

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4040

FISCAL
NOTE

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[Introduced January 12, 2022; Referred to the
Committee on Technology and Infrastructure then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §24-2I-1, §24-2I-2, §24-2I-3, §24-2I-4, §24-2I-5, and §24-2I-6, all relating to
 3 establishing the West Virginia Energy Efficiency Jobs Creation Act; creating short title;
 4 establishing findings and purpose; defining terms; requiring electric utilities to develop and
 5 implement energy efficiency programs; establishing duties of the Public Service
 6 Commission; establishing certain requirements that the commission is to impose on
 7 electric utilities; providing requirements of electric utilities; requiring the commission to
 8 make reports to the Legislature; providing a self -direct option for an energy efficiency plan
 9 for eligible primary or secondary electric customers; establishing eligibility requirements;
 10 establishing duties of the commission; establishing requirements for self-directed energy
 11 efficiency plans; requiring electric providers to provide an annual report to the commission
 12 that includes certain information on the implementation of self-directed energy
 13 optimization plans; and requiring the commission to order certain participating customers
 14 that fail to meet the minimum energy efficiency goals of the self-directed plan to repay to
 15 the provider certain charges the customer avoided.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2I. ENERGY EFFICIENCY.

§24-2I-1. Short title.

1 This article shall be known as the “West Virginia Energy Efficiency Jobs Creation Act.”

§24-2I-2. Findings and purpose.

1 The Legislature finds and declares that:

2 (1) Energy efficiency is among the least expensive ways to meet the electricity demands
 3 of the state;

4 (2) Jobs in energy efficiency have been among the fastest-growing energy industry jobs
 5 in the United States in recent years;

6 (3) Expanded energy efficiency programs in West Virginia would provide electric

7 ratepayers with the tools they need to help manage their energy costs in the face of increasing
8 utility rates; and

9 (4) To provide affordable, reliable, and clean energy for consumers of West Virginia, it is
10 the goal of the state to achieve gradual but significant energy efficiency, conservation, and
11 demand response targets.

§24-2I-3. Definitions.

1 As used in this article:

2 (1) "Demand response program" means a program established by an electric utility that
3 promotes changes in electricity usage by customers from their normal consumption patterns in
4 response to:

5 (A) Changes in the price of electricity over time; or

6 (B) Incentives designed to promote lower electricity use at times of high wholesale market
7 prices or when system reliability is jeopardized.

8 (2) "Commission" means the West Virginia Public Service Commission.

9 (3) "Electricity consumption" and "electricity consumed" mean the sum of retail electricity
10 sales to all customers and reported electricity losses within the electric distribution system.

11 (4) "Peak demand" means the highest level of electricity demand in the state measured in
12 megawatts during the period from January 1 to December 31 of a year on a weather-normalized
13 basis.

14 (5) "Plan" means an electricity savings and demand reduction plan and cost recovery
15 proposal.

§24-2I-4. Energy efficiency programs required.

1 (a) Beginning with the 2023 calendar year and each year thereafter, the commission shall
2 calculate for each electric utility:

3 (1) The electricity consumption for each year; and

4 (2) The peak demand for each year.

5 (b) Subject to review and approval by the commission, each electric utility shall develop
6 and implement programs and services to encourage and promote energy efficiency improvements
7 and conservation of energy by consumers, commercial and industrial end users and electric
8 utilities.

9 (c) The commission shall:

10 (1) Require each electric utility to establish programs or services that the commission finds
11 appropriate and cost-effective, using the total resource cost test, to encourage and promote
12 energy efficiency improvements and conservation of energy; and

13 (2) Adopt rate-making policies that provide cost recovery for all energy efficiency and
14 demand response programs approved by the commission under subsection (d) of this section.
15 Such policies shall include consideration of the impact of lost revenues to an electric utility
16 attributable to such programs, either through implementation of a lost revenue adjustment
17 mechanism or decoupling.

18 (d) By December 31, 2022, by rule or order, the commission shall:

19 (1) To the extent the commission determines that cost-effective energy efficiency and
20 conservation programs and services are available, for each affected class, require each electric
21 utility to:

22 (A) Provide cost-effective energy efficiency and conservation programs for its electricity
23 customers; and

24 (B) To achieve through such programs, at a minimum, verifiable electricity savings
25 equivalent to the following cumulative percentages of electricity consumed in the electric utility's
26 service territory during the year 2020:

27 (i) One-half percent of 2020 sales by the end of 2023;

28 (ii) One and one-quarter percent of 2020 sales by the end of 2024;

29 (iii) Two percent of 2020 sales by the end of 2025;

30 (iv) Three percent of 2020 sales by the end of 2026;

- 31 (v) Four percent of 2020 sales by the end of 2027;
- 32 (vi) Five percent of 2020 sales by the end of 2028;
- 33 (vii) Six percent of 2020 electricity sales by the end of 2029;
- 34 (viii) Seven percent of 2020 electricity sales by the end of 2030;
- 35 (ix) Eight percent of 2020 electricity sales by the end of 2031; and
- 36 (x) Nine percent of 2020 electricity sales by the end of 2032;
- 37 (2) Require each electric utility to:
- 38 (A) Implement a cost-effective demand response program in the electric utility's service
- 39 territory; and
- 40 (B) Achieve, through demand response and energy efficiency programs, relative to the
- 41 peak demand of electricity consumed in the electric utility's service territory during the year 2020,
- 42 a targeted cumulative reduction of:
- 43 (i) One-half percent of 2020 peak demand by the end of 2023;
- 44 (ii) One and one-quarter percent of 2020 peak demand by the end of 2024;
- 45 (iii) Two percent of 2020 peak demand by the end of 2025;
- 46 (iv) Three percent of 2020 peak demand by the end of 2026;
- 47 (v) Four percent of 2020 peak demand by the end of 2027;
- 48 (vi) Five percent of 2020 peak demand by the end of 2028;
- 49 (vii) Six percent of 2020 peak demand by the end of 2029;
- 50 (viii) Seven percent of 2020 peak demand by the end of 2030;
- 51 (ix) Eight percent of 2020 peak demand by the end of 2031; and
- 52 (x) Nine percent of 2020 peak demand by the end of 2032.
- 53 (e)(1) By September 1, 2022, and every three years thereafter, an electric utility shall:
- 54 (A) Consult with the commission regarding the design and adequacy of its plan to achieve
- 55 the electricity savings and demand reduction targets specified in subsection (e) of this section;
- 56 and

57 (B) Provide the commission with any additional information regarding the plan that the
58 commission requests.

59 (2) By September 1, 2022, and every three years thereafter, each electric utility shall
60 submit its plan to the commission that details the electric utility's proposals for achieving the
61 electricity savings and demand reduction targets specified in subsection (e) of this section for the
62 three subsequent calendar years.

63 (3) Each electric utility shall provide annual updates to the commission on plan
64 implementation and progress towards achieving the electricity savings and demand reduction
65 targets specified in subsection (e) of this section. As part of these updates, each utility shall follow
66 evaluation guidance provided by the commission under subsection (g) of this section.

67 (4) Each plan shall include:

68 (A) A description of the proposed energy efficiency and conservation programs and
69 services and the proposed demand response program, anticipated costs, projected electricity
70 savings and any other information requested by the commission; and

71 (B) Energy efficiency programs for residential, commercial and industrial sectors, as
72 appropriate. At least 15 percent of such proposed costs of energy efficiency programs shall be
73 allocated to programs designed to benefit low-income, elderly, or disabled individuals or veterans.

74 (5) The commission shall review each electric utility's plan to determine if the plan is
75 adequate and cost-effective in achieving the electricity savings and demand reduction targets
76 specified in subsection (e) of this section.

77 (6) The commission may request additional information from an electric utility regarding
78 its plan.

79 (f) The commission shall monitor and analyze the impact of all programs and services
80 implemented by electric utilities under this section using the total resource cost test. If the
81 commission determines that the outcome of the programs or service may not be providing the
82 best possible results, the commission shall direct the electric utility to include in its annual update,

83 under subdivision (3), subsection (e) of this section, specific measures to address the findings.

§24-21-5. Energy efficiency program reports.

1 (a) On or before January 1 of each year, the commission shall report to the Legislature
2 on:

3 (1) The status of programs and services to encourage and promote energy efficiency
4 improvements and conservation of energy, including, to the extent possible, an evaluation of the
5 impact of programs and services on energy use, energy costs and jobs in the state. In addition,
6 specific sections in the report shall discuss the energy efficiency programs and services directed
7 to low-income, elderly, or disabled individuals or veterans, businesses and other particular
8 classes of ratepayers;

9 (2) A recommendation for the appropriate funding level to adequately fund these programs
10 and services; and

11 (3) The electricity consumption and the peak demand for the previous calendar year.

12 (b) By December 31, 2023, the commission shall, after providing opportunity for public
13 comment, report its findings to the Senate Committee on Finance, and the House of Delegates
14 Committee on Finance.

§24-21-6. Self-direct option.

1 (a) An eligible primary or secondary electric customer may direct up to 80 percent of any
2 energy efficiency charge on electricity usage that the customer would otherwise incur, based on
3 projected energy usage for the duration of the customer's proposed self-directed plan, towards
4 developing and implementing a self-directed energy efficiency plan as provided in this section.

5 (b) Eligibility requirements for participation in the self-direct option under subsection (a) of
6 this section are as follows:

7 (1) The customer must have had an annual peak demand in the preceding year of at least
8 two megawatts at each site to be covered by the self-directed plan or 10 megawatts in the
9 aggregate at all sites to be covered by the plan; and

10 (2) The customer must comply with all provisions established by the commission under
11 this section, including subsections (c), (d), (e), (g), and (h) of this section.

12 (c) The commission shall by order establish the rates, terms, and conditions of service for
13 customers related to this section.

14 (d) The commission shall by order do all of the following:

15 (1) Require a customer to develop and file with the provider and the commission a self-
16 directed energy efficiency plan meeting the requirements in subsection (e) of this section and
17 provide evidence each year that it has implemented the self-directed plan; and

18 (2) Take such additional actions as necessary to effectively implement the self-directed
19 energy efficiency program option in a manner that provides verifiable energy efficiency savings.

20 (e) All of the following apply to a self-directed energy efficiency plan under subsection (a)
21 of this section:

22 (1) The self-directed plan shall cover not less than one nor more than three years;

23 (2) The self-directed plan shall provide for aggregate energy savings from new energy
24 efficiency measures that for each year meet or exceed the energy efficiency performance
25 standards in subdivision (1), subsection (e), section four of this article. The percentage savings
26 shall be computed using the electricity purchases in 2020 for the site or sites covered by the self-
27 directed plan;

28 (3) Under the self-directed plan, none of the following are included in the calculation of
29 cumulative energy savings:

30 (A) Changes in electricity usage because of changes in business activity levels not
31 attributable to energy efficiency measures; and

32 (B) Changes in electricity usage because of the installation, operation or testing of
33 pollution control equipment; and

34 (4) The self-directed plan shall describe how the customer intends to achieve the energy
35 savings specified in the self-directed plan.

36 (f) Verified energy savings from energy efficiency measures implemented under a self-
37 directed plan may be attributed to the relevant provider's energy efficiency programs for the
38 purposes of determining annual cumulative savings achieved by the provider under subdivision
39 (1), subsection (e), section four of this article.

40 (g) Once a customer begins to implement a self-directed plan at a site covered by the self-
41 directed plan, that site qualifies for the up to 80 percent self-direct option described in subsection
42 (a) of this section and is not eligible to participate in the relevant electric provider's energy
43 efficiency programs.

44 (h) A customer implementing a self-directed energy optimization plan under this section
45 shall submit to the customer's electric provider every year a brief report documenting the energy
46 efficiency measures taken under the self-directed plan during that period and the corresponding
47 energy savings that will result. The report shall provide sufficient information for the provider and
48 the commission to monitor progress toward the goals in the self-directed plan and to develop
49 reliable estimates of the energy savings that are being achieved from self-directed plans. A
50 customer shall promptly notify the provider in its annual report if the customer fails to achieve
51 cumulative energy savings as set forth in its self-directed plan. If a customer submitting a report
52 or notice under this subsection wishes to amend its self-directed plan, the customer shall submit
53 with the report or notice an amended self-directed plan. A report under this subsection shall be
54 accompanied by an affidavit from a knowledgeable official of the customer that the information in
55 the report is true and correct to the best of the official's knowledge and belief. If the customer has
56 retained an independent energy efficiency service company, the requirements of this subsection
57 shall be met by the energy efficiency service company.

58 (i) An electric provider shall provide an annual report to the commission that identifies
59 customers implementing self-directed energy optimization plans and summarizes the results
60 achieved for each of those customers under these self-directed plans. The annual report shall
61 also describe the steps taken by the electric provider to independently verify the reported energy

62 efficiency measures and the estimated savings. The commission may request additional
63 information from the electric provider. If the commission has sufficient reason to believe the
64 information is inaccurate or incomplete, it may request additional information from the customer
65 to ensure the accuracy of the report.

66 (j) If the commission determines that the minimum energy efficiency goals under
67 subdivision (2), subsection (e) of this section have not been achieved at the sites covered by a
68 self-directed plan, in aggregate, the customer will no longer be allowed to participate in the self-
69 direct option and must begin paying the full normal energy efficiency charge. In addition, the
70 commission shall order the customer or customers collectively to pay to the provider, for exclusive
71 use in funding energy efficiency programs, an amount calculated as follows:

72 (1) Determine the proportion of the shortfall in achieving the minimum energy optimization
73 goals under subdivision (2), subsection (e) of this section; then

74 (2) Multiply the figure under subdivision (1) of this subsection by the energy efficiency
75 charges which the customer or customers collectively avoided under subsection (a) of this
76 section; then

77 (3) Multiply the product under subdivision (2) of this subsection by a number not less than
78 one nor greater than two, as determined by the commission based on the reasons for failure to
79 meet the minimum energy efficiency goals.

NOTE: The purpose of this bill is to provide the Public Service Commission the authority to require electric utilities to develop and implement plans for the efficient use, conservation and reduction of electricity usage. The bill sets forth goals to achieve electricity savings. The bill also requires electric utilities to submit plans for reaching those goals. The bill also provides for a self-direct option for large electricity customers.

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