

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5587**

By Delegate Dillon

[Introduced February 12, 2024; Referred to the  
Committee on Energy and Manufacturing then  
Finance]

1 A BILL to amend and reenact §24-2-18 of the Code of West Virginia, 1931, as amended, relating to  
2 ensuring competition among electric service providers in West Virginia and describing  
3 expectations for reporting means of production, environmental, subsidy, and reserve  
4 power information.

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

**ARTICLE 2. POWERS AND DUTIES OF THE PUBLIC SERVICE COMMISSION.**

**§24-2-18. Legislative findings on electric service; jurisdiction of the commission to determine public interest in permitting retail access to competitive power supply markets; participation of interested parties; development of deregulation plan; legislative approval or rejection of plan; certain reports required or permitted; continuing jurisdiction.**

1 (a) The Legislature hereby finds that:

2 (1) Electric service is essential to the health and well-being of residents, to public safety  
3 and to orderly economic development, and the cost of electricity is an important factor in decisions  
4 made by businesses concerning locating, expanding and retaining facilities in West Virginia.  
5 Therefore, reliable electric service should continue to be available to all customers at reasonable  
6 rates and on reasonable terms and conditions;

7 (2) Many state governments have been studying policies that would create a competitive  
8 market for the supply of electricity;

9 (3) The Public Service Commission is the appropriate agency to determine whether West  
10 Virginia should adopt a plan whereby users of electricity in the state would have open access  
11 across existing and new utility delivery systems to a competitive market for power supply. An  
12 affirmative determination of this question is hereafter designated in this section as a "finding of  
13 public interest". If the commission makes a finding of public interest, the commission is also the  
14 appropriate agency to develop such a plan for submission to the Legislature for approval,  
15 hereafter designated in this section as a "deregulation plan".

16 (4) Notwithstanding the commission's substantial expertise in the supervision and  
17 regulation of the electricity generation industry, the significant public policy issues involved in  
18 determining whether to make a finding of public interest and, if necessary, in developing a  
19 deregulation plan, require that the commission seek and secure the involvement of a wide  
20 spectrum of interests in the state, including but not limited to the following interests, hereafter  
21 collectively designated in this section as "all interested parties": Groups representing senior  
22 citizens and other persons on fixed incomes, including the American association of retired  
23 persons; groups representing low income persons and the working poor, including the West  
24 Virginia community action directors association; labor unions, including the West Virginia AFL-  
25 CIO, the communications workers of America, the united mine workers of America, the West  
26 Virginia state building and construction trades council, the international brotherhood of electrical  
27 workers, the independent steel workers, and the united steel workers of America; groups  
28 representing residential consumers; groups representing industrial consumers; groups  
29 representing commercial consumers; groups representing the electric utility industry and  
30 electricity generation concerns; groups representing natural resources industries and associated  
31 industries, including the West Virginia coal association and the West Virginia oil and natural gas  
32 association; groups representing heating, ventilating and air conditioning contractors, including  
33 the West Virginia heating, ventilating, air conditioning and electrical contractors association;  
34 groups representing environmental concerns; the electric industry research group of West Virginia  
35 University; the West Virginia municipal league; and any other person or group which has an  
36 interest in these issues.

37 (5) In order to provide meaningful involvement and participation to all interested parties in  
38 determining whether to make a finding of public interest and, if necessary, in developing a  
39 deregulation plan, the commission is directed (A) to provide notice to all interested parties of each  
40 public meeting to be held by the commission in studying whether to make a finding of public  
41 interest and, if necessary, in developing a deregulation plan, including providing written notice by

42 first class mail at least five days prior to the date of each public meeting to each of the groups  
43 specifically identified in subdivision (4) of this subsection; (B) to consult with all interested parties  
44 attending such public meetings; and (C) to report periodically to the Joint Committee on  
45 Government and Finance of the Legislature or any interim study committee appointed by the Joint  
46 Committee on Government and Finance on the commission's progress on these issues.

47 (6) The commission may not submit a deregulation plan to the Legislature for approval  
48 unless it submits findings and explains the basis for its findings, after providing adequate notice to  
49 all interested parties and other persons and holding a hearing or hearings, that the deregulation  
50 plan fairly balances the interests of the electric utilities, their customers, and the state's economy,  
51 and that the deregulation plan:

52 (A) Is in the best interest of West Virginia electric energy consumers;

53 (B) Results in potential benefits available for all customers, considering that while some  
54 customers may be immediately benefited by reductions in electricity costs, depending on their  
55 individual needs and choices, no customer should be worse off;

56 (C) Preserves universal electric service at reasonable rates;

57 (D) Maintains reasonable standards of safety, availability and reliability of electric service  
58 for all customers at all times, including at times of peak load usage of electric service;

59 (E) Does not result in a substantial negative impact on employment in the state or the  
60 state's economy;

61 (F) Does not impact compliance with environmental rules;

62 (G) Considers and maintains the public benefits of energy efficiency, renewable resource  
63 technology and research and development;

64 (H) Encourages the continued and expanded use of West Virginia coal, oil, natural gas and  
65 other energy resources;

66 (I) Assures that customers have meaningful choices among electricity providers and that  
67 customers are protected from anticompetitive behavior, poor service, and unfair billing, collection

68 and disconnection procedures;

69 (J) Is conditioned upon workable competition with a level playing field for all buyers and  
70 sellers, and provides for a code of conduct for electric service providers to be established by  
71 commission rule;

72 (K) Assures that existing commitments of utilities arising from past decisions made  
73 pursuant to historical regulatory and legal principles are addressed in a fair and reasonable  
74 manner, considering the financial integrity of the utilities;

75 (L) Addresses and maintains adequate protections for low-income consumers and gives  
76 meaningful consideration to the development of funding mechanisms to protect senior citizens  
77 and other persons on fixed incomes, low income persons and the working poor; and

78 (M) Ensures that regulated industries do not subsidize nonregulated industries and  
79 businesses.

80 (7) Restructuring of the electric utility industry should reasonably preserve tax revenues for  
81 state and local governments and should neither result in a shift of the tax burden to any customer  
82 or customer group nor result in a tax system which places any competitor in the market place at a  
83 disadvantage.

84 (b) In addition to its other powers and duties, the commission is authorized to determine, in  
85 consultation with all interested parties, whether to make a finding of public interest, and if a finding  
86 of public interest is made:

87 (1) To develop, in consultation with all interested parties, a deregulation plan to allow  
88 deregulation of existing utility generation assets and direct access by retail customers to  
89 competitive electric power supply markets and which is consistent with the legislative findings set  
90 forth in subsection (a) of this section;

91 (2) To prescribe, by order or rules, procedures and standards for the marketing of power  
92 supply in the state; and

93 (3) To resolve all issues necessary to provide for an orderly transition from the current

94 regulated structure to a system of direct retail access in a fully workable competitive power supply  
95 market in a manner that is fair to customers, electric utilities and other affected parties.

96 (c) If the commission develops a deregulation plan pursuant to subsection (b) of this  
97 section, the commission shall submit the deregulation plan to each house of the Legislature during  
98 the next succeeding regular session of the Legislature or during any special session of the  
99 Legislature occurring after such regular session if legislative approval of the deregulation plan is  
100 included in the call therefor. Upon such submission, the Legislature shall, by concurrent resolution,  
101 approve or reject the deregulation plan. If the deregulation plan is so rejected, the concurrent  
102 resolution shall set forth the reasons for such rejection, and the commission may subsequently  
103 modify the deregulation plan to meet the objections of the Legislature and may resubmit it as  
104 modified to the Legislature pursuant to this subsection. No initial or modified deregulation plan  
105 may be adopted or implemented by the commission until the Legislature has approved it pursuant  
106 to this subsection.

107 (d) Upon the development of a deregulation plan and prior to or concurrently with the  
108 submission of the deregulation plan to the Legislature pursuant to subsection (c) of this section,  
109 the commission shall issue a report to the Governor, the President of the Senate, and the Speaker  
110 of the House of Delegates on the potential state or local tax consequences which might be created  
111 by implementation of the deregulation plan, along with recommendations for statutory changes, if  
112 any are necessary, to satisfy the legislative findings specified in subdivisions (6) and (7),  
113 subsection (a) of this section.

114 (e) Upon the development of a deregulation plan and prior to or concurrently with the  
115 submission of the deregulation plan to the Legislature pursuant to subsection (c) of this section,  
116 any interested party who actively consulted with the commission during the development of the  
117 deregulation plan may issue a report to the Governor, the President of the Senate, and the  
118 Speaker of the House of Delegates setting forth the instances in which such interested party  
119 believes the deregulation plan does not satisfy one or more of the legislative findings specified in

120 subdivisions (6) and (7), subsection (a) of this section.

121 (f) After the adoption and implementation of a deregulation plan approved by the  
122 Legislature pursuant to subsection (c) of this section, the commission shall retain authority and  
123 jurisdiction to modify or rescind the deregulation plan if, upon application to the commission or  
124 upon the commission's own motion, and after notice to all interested parties and a hearing, the  
125 commission finds that it is in the public interest to do so, after making a finding that a substantial  
126 change in state or federal law or a court decision necessitates the rescission or modification of the  
127 deregulation plan to continue to meet the legislative findings in this section or that for any other  
128 reason the deregulation plan is not meeting such legislative findings. The implementation of a  
129 deregulation plan through an order of the commission pursuant to this section does not amend  
130 existing provisions of this code, except as specifically herein modified.

131 (g) Beginning July 1, 2025, any deregulation plan approved by the Legislature shall  
132 include:

133 (1) Market-based competition between multiple, concurrent operators of electrical utilities  
134 within the same given geographical regions of West Virginia, with consumers receiving relevant  
135 information prior to choosing an electrical supplier, to include, but not be limited to, the following:

136 (A) Means of electrical production, including source of energy, process used in generation  
137 process, and management process of waste products.

138 (B) Disclosure of subsidies received from federal, state, local, or any combination of the  
139 three levels, that are received by the producer toward support of production.

140 (C) Statement of environmental management.

141 (D) Utility customer service rate options, billing schedule, terms, and conditions.

142 (h) They will also ensure that qualifications for prospective electrical utility operators  
143 include provisions for at least 20% reserve capacity beyond anticipated daily peak to provide  
144 robustness and flexibility to the grid in times of disaster, disturbances, or both.

145 (i) Separate and distinct territories for maintenance of electrical grid infrastructure which

146 shall be separate, unrelated entities from the electrical utility operators.

147 (j) Electrical utility operators shall contract with maintenance operators and factor such

148 costs into the final rates offered to consumers.

NOTE: The purpose of this bill is to ensure competition among electric service providers 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.