

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4553**

BY DELEGATES CLARK, HAYNES, ANDERSON, ESPINOSA,

BARRETT, AND RILEY

[Introduced February 03, 2022; referred to the

Committee on the Judiciary]



1 A BILL to amend and reenact §8A-1-2 of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §8A-7-3 of said code; all relating to zoning requirements for exempt  
3 wholesale generators; providing for the definition of “exempt wholesale generator”; and,  
4 providing that exempt wholesale generators are a permitted use in any zoning district.

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

## **ARTICLE 1. GENERAL PROVISIONS**

### **§8A-1-2. Definitions.**

1 As used in this chapter, the following words and terms have the following meanings, unless  
2 the context clearly indicates otherwise:

3 (a) “Abandonment” means the relinquishment of property or a cessation of the use of the  
4 property by the owner or lessee without any intention of transferring rights to the property to  
5 another owner or resuming the nonconforming use of the property for a period of one year.

6 (b) “Aggrieved” or “aggrieved person” means a person who:

7 (1) Is denied by the planning commission, board of subdivision and land development  
8 appeals, or the board of zoning appeals, in whole or in part, the relief sought in any application or  
9 appeal; or

10 (2) Has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience  
11 beyond that which other residents of the county or municipality may suffer.

12 (c) “Comprehensive plan” means a plan for physical development, including land use,  
13 adopted by a governing body, setting forth guidelines, goals and objectives for all activities that  
14 affect growth and development in the governing body’s jurisdiction.

15 (d) “Conditional use” means a use which because of special requirements or  
16 characteristics may be permitted in a particular zoning district only after review by the board of  
17 zoning appeals and upon issuance of a conditional use permit, and subject to the limitations and  
18 conditions specified in the zoning ordinance.

19 (e) "Contiguous" means lots, parcels, municipal boundaries or county boundaries that are  
20 next to, abutting and having a boundary, or portion thereof, that is coterminous. Streets, highways,  
21 roads or other traffic or utility easements, streams, rivers, and other natural topography are not to  
22 be used to determine lots, parcels, municipal boundaries or county boundaries as contiguous.

23 (f) "Essential utilities and equipment" means underground or overhead electrical, gas,  
24 communications not regulated by the federal communications commission, water and sewage  
25 systems, including pole structures, towers, wires, lines, mains, drains, sewers, conduits, cables,  
26 fire alarm boxes, public telephone structures, police call boxes, traffic signals, hydrants, regulating  
27 and measuring devices and the structures in which they are housed, and other similar equipment  
28 accessories in connection therewith. Essential utility equipment is recognized in three categories:

- 29 (1) Local serving;
- 30 (2) Nonlocal or transmission through the county or municipality; and
- 31 (3) Water and sewer systems, the activities of which are regulated, in whole or in part, by  
32 one or more of the following state agencies:
  - 33 (A) Public service commission;
  - 34 (B) Department of environmental protection; or
  - 35 (C) The Department of Health and Human Resources.

36 (g) "Existing use" means use of land, buildings or activity permitted or in existence prior to  
37 the adoption of a zoning map or ordinances by the county or municipality. If the use is  
38 nonconforming to local ordinance and lawfully existed prior to the adoption of the ordinance, the  
39 use may continue to exist as a nonconforming use until abandoned for a period of one year:  
40 *Provided*, That in the case of natural resources, the absence of natural resources extraction or  
41 harvesting is not abandonment of the use.

42 (h) "Exterior architectural features" means the architectural character and general  
43 composition of the exterior of a structure, including, but not limited to, the kind, color and texture  
44 of the building material, and the type, design and character of all windows, doors, massing and

45 rhythm, light fixtures, signs, other appurtenant elements and natural features when they are  
46 integral to the significance of the site, all of which are subject to public view from a public street,  
47 way or place.

48 (i) "Factory-built homes" means modular and manufactured homes.

49 (j) "Flood-prone area" means any land area susceptible to repeated inundation by water  
50 from any source.

51 (k) "Governing body" means the body that governs a municipality or county.

52 (l) "Historic district" means a geographically definable area, designated as historic on a  
53 national, state or local register, possessing a significant concentration, linkage or continuity of  
54 sites, buildings, structures or objects united historically or aesthetically by plan or physical  
55 development.

56 (m) "Historic landmark" means a site, building, structure or object designated as historic  
57 on a national, state or local register.

58 (n) "Historic site" means the location of a significant event, a prehistoric or historic  
59 occupation or activity, or a building or structure whether standing, ruined or vanished, where the  
60 location itself possesses historical, cultural or archaeological value regardless of the value of any  
61 existing structure and designated as historic on a national, state or local register.

62 (o) "Improvement location permit" means a permit issued by a municipality or county, in  
63 accordance with its subdivision and land development ordinance, for the construction, erection,  
64 installation, placement, rehabilitation or renovation of a structure or development of land, and for  
65 the purpose of regulating development within flood-prone areas.

66 (p) "Infill development" means to fill in vacant or underused land in existing communities  
67 with new development that blends in with its surroundings.

68 (q) "Land development" means the development of one or more lots, tracts or parcels of  
69 land by any means and for any purpose, but does not include easements, rights-of-way or  
70 construction of private roads for extraction, harvesting or transporting of natural resources.

71 (r) "Manufactured home" means housing built in a factory according to the federal  
72 manufactured home construction and safety standards effective June 15, 1976.

73 (s) "Modular home" means housing built in a factory that meets state or local building  
74 codes where the homes will be sited.

75 (t) "Non-traditional zoning ordinance" means an ordinance that sets forth development  
76 standards and approval processes for land uses within the jurisdiction, but does not necessarily  
77 divide the jurisdiction into distinct zoning classifications or districts requiring strict separation of  
78 different uses, and does not require a zoning map amendment.

79 (u) "Permitted use" means any use allowed within a zoning district, subject to the  
80 restrictions applicable to that zoning district and is not a conditional use.

81 (v) "Plan" means a written description for the development of land.

82 (w) "Planning commission" means a municipal planning commission, a county planning  
83 commission, a multicounty planning commission, a regional planning commission or a joint  
84 planning commission.

85 (x) "Plat" means a map of the land development.

86 (y) "Preferred development area" means a geographically defined area where incentives  
87 may be used to encourage development, infill development or redevelopment in order to promote  
88 well designed and coordinated communities.

89 (z) "Public place" means any lots, tracts or parcels of land, structures, buildings or parts  
90 thereof owned or leased by a governing body or unit of government.

91 (aa) "Sprawl" means poorly planned or uncontrolled growth, usually of a low-density  
92 nature, within previously rural areas, that is land consumptive, auto-dependent, designed without  
93 respect to its surroundings, and some distance from existing development and infrastructure.

94 (bb) "Streets" means streets, avenues, boulevards, highways, roads, lanes, alleys and all  
95 public ways.

96 (cc) "Subdivision or partition" means the division of a lot, tract or parcel of land into two or  
97 more lots, tracts or parcels of land, or the recombination of existing lots, tracts, or parcels.

98 (dd) "Unit of government" means any federal, state, regional, county or municipal  
99 government or governmental agency.

100 (ee) "Urban area" means all lands or lots within the jurisdiction of a municipal planning  
101 commission.

102 (ff) "Utility" means a public or private distribution service to the public that is regulated by  
103 the Public Service Commission.

104 (gg) "Zoning" means the division of a municipality or county into districts or zones which  
105 specify permitted and conditional uses and development standards for real property within the  
106 districts or zones.

107 (hh) "Zoning map" means a map that geographically illustrates all zoning district  
108 boundaries within a municipality or county, as described within the zoning ordinance, and which  
109 is certified as the official zoning map for the municipality or county.

110 (ii) "Exempt wholesale generator" means any person or entity:

111 (1) Who is not an electric utility;

112 (2) Who intends to purchase or construct and operate an electric generating facility as an  
113 exempt wholesale generator under federal law, including any energy storage for such electricity;  
114 and

115 (3) Who is seeking or has been granted a siting certificate or other authorization to  
116 construct by the Public Service Commission pursuant to §24-2-11c or §24-2-1o of this code.

## **ARTICLE 7. ZONING ORDINANCE**

### **§8A-7-3. Zoning — Generally.**

1 (a) A zoning ordinance may cover a county's entire jurisdiction or parts of its jurisdiction.

2 (b) The different zones created in a zoning ordinance by a governing body do not have to  
3 cover or include the same territory, and may overlap.

4 (c) Overlay districts and special design districts may have specific additional development  
5 standards for each permitted, accessory and conditional use.

6 (d) Each zone will be subject to the same rules, regulations, standards and designations  
7 throughout the zone, unless specific provisions are made by the governing body in the zoning  
8 ordinance.

9 (e) Essential utilities and equipment are a permitted use in any zoning district.

10 (f) Exempt wholesale generators are a permitted use in any zoning district.

11 ~~(f)~~ (g) Several areas of a municipality or county may be classified in a zone even though  
12 the areas are not contiguous.

13 ~~(g)~~ (h) The boundaries of each zone and the designated classifications must be shown on  
14 a zoning district map. The boundaries may only be changed after appropriate public hearing and  
15 zoning district map changes are adopted by the governing body.

16 ~~(h)~~ (i) A governing body shall certify the original zoning district map. Subsequent versions  
17 of the zoning district map shall be certified and clearly identified with an effective date.

18 ~~(i)~~ (j) All certified zoning district maps must be filed with the clerk of the applicable  
19 governing body, the applicable planning commission and the office of the clerk of the applicable  
20 county commission.

NOTE: The purpose of this bill is to clarify the application of zoning requirements to exempt  
wholesale generators.

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