

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2842**

BY DELEGATES HIGGINBOTHAM, ANDERSON,  
HOUSEHOLDER, J. KELLY, WAMSLEY, KESSINGER,  
STATLER, ELLINGTON, G. WARD, KIMBLE AND ZATEZALO

[Originating in the Committee on the Judiciary;

reported on March 23, 2021]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §8-12-22, relating to placing limitations on the authority of municipalities,  
3 political subdivisions, and local governing bodies generally; forbidding a municipality,  
4 political subdivision, or a local governing body to enact any code, ordinance, or land use  
5 regulation that would prohibit, have the effect of prohibiting, or regulate in any manner a  
6 public utility or department of public utilities from furnishing a utility service to a utility  
7 customer based on an energy source which is provided or used by a utility service;  
8 forbidding a municipality, political subdivision, or a local governing body to enact any code,  
9 ordinance, or land use regulation that would prohibit or regulate a customer of a public  
10 utility or department of public utilities from purchasing, using, or connecting or  
11 reconnecting to a utility service based on the energy source provided or used by a utility  
12 service, forbidding a municipality, political subdivision, or a local governing body to enact  
13 any code, ordinance, or land use regulation that would prohibit or regulate a public utility  
14 or department of public utilities from utilizing vehicles, equipment, machinery, or tools, to  
15 provide utility services to a utility customer based on the energy source used by or  
16 powering those vehicles, equipment, machinery, or tools used by the utility service; and  
17 defining terms.

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

**ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED  
RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL  
OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.**

**§8-12-22. Limitations on Municipalities, Political Subdivisions, and Local Governing  
Bodies' Authority Over Energy Usage and Development.**

1       (a) As used in this section:

2       “Energy source” means the method of generation, or the fuel source, used to provide or  
3       supply utility service to a customer. The term includes any nonrenewable or renewable energy  
4       source.

5       “Governing body” shall mean the mayor and council together, the council, the board of  
6       directors, the commission, or other board or body of any municipality with the responsibility of  
7       enacting ordinances and determining public policy, as defined in §8-1-2(b)(1) of this code.

8       “Municipality” shall mean and include any Class I, Class II, and Class III city and any Class  
9       IV town or village, heretofore or hereafter incorporated as a municipal corporation under the laws  
10      of this state, as defined in §8-1-2(a)(1) of this code.

11      “Political subdivision” shall have the meaning as defined in §29-12A-3 of this Code.

12      “Private property” means real property that is not owned or leased by a municipality or  
13      county.

14      “Utility service” means any service provided by a public utility or private business,  
15      including, but not limited to:

16       (1) The generation, production, transmission, or distribution of electricity to or for the  
17       public, for compensation; or the production, manufacture, storage, transportation, distribution,  
18       sale, or

19       (2) furnishing of:

20       (A) Natural gas; propane; artificial or manufactured gas; or

21       (B) a mixture of natural gas and artificial or manufactured gas; to or for the public, for  
22       compensation; for heat, light, power, or other uses.

23       (b) A municipality, political subdivision, or governing body, as defined in this section, does  
24       not have the power to enact any code, ordinance, or land use regulation, that would prohibit or  
25       have the effect of prohibiting, or, to otherwise regulate in any manner prohibiting or have the effect  
26       of prohibiting:

27        (1) A public utility, private business, or department of public utilities from furnishing a utility

28        service to a utility customer based on an energy source provided or used by a utility service;

29        (2) A customer of a public utility or department of public utilities from purchasing, using, or

30        connecting or reconnecting to a utility service based on the energy source provided or used by a

31        utility service; or

32        (3) A public utility, private business, or department of public utilities, from utilizing any

33        vehicles, equipment, machinery, or tools, to provide utility services to a utility customer based on

34        the energy source used by or powering vehicles, equipment, machinery, or tools that are used by

35        the utility service.

36        (c) Any code, ordinance, land use regulation, or general or specific plan provision adopted

37        by a municipality, political subdivision, or governing body, must preserve the ability of an owner

38        of private property to use the utility service of a utility service provider that is otherwise authorized

39        under this code.

NOTE: The purpose of this bill is to prohibit municipalities from banning certain utility companies.

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