

WEST VIRGINIA LEGISLATURE
2022 FOURTH EXTRAORDINARY SESSION

Introduced

House Bill 401

BY DELEGATES HANSHAW (MR. SPEAKER) AND SKAFF

BY REQUEST OF THE EXECUTIVE

[Introduced September 12, 2022; Referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §5B-2-21, relating to the establishment of the Certified Industrial Business
3 Expansion Development Program; granting authority to the Department of Economic
4 Development to administer the Certified Industrial Business Expansion Development
5 Program; authorizing rule-making; establishing procedures for certifying high impact
6 industrial business development districts; limiting the number of districts that can be
7 certified by the Department of Economic Development; setting forth requirements for
8 providing electric service within a certified high impact industrial business development
9 district; exempting any such projects from Public Service Commission requirements if
10 certain conditions are met; limiting the eligible electric customers able to take advantage
11 of a certified high impact industrial business development district; authorizing the Public
12 Service Commission to establish special rates for a certified high impact industrial
13 business development district in certain circumstances; and setting forth an expiration
14 date for the program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.

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

15 (a) Program established. — The Certified Industrial Business Expansion Development
16 Program is hereby created and is to be administered as a program within the Department of
17 Economic Development to encourage the continued development, construction, operation,
18 maintenance and expansion in West Virginia of high impact industrial plants and facilities, in
19 certain circumstances where the availability of electricity generated from renewable sources is
20 demonstrated to be necessary. In order to effectuate the purposes of this section, the Department
21 of Economic Development or any agency, division, or subdivision thereof, may promulgate
22 procedural rules, interpretive rules, and any legislative rules, including emergency rules, or any
23 combination thereof in accordance with §29A-3-1 et seq. of this code.

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

27 (1) Certification of the high impact industrial business development district and location of
28 new or expanded businesses within the district will have a significant and positive economic
29 impact on the state;

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

32 (3) The area to be certified as a high impact industrial business development district shall
33 be no greater than 2,250 acres and must be located on land sold or leased by the state, its
34 agencies, or political subdivisions as defined in §29-12A-3(c) of this code with a purpose of
35 creating a high impact industrial business development district or on land that has been previously
36 used for coal mining operations in the state.

37 The Secretary of the Department of Economic Development may not certify more than two
38 high impact industrial business development districts. A designation made pursuant to this section
39 by the Secretary as to the certification of a high impact industrial business development district is
40 final.

41 (c) Providing electric service within a certified high impact industrial business development
42 district. — Within a high impact industrial business development district, any person, firm,
43 corporation, or entity seeking to provide electric service through the generation of renewable
44 sources of electricity to businesses locating within the certified high impact industrial business
45 development district may:

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

49 (2) Not be subject to the net metering and interconnection standards as set forth in §24-

50 2F-8 of this code:

51 (3) Elect to qualify as an exempt wholesale generator under federal law for purposes of
52 furnishing electric service through the generation of renewable sources to a utility or regional
53 transmission organization without being subject to the Public Service Commission's siting
54 certificate requirements as set forth in §24-2-1(d), §24-2-11c, or §24-2-1o of this code:

55 (4) Provide any such electric service to businesses making a capital investment in a new
56 or expanded industrial facility located within the certified high impact industrial business
57 development district; and

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

61 (d) Eligible electric retail customers. — In order to take advantage of the provisions of this
62 section, an industrial plant or facility choosing to locate and operate within a high impact industrial
63 business development district must constitute new electric generating load. Any owner or tenant
64 of an industrial plant or facility that has not previously received electric service from a regulated
65 public electric utility located within this state, or who is making a capital investment in an expanded
66 industrial facility that is above and beyond any regulated electric service it currently receives within
67 the state, shall be considered eligible new electric generating load. Electric service to any such
68 industrial plant or facility shall be considered new electric generating load regardless of whether
69 or not a person or entity previously received service from a public electric utility at or near the
70 same location prior to the certification of the high impact industrial business development district.

71 An eligible industrial plant or facility choosing to locate and operate within a high impact
72 industrial business development district is not required to connect with and use any public electric
73 utility: *Provided*, That any plant or facility choosing to do so may participate in net metering with
74 a public electric utility without being subject to the net metering and interconnection standards set
75 forth in §24-2F-8 of this code: and *Provided, however*, That any such connection with and use of

76 a public electric utility for purposes of the initial construction and development within the high
77 impact industrial business development district shall not impact an industrial plant or facility's
78 status as new electric generating load in order to take advantage of the provisions of this section.

79 (e) *Special rates.* — In furtherance of the creation of a high impact industrial business
80 development district, the Public Service Commission may establish special electric utility rates for
81 an eligible retail electric customer within the high impact industrial business development district
82 if:

83 (1) Service to the eligible retail electric customer does not impose an unreasonable burden
84 upon the regulated electric public utility or its customers; and

85 (2) The Commission determines that any such special rates are necessary or appropriate
86 to facilitate the expansion of business operations within the high impact industrial business
87 development district.

88 (f) The provisions of this section shall expire on June 30, 2028: *Provided*, That the
89 expiration of this section shall not affect any high impact industrial business development district
90 previously approved by the Secretary.

NOTE: The purpose of this bill is to establish the Certified Industrial Business Expansion Development Program to encourage the continued development, construction, operation, maintenance and expansion in West Virginia of high impact industrial plants and facilities. The bill provides for the certification of high impact industrial business development district by the Department of Economic Development and sets forth certain parameters for servicing new businesses locating within the premises of the high impact industrial business development district through the generation of renewable sources of electricity.

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