5 expedited recovery process for coal-fired power plants owned by electric utilities in West  
 6 Virginia; and providing procedures to ensure that no more coal-fired plants close and long-  
 7 term state prosperity is maintained.

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

**CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.**

**ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.**

**§5D-1-2. Purpose and intent.**

1 The Legislature finds and declares that:  
 2 (a) ~~That~~ The long-term health and economy of the United States will depend upon the  
 3 availability of reliable sources of energy;  
 4 (b) ~~That~~ The State of West Virginia has abundant reserves of coal, natural gas and other  
 5 natural resources;  
 6 (c) ~~That~~ The economy of the State of West Virginia needs a reliable and dependable  
 7 market for the state’s coal, natural gas and other natural resources and the by-products thereof;  
 8 (d) ~~That~~ The State of West Virginia needs to encourage the efficient utilization and  
 9 disposition of by-products resultant from the production of natural resources;  
 10 (e) ~~That~~ With all due regard to the protection of the environment and husbandry of the  
 11 natural resources of this state, the health, happiness, safety, right of gainful employment and  
 12 general welfare of the citizens of this state will be promoted by the establishment and operation  
 13 of coal fired electric generating plants and transmission facilities and the establishment and  
 14 operation of natural gas transmission projects and/or other energy projects; and

15           (f) ~~That~~ The means and measures herein authorized for the financing, building and  
 16 operation of the facilities described in subsection (e) are, as a matter of public policy, for the public  
 17 purpose of the state.

18           (g) Over 562 coal-fired electric units nationally have been forced to close;

19           (h) Eighteen coal-fired electric units within West Virginia's borders have been forced to;

20           (i) Markets for West Virginia coal have been severely diminished due to the closure of  
 21 regional coal plants to the point that West Virginia coal shipments have been reduced from 162  
 22 coal plants a decade ago to only 50 plants today;

23           (j) West Virginia coal mines are forced to close, and West Virginia coal miners are forced  
 24 out of work and homeland security and homeland defense measures are compromised and  
 25 matters of long-term economic health, grid stability, and resiliency are threatened; and

26           (k) It is imperative the State of West Virginia take immediate steps to reverse these  
 27 undesirable trends to ensure that no more coal-fired plants close, no additional coal jobs are lost,  
 28 and long-term state prosperity is maintained.

29           Accordingly, the public energy authority created herein ~~shall be authorized to~~ may initiate  
 30 such directives and take such measures as may be necessary to effectuate the public purpose of  
 31 this chapter.

**§5D-1-5. Powers, duties, and responsibilities of authority generally; termination of certain powers.**

1           The West Virginia Public Energy Authority ~~has and~~ may exercise all powers necessary or  
 2 appropriate to execute its corporate purpose. The authority may:

3           (1) Adopt, amend, and repeal bylaws necessary and proper for the regulation of its affairs  
 4 and the conduct of its business and rules to implement and make effective its powers and duties,  
 5 such rules to be promulgated in accordance with ~~the provisions of~~ §29A-3-1 *et seq.* of this code.

6           (2) Adopt and use an official seal and alter the same at pleasure.

7           (3) Maintain a principal office and, if necessary, regional sub-offices at locations properly

8 designated or provided.

9 (4) Sue and be sued in its own name and plead and be impleaded in its own name, and  
10 particularly to enforce the obligations and covenants made under this article. Any actions against  
11 the authority shall be brought in the circuit court of Kanawha County.

12 (5) Foster, encourage and promote the mineral development industry. The authority is  
13 encouraged to maximize the use of the West Virginia mineral development industry but is not  
14 prohibited from utilizing nonstate mineral resources.

15 (6) Represent the state with respect to national initiatives concerning the mineral  
16 development industry and international marketing activities affecting the mineral development  
17 industry.

18 (7) Engage in strategic planning to enable the state to cope with changes affecting or  
19 which may affect the mineral development industry.

20 (8) Acquire, whether by purchase, construction, gift, lease, lease-purchase or otherwise,  
21 any electric power project or natural gas transmission project. In the event that an electric power  
22 project to be constructed pursuant to this article is designed to utilize coal wastes for the  
23 generation of electricity or the production of other energy, such project shall also be capable of  
24 using coal as its primary energy input: *Provided*, That it shall be demonstrated to the authority's  
25 satisfaction that quantities of coal wastes exist in amounts sufficient to provide energy input for  
26 such project for the term of the bonds or notes issued by the authority to finance the project and  
27 are accessible to the project.

28 (9) Lease, lease with an option by the lessee to purchase, sell, by installment sale or  
29 otherwise, or otherwise dispose of, to persons other than governmental agencies, any or all of its  
30 electric power projects or natural gas transmission projects for such rentals or amounts and upon  
31 such terms and conditions as the Public Energy Authority Board may ~~deem~~ consider advisable.

32 (10) Finance one or more electric power projects or natural gas transmission projects by  
33 making secured loans to persons other than governmental agencies to provide funds for the

34 acquisition, by purchase, construction or otherwise, of any such project or projects.

35 (11) Issue bonds for the purpose of financing the cost of acquisition and construction of  
36 one or more electric power projects or natural gas transmission projects or any additions,  
37 extensions or improvements thereto which will be sold, leased with an option by the lessee to  
38 purchase, leased or otherwise disposed of to persons other than governmental agencies or for  
39 the purpose of loaning the proceeds thereof to persons other than governmental agencies for the  
40 acquisition and construction of said projects or both. ~~Such~~ The bonds shall be issued and the  
41 payment of such bonds secured in the manner provided by the applicable provisions of §13-2C-  
42 7 through 13 and §13-2C-17 of this code: *Provided*, That the principal and interest on ~~such~~ the  
43 bonds shall be payable out of the revenues derived from the lease, lease with an option by the  
44 lessee to purchase, sale or other disposition of or from loan payments in connection with the  
45 electric power project or natural gas transmission project for which the bonds are issued, or any  
46 other revenue derived from such electric power project or natural gas transmission project.

47 (12) ~~In the event that~~ If the electric power project or natural gas transmission project is to  
48 be owned by a governmental agency, apply to the economic development authority for the  
49 issuance of bonds payable solely from revenues as provided in §32-15-1 *et seq.* of this code:  
50 *Provided*, That the economic development authority ~~shall~~ may not issue any such bonds except  
51 by an act of general law: *Provided, however*, That the authority shall require that in the  
52 construction of any such project, prevailing wages shall be paid as part of a project-specific  
53 agreement which also takes into account terms and conditions contained in the West Virginia -  
54 Ohio Valley market retention and recovery agreement or a comparable agreement.

55 (13) Acquire by gift or purchase, hold, and dispose of real and personal property in the  
56 exercise of its powers and the performance of its duties as set forth in this article.

57 (14) Acquire in the name of the state, by purchase or otherwise, on such terms and in  
58 such manner as it deems proper, or by the exercise of the right of eminent domain in the manner  
59 provided in chapter 54 of this code, such real property or parts thereof or rights therein, rights-of-

60 way, property, rights, easements and interests it ~~deems~~ considers necessary for carrying out the  
61 provisions of this article and compensation shall be paid for public or private lands so taken; and  
62 the authority may sell any of the real property or parts thereof or rights therein, rights-of-way,  
63 property, rights, easements and interests acquired hereunder in such manner and upon such  
64 terms and conditions as the authority ~~deems~~ considers proper: *Provided*, That if the authority  
65 determines that land or an interest therein acquired by the authority through the exercise of the  
66 power of eminent domain for the purpose of this article is no longer necessary or useful for such  
67 purposes, and if the authority desires to sell ~~such~~ the land or interest therein, the authority shall  
68 first offer to sell ~~such~~ the land or interest to the owner or owners from whom it was acquired, at a  
69 price equal to its fair market value: *Provided, however*, That if the prior owner or owners shall  
70 decline to reacquire the land or interest therein, the authority ~~shall be authorized to~~ may dispose  
71 of ~~such~~ the property by direct sale, auction or competitive bidding. In no case ~~shall~~ may ~~such~~ the  
72 land or an interest therein acquired under this subdivision be sold for less than its fair market  
73 value. This article does not authorize the authority to take or disturb property or facilities belonging  
74 to any public utility or to a common carrier, which property or facilities are required for the proper  
75 and convenient operation of such public utility or common carrier, except for the acquisition of  
76 easements or rights-of-way which will not unreasonably interfere with the operation of the property  
77 or facilities of ~~such~~ the public utility or common carrier, and ~~in the event of the~~ if there is a taking  
78 or disturbance of property or facilities of public utility or common carrier, provision shall be made  
79 for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost  
80 of the authority.

81         The term real property as used in this article is defined to include lands, structures,  
82 franchises and interests in land, including lands under water and riparian rights, and any and all  
83 other things and rights usually included within the said term, and includes also any and all interests  
84 in such property less than full title, such as easements, rights-of-way, uses, leases, licenses and  
85 all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including

86 terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all  
87 claims for damages for such real estate.

88 For the purposes of this section, fair market value shall be determined by an appraisal  
89 made by an independent person or firm chosen by the authority. The appraisal shall be performed  
90 using the principles contained in the Uniform Appraisal Standards for Federal Land Acquisitions  
91 published under the auspices of the Interagency Land Acquisition Conference, United States  
92 Government Printing Office, 1972.

93 (15) Make and enter into all contracts and agreements and execute all instruments  
94 necessary or incidental to the performance of its duties and the execution of its powers: *Provided,*  
95 That if any electric power project or natural gas transmission project is to be constructed by a  
96 person other than a governmental agency, and with whom the authority has contracted to lease,  
97 sell or finance such project upon its completion, then the authority ~~shall~~may not be required to  
98 comply with the provisions of §5-22-1 *et seq.* of this code requiring the solicitation of competitive  
99 bids for the construction of such a project.

100 (16) Employ managers, superintendents, and other employees, and retain or contract with  
101 consulting engineers, financial consultants, accountants, architects, attorneys and such other  
102 consultants and independent contractors as are necessary in its judgment to carry out the  
103 provisions of this article, and fix the compensation or fees thereof. All expenses thereof shall be  
104 payable solely from the proceeds of bonds issued by the economic development authority, from  
105 the proceeds of bonds issued by or loan payments, lease payments or other payments received  
106 by the authority, from revenues and from funds appropriated for ~~such~~ that purpose by the  
107 Legislature.

108 (17) Receive and accept from any federal agency, or any other source, grants for or in aid  
109 of the construction of any project or for research and development with respect to electric power  
110 projects, natural gas transmission projects or other energy projects, and receive and accept aid  
111 or contribution from any source of money, property, labor, or other things of value to be held, used

112 and applied only for the purpose for which such grants and contributions are made.

113 (18) Purchase property coverage and liability insurance for any electric power project or  
114 natural gas transmission project or other energy project and for the principal office and sub offices  
115 of the authority, insurance protecting the authority and its officers and employees against liability,  
116 if any, for damage to property or injury to or death of persons arising from its operations and any  
117 other insurance which may be provided for under a resolution authorizing the issuance of bonds  
118 or in any trust agreement securing the same.

119 (19) Charge, alter, and collect transportation fees and other charges for the use or services  
120 of any natural gas transmission project as provided in this article.

121 (20) Charge and collect fees or other charges from any energy project undertaken as a  
122 result of this article.

123 (21) When the electric power project is owned and operated by the authority, charge  
124 reasonable fees in connection with the making and providing of electric power and the sale thereof  
125 to corporations, states, municipalities, or other entities in the furtherance of the purposes of this  
126 article.

127 (22) Purchase and sell electricity or other energy produced by an electric power project in  
128 and out of the State of West Virginia.

129 (23) Enter into wheeling contracts for the transmission of electric power over the  
130 authority's or another party's lines.

131 (24) Make and enter into contracts for the construction of a project facility and joint  
132 ownership with another utility and the provisions of this article shall not constrain the authority  
133 from participating as a joint partner therein.

134 (25) Make and enter into joint ownership agreements.

135 (26) Establish or increase reserves from moneys received or to be received by the  
136 authority to secure or to pay the principal of and interest on the bonds issued by the economic  
137 development authority pursuant to ~~the provisions of §31-15-1 et seq.~~ of this code or bonds issued



138 by the authority.

139 (27) Broker the purchase of natural gas for resale to end-users: *Provided*, That whenever  
140 there are local distribution company pipelines already in place the authority shall arrange to  
141 transport the gas through such pipelines at the rates approved by the Public Service Commission  
142 of West Virginia.

143 (28) Engage in market research, feasibility studies, commercial research, and other  
144 studies and research pertaining to electric power projects and natural gas transmission projects  
145 or any other functions of the authority pursuant to this article.

146 (29) Enter upon any lands, waters and premises in the state for the purpose of making  
147 surveys and examinations as it may deem necessary or convenient for the purpose of this article,  
148 and such entry ~~shall~~ may not be ~~deemed~~ determined a trespass, nor ~~shall~~ may an entry for such  
149 purposes be ~~deemed~~ considered an entry under any condemnation proceedings which may be  
150 then pending and the authority shall make reimbursement for any actual damages resulting to  
151 such lands, waters and premises as a result of ~~such~~ those activities.

152 (30) Participate in any reorganization proceeding pending pursuant to the United States  
153 Code (being the act of congress establishing a uniform system of bankruptcy throughout the  
154 United States, as amended) or any receivership proceeding in a state or federal court for the  
155 reorganization or liquidation of a responsible buyer or responsible tenant. The authority may file  
156 its claim against any such responsible buyer or responsible tenant in any of the foregoing  
157 proceedings, vote upon any question pending therein, which requires the approval of the creditors  
158 participating in any reorganization proceeding or receivership, exchange any evidence of such  
159 indebtedness for any property, security or evidence of indebtedness offered as a part of the  
160 reorganization of such responsible buyer or responsible tenant or of any entity formed to acquire  
161 the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as  
162 a part of any such reorganization.

163 (31) Make or enter into management contracts with a second party or parties to operate

164 any electric power project or any gas transmission project and associated facilities, or other  
165 related energy project, either during construction or permanent operation.

166 (32) Do all acts necessary and proper to carry out the powers expressly granted to the  
167 authority in this article.

168 (33) Nothing herein ~~shall~~ may be construed to permit the transportation of gas produced  
169 outside of this state through a natural gas transmission project.

170 (34) The authority shall, after consultation with other agencies of state government having  
171 environmental regulatory functions, promulgate legislative rules pursuant to §29A-3-1 *et seq.* of  
172 this code, to establish standards and principles to be applied to all projects in assessing the effects  
173 of projects on the environment: *Provided*, That when a proposed project requires an  
174 environmental impact statement pursuant to the National Environmental Policy Act of 1969, a  
175 copy of the environmental impact statement shall be filed with the authority and be made available  
176 prior to any final decision or final approval of any project and prior to the conducting of any public  
177 hearings regarding the project, and in any such case, no assessment pursuant to the legislative  
178 rule need be made.

179 (35) To coordinate with the Public Service Commission of West Virginia, West Virginia  
180 Environmental Protection, and the West Virginia Division of Homeland Security and Emergency  
181 Management, the review and approval of comprehensive operational plans and other reports and  
182 information required by §24-2-20 of this code.

## CHAPTER 24. PUBLIC SERVICE COMMISSION.

### ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

#### §24-2-21. Required environmental pollution controls for coal-fired power plants; findings; expedited recovery process.

1 (a) The Legislature hereby finds that:

2 (1) Coal-fired power plants owned by electric utilities in West Virginia provide electric utility

3 customers in the state with reliable and affordable energy;

4 (2) West Virginia's access to coal reserves has provided the citizens of the state with  
5 access to an energy resource that is affordable and accessible to coal-fired power plants in West  
6 Virginia;

7 (3) Electric utilities in the state have made considerable investments in coal-fired plants to  
8 comply with numerous environmental regulations;

9 (4) Electric utilities in West Virginia continue to modify and install environmental pollution  
10 controls on power plants to comply with federal and state environmental regulatory requirements  
11 to ensure that those facilities can continue to operate and serve the citizens of the state with  
12 reliable and affordable energy;

13 (5) Efforts to comply with environmental regulatory mandates owned by electric utilities  
14 used to generate electricity in the state involve the investment of capital and the incurrence of  
15 associated incremental costs. Because the utilities are required to install environmental pollution  
16 control equipment to comply with federal and state environmental regulations, the electric utilities  
17 should be permitted to recover the incremental rate of return including the Affordable Clean  
18 Energy plan promulgated by the United States Environmental Protection Act in June 2019, related  
19 income taxes, depreciation and property taxes associated with the environmental control  
20 equipment that the utilities are required to install on power plants without waiting for a full base  
21 rate tariff filing, as more described in subsection (f) of this section.

22 (6) Matters generally related to homeland security and national defense are of paramount  
23 importance to West Virginia and its residents and coal-fired power plants provide optimal  
24 protection and resiliency toward state security and uninterrupted power supplies for household,  
25 industrial, and military applications;

26 (7) West Virginia coal has solidified its place in our country's history for its unconditional  
27 participation and sacrifices in both World Wars by our many native sons who have bravely  
28 defended our country and by generating the power to make the steel to build the tanks and

29 battleships that affords us the liberties and freedoms benefiting every American today;

30 (8) West Virginia coal-fired plants continue to provide base load generation critical for  
31 maintaining slow, steady generation that produces power on a continuous cycle and ensures grid  
32 stability, and protects against overloads and power shortages;

33 (9) West Virginia coal and electricity generated in West Virginia are relied upon throughout  
34 an 18-state region thus playing a vital role in regional homeland security;

35 (10) West Virginia's coal fleet, comprised of nine individual plants and 25 units, is fueled  
36 on average by a total of 28 million tons annually and accounts for over \$2 billion of economic  
37 activity and sustains 3,500 mining jobs, 2,000 plant worker jobs and hundreds of millions of dollars  
38 of payroll and tax dollars locally; and,

39 (11) The role of West Virginia and West Virginia coal in regional homeland security is as  
40 important today as heretofore, thus, it is incumbent for our state to continue to provide leadership  
41 in this increasingly critical area in order to sustain and protect our regional electric supplies.

42 (b) Legislative purpose:

43 (1) To encourage in-state power producers to maintain 2019 levels of coal consumed by  
44 their West Virginia fleet of coal plants;

45 (2) Provide upgrade cost recovery measures and incentives for in-state power producers  
46 to upgrade existing plants to ensure optimal efficiencies and extended operational plant life with  
47 improved heat rates, better emission controls, and improved overall performance.

48 (3) Compel in-state power producers to file compliance plans every three years with the  
49 Public Service Commission and Public Energy Authority pursuant to §5D-1-1 et seq. of this code  
50 which shall specify their fuel supply and total distribution of electricity, how 2019 coal consumption  
51 levels will be maintained, all necessary upgrades to be made in next three-year cycle; status of  
52 all upgrades completed, announced or previously incorporated into the plan for the previous cycle  
53 or cycles, an accounting of all expenditures or cost which have been recovered pursuant to this  
54 section, which may be incorporated into "Integrated Resource Plans";

55 (4) Require state utility compliance with the Environmental Protection Act's Affordable  
56 Clean Energy rule by June 30, 2021;

57 (5) Compel in-state power producers to maintain a 90-day "base fuel" supply on site;

58 (6) Empower the Public Service Commission and Public Energy Authority pursuant to  
59 §5D-1-1 et seq. of this code to enforce the provisions of this section and to generally oversee the  
60 implementation of this article.

61 (c) Requirements of Electric Utilities:

62 (1) Effective immediately, all coal-fired utilities shall continue to consume, at a minimum,  
63 the same level or tonnage of coal as the amount consumed or burned to generate electricity in  
64 the calendar year 2019;

65 (2) Effective immediately, all coal-fired utilities shall undertake a comprehensive  
66 operational analysis of each coal-fired unit within its plan or system of generators to ascertain all  
67 feasible and technological upgrades to improve performance and extend efficient plant life cycle;

68 (3) The findings of the comprehensive operational analysis shall be submitted to the West  
69 Virginia Public Service Commission and to the West Virginia Public Energy Authority pursuant to  
70 §5D-1-1 et seq. of this code along with each three-year comprehensive compliance plan, pursuant  
71 with the requirements set forth in subsection (d) of this section beginning with the first filing on  
72 January 1, 2021, and every three years thereafter;

73 (4) No application for cost recovery pursuant to section (d) of this section may be  
74 considered until the compliance plan required in subsection (3) of this section is accepted and  
75 determined administratively complete and authentic as determined by rule of the Public Service  
76 Commission.

77 (5) On or before January 1, 2022, all utilities generating electric power for industrial or  
78 residential consumption within the State of West Virginia shall establish and maintain a minimum  
79 of a 90-day supply of the base fuel used to generate electricity.

80 (6) On or before June 30, 2021, all utilities generating electric power for industrial or

81 residential consumption within the State of West Virginia shall file with the West Virginia  
82 Department of Environmental Protection a detailed compliance plan for the United States  
83 Environmental Protection Plan's Affordable Clean Energy final rule filed in June, 2019, which shall  
84 be forwarded to United States Environmental Protection within 30-days of submission.

85 (d) Comprehensive Operational Plan; Minimum Requirements.

86 At a minimum the Comprehensive Operational Plan shall contain the following:

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

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

89 (3) How 2019 coal consumption levels are to be maintained for each plant including all  
90 fuel supply contracts and a complete listing of fuel suppliers;

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

94 (5) Status of all upgrades completed, announced, or previously incorporated into the plan  
95 for the previous cycle or cycles;

96 (6) A maintenance schedule of all routine, scheduled, or planned maintenance along with  
97 a record of all nonplanned or nonscheduled events leading to or causing emergency or needed  
98 maintenance; and,

99 (7) An up-to-date accounting of all expenditures or costs which have been recovered  
100 pursuant to this section or applied for subsection (f).

101 (e) Requirements of the Public Service Commission:

102 (1) Upon receipt of the comprehensive operational plan, the Public Serve Commission  
103 shall review the plan within 60 days of submittal and within 30 days provide each public utility a  
104 written response as to the administrative completeness of the comprehensive operational plan.

105 (2) Within 120 days, the Public Service Commission shall approve or deny the  
106 comprehensive operational plan and provide a written response including any supportive

107 evidence of its approval or denial decision;

108 (3) The commission shall visit every public utility operating within the State of West Virginia  
109 bi-annually but not within the same or consecutive quarters to ascertain the general condition of  
110 each plant, the implementation of the comprehensive operational plan, and to consult with the  
111 plant operator;

112 (4) During each visit, the commission shall solicit such reports or information to verify the  
113 accuracy and progress completed on the previously approved comprehensive operational plan.  
114 The commission shall also verify the 90 base fuel supply required by subsection (c)(5) of this  
115 section is maintained.

116 (5) The commission shall report its inspection findings and overall condition of in-state  
117 public utilities at least annually to the West Virginia Office of Homeland Security and Emergency  
118 Management, West Virginia Department of Environmental Protection, West Virginia Public  
119 Energy Authority, and to the Legislature's Joint Committee on Government and Finance.

120 (6) Before any public utility announces the retirement of a coal-fired unit, the proposed  
121 shutdown of a coal-fired unit, the closure of the plant, or the proposed sale of a plant to another  
122 operator, the plant operator or public utility shall give notice to the West Virginia Office of  
123 Homeland Security and Emergency Management, West Virginia Department of Environmental  
124 Protection, West Virginia Public Energy Authority and to the Legislature's Joint Committee on  
125 Government and Finance and receive unanimous permission from them: *Provided, That any*  
126 matter before the commission or final order therefrom that involves a coal plant closure occurring  
127 within 180 days of the effective date of this section shall be reviewed to ensure consistency within  
128 this section and if found to be inconsistent shall be modified to ensure consistency.

129 (f) Electric utilities may file with the commission an application for the expedited recovery  
130 of costs for the installation of environmental pollution control projects that will be installed to  
131 comply with federal or state environmental requirements. The recovery of costs in support of the  
132 environmental pollution control equipment to be installed shall be allowed in the manner set forth

133 in this section if the equipment to be installed and related rates are found to be just, reasonable  
134 and based on prudent investments that are required or used and useful to the utilities' West  
135 Virginia ratepayers.

136 (c) The application is in lieu of a proceeding pursuant to §24-2-11 of this code and shall  
137 contain the following:

138 (1) A description of the environmental pollution control equipment to be installed, to include  
139 costs associated with or incidental to the reduction or control of emissions, effluents, or  
140 compliance with environmental requirements, the projected cost and timing of the installation of  
141 equipment and facilities that the applicant proposes to replace, construct, modernize and/or  
142 improve;

143 (2) The projected net cost, on an annual basis, of the replacement, construction, or  
144 improvements;

145 (3) The projected starting and completion dates for construction of the environmental  
146 pollution control equipment;

147 (4) The projected cost of debt for the environmental pollution control equipment funding  
148 and the projected capital structure for coal-fired boiler modernization and improvement program  
149 funding;

150 (5) Testimony, exhibits, or other evidence that demonstrates the necessary regulatory  
151 compliance for the environmental pollution control equipment in order to provide and maintain  
152 adequate, efficient, safe, reliable, and reasonably priced electrical generation;

153 (6) A proposed cost recovery mechanism consistent with this section; and

154 (7) Other information the applicant considers relevant or the commission requires.

155 (d) Upon filing of the application, the applicant shall publish, in the form the commission  
156 directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate  
157 increase under the proposal, by average percentage and dollar amount for customers within a  
158 class of service, as a Class I legal advertisement in compliance with §59-3-1 et seq. of this code,



159 the publication area to be each county in which service is provided by the electrical utility, a notice  
160 of the filing of the application and that the commission shall hold a hearing on the application  
161 within 120 days of the notice; unless no opposition to the application is received by the  
162 commission within one week of the proposed hearing date, in which case the hearing can be  
163 waived, and issue a final order within 180 days of the application filing date.

164 (e) Upon notice and hearing, if required by the commission, the commission shall approve  
165 the application for environmental pollution control equipment and allow expedited recovery of  
166 costs related to the expenditures as provided in subsection (f) of this section if the commission  
167 finds that the expenditures and the associated rate requirements are just, reasonable, prudent,  
168 not contrary to the West Virginia public interest and will allow for the provision and maintenance  
169 of adequate, efficient, safe, reliable, and reasonably priced electricity generated from coal.

170 (f) Upon commission approval, electric utilities shall be authorized to recover related  
171 incremental capital and operation and maintenance costs, net of contributions, by recovery of  
172 return, depreciation, and tax expenses attributable to the installation and operation of the  
173 environmental pollution control equipment from electric utility's customers, if any, as provided in  
174 the following:

175 (1) An allowance for return shall be calculated by applying a rate of return to the average  
176 planned net incremental increase to rate base attributable to the installation of environmental  
177 pollution control equipment for the coming year, considering the projected amount and timing of  
178 expenditures to install and operate the pollution control equipment plus any expenditures in  
179 previous years that were dedicated to the installation and operation of the pollution control  
180 equipment. The rate of return shall be determined by utilizing the rate of return on equity  
181 authorized by the commission in the electric utility's most recent rate case proceeding or in the  
182 case of a settled rate case, a rate of return on equity as determined by the commission, and the  
183 projected cost of the electric utility's debt during the installation of the pollution control equipment  
184 to determine the weighted cost of capital based upon the electric utility's capital structure.

185 (2) Income taxes at the corporate statutory income rates applicable to the return allowed  
186 on pollution control equipment shall be calculated for inclusion in rates.

187 (3) Incremental depreciation and property tax expenses directly attributable to the pollution  
188 control equipment shall be estimated for the upcoming year.

189 (4) Following commission approval of the installation of the pollution control equipment,  
190 an electric utility shall place into effect rates that include an increment that recovers the allowance  
191 for return, operation and maintenance expense, related income taxes, depreciation, and property  
192 tax expenses associated with the installation and operation of the environmental pollution control  
193 equipment.

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

NOTE: The purpose of this bill is to provide procedures to ensure that no more coal-fired plants close, and long-term state prosperity is maintained. The bill requires environmental pollution controls for coal-fired power plants and provides expedited recovery process for coal-fired power plants owned by electric utilities in West Virginia.

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