

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3365**

By Delegate Riley

[Introduced February 10, 2023; Referred to the  
Committee on Energy and Manufacturing then the  
Judiciary]

1 A BILL to amend and reenact §5B-2-21 and §24-1-2 of the Code of West Virginia, 1931, as  
2 amended, relating to including non-combustion and other fuel sources that are free of  
3 carbon dioxide of that use carbon dioxide sequestration in the Economic Development Act  
4 of 1985, and to exclude from the definition of "public utility" any subsidiary of a public utility  
5 providing electric service within a Certified High Impact Industrial Business Development  
6 District.

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

## **CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

### **ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.**

#### **§5B-2-21. Certified Industrial Business Expansion Development Program.**

1 (a) *Program established.* — The Certified Industrial Business Expansion Development  
2 Program is hereby created and is to be administered as a program within the Department of  
3 Economic Development to encourage the continued development, construction, operation,  
4 maintenance, and expansion in West Virginia of high impact industrial plants and facilities, in  
5 certain circumstances where the availability of electricity generated from renewable sources, non-  
6 combustion sources, sources that are free of carbon dioxide emissions, or sources utilizing carbon  
7 dioxide sequestration, is demonstrated to be necessary to encourage economic development. In  
8 order to effectuate the purposes of this section, the Department of Economic Development or any  
9 agency, division, or subdivision thereof, may propose for promulgation of legislative rules,  
10 including emergency rules, in accordance with §29A-3-1 *et seq.* of this code.

11 (b) *District certification.*— The Secretary of the Department of Economic Development  
12 may identify and certify high impact industrial business development districts in this state upon a  
13 finding that the following requirements are met:

14 (1) Certification of the high impact industrial business development district and location of  
15 new or expanded businesses or facilities within the district will have a significant and positive

16 economic impact on the state;

17 (2) Certification of the high impact industrial business development district is necessary to  
18 attract at least two businesses or facilities to locate or expand in this state;

19 (3) The area to be certified as a high impact industrial business development district shall  
20 be no greater than 2,250 acres and must be located on land in this state sold or leased by the  
21 federal government; the state, its agencies, or political subdivisions as defined in §29-12A-3(c) of  
22 this code with a purpose of creating a high impact industrial business development district; land  
23 that is occupied by a Critical Infrastructure Facility as defined in this section; or ~~or~~ land that has  
24 been previously used for surface coal mining operations; or surface land that has been disturbed  
25 as part of an underground mining operation in the state; and

26 (4) The electricity generated from renewable sources, non-combustion sources, sources  
27 that are free of carbon dioxide emissions, or sources utilizing carbon dioxide sequestration within  
28 the district will be used within the district or delivered to the wholesale market.

29 (5) For the purposes of this section, Critical Infrastructure Facility means only:

30 (A) A petroleum or alumina refinery;

31 (B) A chemical, polymer, or rubber manufacturing facility;

32 (C) A water intake structure, water treatment facility, wastewater treatment plant or pump  
33 station;

34 (D) A natural gas compressor station;

35 (E) Wireline and wireless telecommunications infrastructure;

36 (F) A gas processing plant, including a plant used in the processing, treatment, or  
37 fractionation of natural gas or natural gas liquids;

38 (G) A steelmaking facility that uses an electric arc furnace to make steel;

39 (H) A military facility, including national guard facilities and equipment storage areas where  
40 non-military personnel are prohibited;

41 (I) A federal or state intelligence or law enforcement facility,

42 (J) A health care facility;

43 (K) A data storage or data processing facility; or

44 (L) A commercial service airport as defined by the Federal Aviation Administration.

45 The Secretary of the Department of Economic Development may not certify more than ~~two~~  
46 10 high impact industrial business development districts. A designation made pursuant to this  
47 section by the secretary as to the certification of a high impact industrial business development  
48 district is final.

49 *(c) Providing electric service within a certified high impact industrial business development*  
50 *district.*— Within a high impact industrial business development district, any person, firm,  
51 corporation, LLC, or entity, subsidiary of an otherwise regulated public utility seeking to provide  
52 electric service through the generation of renewable sources, non-combustion sources, sources  
53 that are free of carbon dioxide emissions, or sources utilizing carbon dioxide sequestration from  
54 within the high impact industrial business development district of electricity to businesses or  
55 facilities locating within the certified high impact industrial business development district may:

56 (1) Not be subject to the jurisdiction of the Public Service Commission with respect to rates,  
57 obtaining a certificate of convenience and necessity, conditions of service or complaints pursuant  
58 to chapter 24 of this code;

59 (2) Not be subject to the net metering and interconnection standards as set forth in §24-2F-  
60 8 of this code;

61 (3) Elect to qualify as an exempt wholesale generator or qualifying facility under federal law  
62 for purposes of ~~furnishing electric service through the generation of renewable sources~~ exporting  
63 electricity to a utility or regional transmission organization without being subject to the Public  
64 Service Commission's siting certificate requirements as set forth in §24-2-1(d), §24-2-11c, or §24-  
65 2-1o of this code;

66 (4) Provide any such electric service to businesses or facilities making a capital investment  
67 in a new or expanded ~~industrial~~ business or facility located within the certified high impact

68 industrial business development district; and

69 (5) Not provide any such electric service for purposes of encouraging businesses or  
70 facilities already receiving electric service from a regulated utility in this state to relocate to the  
71 certified high impact industrial business development district.

72 (d) *Eligible electric retail customers.* — In order to take advantage of the provisions of this  
73 section, an ~~industrial plant~~ a business or facility choosing to locate and operate within a high  
74 impact industrial business development district must constitute new electric generating load. Any  
75 owner or tenant of an ~~industrial plant~~ business or facility that has not previously received electric  
76 service from a regulated public electric utility located within this state, or who is making a capital  
77 investment in a new ~~industrial~~ business or facility within the district shall be considered eligible new  
78 electric generating load. Electric service to any such ~~industrial plant~~ business or facility shall be  
79 considered new electric generating load so long as any customer making a new capital investment  
80 within the district does not decrease the load of an existing business or facility outside the district in  
81 this state in conjunction with the new capital investment within the district, and regardless of  
82 whether or not a person or entity previously received service from a public electric utility at or near  
83 the same location prior to the certification of the high impact industrial business development  
84 district.

85 An eligible ~~industrial plant~~ business or facility choosing to locate and operate within a high  
86 impact industrial business development district is not required to connect with and use any public  
87 electric utility: *Provided*, That any ~~plant~~ business or facility choosing to do so may participate in net  
88 metering with a public electric utility without being subject to the net metering and interconnection  
89 standards set forth in §24-2F-8 of this code: *Provided, however*, That any such connection with  
90 and use of a public electric utility for purposes of the initial construction and development within the  
91 high impact industrial business development district shall not impact an ~~industrial plant~~ business's  
92 or facility's status as new electric generating load in order to take advantage of the provisions of  
93 this section.

94 (e) *Special rates.* — In furtherance of the creation of a high impact industrial business  
 95 development district, the Public Service Commission may approve special electric utility rates for  
 96 an eligible electric retail electric customer within the high impact industrial business development  
 97 district. An eligible retail electric customer seeking to apply for a special rate shall first enter into  
 98 negotiations with the utility that provides it with electric power, regarding the terms and conditions  
 99 of a mutually agreeable special rate. If the negotiations result in an agreement between the eligible  
 100 retail electric customer and the utility, the eligible retail electric customer and the utility shall make  
 101 a joint filing with the Public Service Commission seeking approval of the proposed special rate. If  
 102 the negotiations are unsuccessful, the eligible retail electric customer may file a petition with the  
 103 Public Service Commission to consider establishing a special rate. The Public Service  
 104 Commission shall have the authority to establish a special rate upon the filing of either a joint filing  
 105 or a petition pursuant to this section.

106 (f) The provisions of this section shall expire on June 30, ~~2028~~ 2030; *Provided*, That the  
 107 expiration of this section shall not affect any high impact industrial business development district  
 108 previously approved by the secretary.

## **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

### **ARTICLE 1. GENERAL PROVISIONS.**

#### **§24-1-2. Definitions.**

1 Except where a different meaning clearly appears from the context, the following words  
 2 when used in this chapter, shall mean:

3 "Commission" or "Public Service Commission" means the Public Service Commission of  
 4 West Virginia.

5 "Customer" means any person, firm, corporation, municipality, public service district, or  
 6 any other entity who purchases a product or services of any utility and shall include any person,  
 7 firm, corporation, municipality, public service district, or any other entity who purchases the

8 services or product for resale.

9 "Governing body" means the municipal body charged with the authority and responsibility  
10 of enacting ordinances of the municipality, as defined in §8-1-2 of this code, or a public service  
11 board of a public service district, as defined in §16-13A-3 of this code.

12 "Public utility" means any person or persons, or association of persons, however  
13 associated, whether incorporated or not, including municipalities, engaged in any business,  
14 whether herein enumerated or not, which is, or shall hereafter be held to be, a public service:  
15 *Provided*, That "public utility" does not include individuals or entities owning a solar photovoltaic  
16 energy facility located on and designed to meet only the electrical needs of the premises of a retail  
17 electric customer, the output of which is subject to a power purchase agreement with the retail  
18 electric customer, subject to §24-2-1(a) of this code: *Provided however*, That "public utility" does  
19 not include a subsidiary of a public utility who provides electric service within a Certified High  
20 Impact Industrial Business Development District pursuant to §5B-2-21 of this code.

NOTE: The purpose of this bill is to include non-combustion and other fuel sources that are free of carbon dioxide of that use carbon dioxide sequestration in the Economic Development Act of 1985, and to exclude from the definition of "public utility" any subsidiary of a public utility providing electric service within a Certified High Impact Industrial Business Development District.

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