

The background of the entire image is a deep blue space scene. On the left side, the curved horizon of the Earth is visible, showing a thin layer of white atmosphere and a dark, textured surface. The rest of the background is filled with a dense field of small, bright white stars of varying sizes, creating a starry night sky effect.

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Legislature Opens the Door for Solar Developments in West Virginia



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Just a few short years ago, the thought of utility-scale solar energy projects popping up throughout West Virginia may have seemed laughable to many. After all, the Mountain State doesn't exactly sound like fertile ground for the location of hundreds of thousands of solar panels. While West Virginia is one of the nation's leading producers of coal and natural gas, the state had admittedly lagged behind with respect to renewable energy developments. While West Virginia had nearly 700 megawatts (MW) of wind turbine energy in operation, the state ranked near the bottom of the nation with only 8.5 MW of installed solar.

West Virginia's outlook for solar energy developments changed in late 2019 as officials within both the state's Commerce Department and the West Virginia Legislature placed an emphasis on making West Virginia a more hospitable place for development. At that time, Commerce Secretary Ed Gaunch and the state's Development Office Executive Director, Mike Graney, began noting that the lack of available solar resources in West Virginia was a real problem in attracting different companies to the state. Legislative leadership quickly took notice, devoting the 2019 November interim committee meeting of the Joint Standing Committee on Energy to evaluating renewable energy opportunities in West Virginia. What's followed has been a series of bills that have helped pave the way for large utility-scale solar developments in the state.

While the vast majority of West Virginia's terrain is difficult for solar development, substantial opportunity existed nonetheless as the state is otherwise highly competitive with neighboring states of Virginia and North Carolina in terms of the quality of solar resources. One major impediment to development was the state's tax structure.

Under existing state law, West Virginia applies a state Business and Occupation (B&O) tax on the generation of electricity to the nameplate capacity of the generator, adjusted by the capacity factor of the generating unit. Because West Virginia law had not been amended specifically to address solar-generating units, any such commercial developments would have been taxed at a generation capacity of 40 percent – or nearly double the actual capacity factor of solar-generating units. The West Virginia Legislature fixed this problem during the 2020 Regular Session with the passage of S.B. 578, which set an eight percent taxable generation capacity rate for utility-scale solar units.

That same year, the Legislature also passed S.B. 583, which set up two programs for the development of utility-scale solar projects in West Virginia. Most of S.B. 583, codified at W. Va. Code § 24-2-10, addresses the development of utility-scale solar by electric utilities, and allows for regulated utilities such as American Electric Power and First Energy to develop their own solar-generating projects 50 MW at a time.

Additionally, S.B. 583 includes provisions aimed at encouraging the development of utility-scale solar by exempt wholesale generators (EWGs). Unlike public utilities, EWGs have no captive customers. Rather, they sell power at wholesale to electric utilities or regional transmission organizations according to either prices set in power purchase agreements or spot market prices. Given this minimal impact on West Virginia's energy customers, the Legislature provided for expedited siting certificates for solar-generating EWGs, which must now be processed by the Public Service Commission of West Virginia in 150 days or less.



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It is these latter provisions of S.B. 583 and the tax rate adjustments of S.B. 578 that have made the development of utility-scale solar projects in West Virginia both attractive and economically feasible. As a result, the Mountain State now has several hundred megawatts of utility-scale solar developments in the siting process, with many other projects and prospects in various stages of development.

State lawmakers followed their 2020 legislative efforts with two more significant pieces of legislation during the 2021 Regular Session.

First, the Legislature worked with industry stakeholders to craft S.B. 492, which established a bonding and reclamation program for abandoned wind and solar-generating facilities

in West Virginia. As passed, S.B. 492 grandfathers existing projects that already have a decommissioning agreement with the Public Service Commission of West Virginia pursuant to its solar siting requirements. New projects moving forward will be required to submit a decommissioning plan with the West Virginia Department of Environmental Protection (DEP) within 12 months of commencing commercial operation.

Second, the Legislature enacted H.B. 3310, which sought to further encourage retail investment in solar energy in the Mountain State. Specifically, H.B. 3310 exempted from public service jurisdiction certain third-party power purchase agreements (PPAs) for solar energy facilities with retail electric customers.

While the state law caps the aggregate of all PPAs and net metering arrangements in the state for any utility at three percent, the legislation nonetheless sets the state for future opportunity for third-party PPA development.

The development of renewable energy in West Virginia, and solar development in particular, continues to be at the top of mind for many state lawmakers as West Virginia looks to solidify its position as a national leader in energy production. In just a few short years, West Virginia has made strides that many thought were once impossible, as the Mountain State works to develop utility-scale solar sites in the heart of coal country. The future of solar development in West Virginia is bright indeed. **▼**