

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 2254**

By Delegate Steele

[Introduced January 11, 2023; Referred to the  
Committee on Energy and Manufacturing then  
Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §5B-2N-1, §5B-2N-2, §5B-2N-3 and §5B-2N-4; to amend said code by adding  
 3 thereto a new section, designated §22-5-11b; and to amend and reenact §22B-1-7 of said  
 4 code, all relating generally to the Natural Gas Fired Electricity Generation Development  
 5 Act of 2023; providing for a short title; making legislative findings and declarations;  
 6 requiring designation of suitable sites for natural gas electric generation and reporting to  
 7 the Division of Air Quality of the West Virginia Department of Environmental Protection and  
 8 the West Virginia Public Service Commission; requiring construction and operating permits  
 9 for natural gas electric generation facilities, including expedited consideration; and  
 10 requiring prompt consideration of appeals by the Air Quality Board concerning natural gas  
 11 electric generation facility permits.

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

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

### **ARTICLE 2N. NATURAL GAS FIRED ELECTRICITY GENERATION DEVELOPMENT**

#### **ACT OF 2022.**

##### **§5B-2N-1. Short title.**

1 This article shall be known and cited as the "Natural Gas Electric Generation Development  
 2 Act."

##### **§5B-2N-2. Legislative findings; declaration of public policy.**

1 (a) The Legislature finds that:

2 (1) The advent and advancement of new and existing technologies and drilling practices  
 3 have created the opportunity for efficient development of natural gas in West Virginia, including  
 4 opportunities for the production of electricity;

5 (2) Production of electricity utilizing natural gas produced in West Virginia is highly  
 6 underdeveloped in comparison to nearby states with which West Virginia competes for

7 economically beneficial projects. Natural gas electric generation projects have been undermined  
8 by existing regulatory requirements and related time delays;

9 (3) In developing regulatory actions and identifying appropriate approaches to encourage  
10 development of natural gas electric generation projects, agencies should attempt to promote  
11 coordination, simplification, and harmonization. Agencies should also seek to identify appropriate  
12 means to achieve regulatory goals that are designed to promote innovation and enhance West  
13 Virginia's competitiveness with surrounding states;

14 (4) Agencies should review their existing legislative and procedural rules to determine  
15 whether any such rules should be modified, streamlined, expanded, or repealed so as to make the  
16 agency's regulatory program more effective or less burdensome in achieving the regulatory  
17 objectives related to natural gas electric generation projects. Agencies should also evaluate the  
18 data that they have to determine what information might be useful to prompt permitting and  
19 approval of natural gas generated electricity; and

20 (5) The West Virginia Economic Development Authority ("WVEDA") established in §31-15-  
21 1 *et seq.* of this code and the West Virginia Infrastructure and Jobs Development Council created  
22 in §31-15A-1 *et seq.* of this code, should provide as much assistance as possible to grow and  
23 sustain the natural gas electric generation segment of the economy.

24 (b) The Legislature declares that facilitating the development of business activity directly  
25 and indirectly related to natural gas electric generation development, transportation, storage, and  
26 use serves the public interest of the citizens of this state by promoting economic development and  
27 improving economic opportunities for the citizens of this state.

**§5B-2N-3. Identification of suitable sites for natural gas electric generation projects.**

1 (a) The West Virginia Economic Development Authority ("WVEDA") is authorized and  
2 directed to identify economically viable sites within the state that are:

3 (1) Located near a convenient and sufficient supply of natural gas;

4 (2) Located near consumers to provide a convenient supply of the generated electricity;

5 and,

6 (3) Likely to create economically viable natural gas electric generation projects that provide  
7 economic benefits to the local and state governmental units and the citizens of the state.

8 (b) The WVEDA shall use the following criteria in identifying economically viable sites for  
9 natural gas electric generation projects:

10 (1) Geographic locations near producing natural gas wells or pipelines carrying natural gas  
11 produced in the state capable of supplying and sustaining one or more natural gas electric  
12 generation facilities for the economic life of the facilities;

13 (2) Geographic locations near existing electric transmission infrastructure capable of  
14 transmitting the generated electricity to wholesale consumers and industrial, commercial, or  
15 residential consumers in the state by one or more natural gas electric generation facilities for the  
16 economic life of the facilities;

17 (3) Geographic locations that fulfill the air quality conditions imposed by the Division of Air  
18 Quality of the West Virginia Department of Environmental Protection ("WVDEP") for one or more  
19 natural gas electric generation facilities; and

20 (4) Geographic locations that can demonstrate that allowable emission increases from one  
21 or more natural gas electric generation facilities, in conjunction with all other applicable emission  
22 increases or reductions (including secondary emissions), would not cause or contribute to air  
23 pollution in violation of:

24 (A) Any national or West Virginia Ambient Air Quality Standard in any air quality control  
25 region; or

26 (B) Any applicable maximum allowable increase over the baseline concentration in any  
27 area.

**§5B-2N-4. Designation of sites suitable for natural gas electric generation projects.**

1 (a) Following identification of economically viable sites that may be suitable for natural gas  
2 electric generation projects, the West Virginia Economic Development Authority ("WVEDA") shall

3 identify and designate all sites it has determined to be suitable for natural gas electric generation  
4 projects as "Designated Sites", and shall communicate the Designated Sites to the West Virginia  
5 Department of Environmental Protection's ("WVDEP") Division of Air Quality and the West Virginia  
6 Public Service Commission ("PSC") as sites suitable for the construction and operation of natural  
7 gas electric generation projects.

8 (b) Any application for a Certificate of Public Convenience and Necessity filed with the  
9 PSC for development of a natural gas electric generation project at a Designated Site must be  
10 adjudicated, and a final order issued by the PSC, within 270 calendar days after the date of the  
11 filing of the application, notwithstanding the requirements of any other provision of this code.

## CHAPTER 22. ENVIRONMENTAL RESOURCES.

### ARTICLE 5. AIR POLLUTION CONTROL.

#### **§22-5-11b. Construction and operating permits required for natural gas electric generation facilities as stationary sources of air pollutants.**

1 (a) This section applies to natural gas electric generation facilities as identified and  
2 communicated to the secretary by the West Virginia Economic Development Authority ("WVEDA")  
3 as sites that may be suitable for one or more natural gas electric generation facilities in  
4 accordance with §5B-2N-1 *et seq.* of this code, or as identified by an applicant for a construction  
5 and operating permit for one or more natural gas electric generation facilities.

6 (b) The secretary shall take all reasonable steps to expedite consideration of permit  
7 applications utilizing sites designated by the WVEDA as a site suitable for use as a natural gas  
8 electric generation facility and communicated to the secretary in accordance with §5B-2N-1 *et*  
9 *seq.* of this code. Such steps shall include:

10 (1) An initial determination of whether the identified site is in compliance with National  
11 Ambient Air Quality Standards and the West Virginia State Implementation Plan, whether  
12 emissions from a natural gas electric generation facility would be likely to interfere with compliance

13 with the same and, if interference is likely, the steps necessary to avoid noncompliance with  
 14 National Ambient Air Quality Standards and the State Implementation Plan; and

15 (2) Evaluation of whether there is sufficient data, meteorological and otherwise, that would  
 16 allow acceptable modeling of the impacts of emissions from a natural gas electric generation  
 17 facility, and if not, construction of sampling and measuring devices to acquire such data at the site.

18 (c) Unless otherwise specifically provided in this article, the secretary shall issue a permit  
 19 for a natural gas electric generation facility which is determined to be a major stationary source  
 20 within a reasonable time, not to exceed 270 calendar days, after the secretary determines that the  
 21 application is complete. The secretary must determine whether an application is complete within  
 22 30 days from the date the permit application is filed with the secretary and communicated to the  
 23 permit applicant.

## CHAPTER 22B. ENVIRONMENTAL BOARDS.

### ARTICLE 1. GENERAL POLICY AND PURPOSE.

#### §22B-1-7. Appeals to Boards.

1 (a) The provisions of this section are applicable to all appeals to the boards, with the  
 2 modifications or exceptions set forth in this section.

3 (b) Any person authorized by statute to seek review of an order, permit, or official action of  
 4 the chief of air quality, the chief of water resources, the chief of waste management, the chief of  
 5 mining and reclamation, the chief of oil and gas, or the secretary may appeal to the air quality  
 6 board, the environmental quality board, or the surface mine board, as appropriate, in accordance  
 7 with this section. The person so appealing shall be known as the appellant and the appropriate  
 8 chief or the secretary shall be known as the appellee.

9 (c) An appeal filed with a board by a person subject to an order, permit, or official action  
 10 shall be perfected by filing a notice of appeal with the board within 30 days after the date upon  
 11 which such order, permit, or official action was received by such person as demonstrated by the

12 date of receipt of registered or certified mail or of personal service. For parties entitled to appeal  
13 other than the person subject to such order, permit, or official action, an appeal shall be perfected  
14 by filing a notice of appeal with the board within 30 days after the date upon which service was  
15 complete. For purposes of this subsection, service is complete upon tendering a copy to the  
16 designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge  
17 of the facility or activity involved, or to the permittee; or by tendering a copy by registered or  
18 certified mail, return receipt requested to the last known address of the person on record with the  
19 agency. Service is not incomplete by refusal to accept. Notice of appeal must be filed in a form  
20 prescribed by the rule of the board for such purpose. Persons entitled to appeal may also file a  
21 notice of appeal related to the failure or refusal of the appropriate chief or the secretary to act  
22 within a specified time on an application for a permit; such notice of appeal shall be filed within a  
23 reasonable time.

24 (d) The filing of the notice of appeal does not stay or suspend the effectiveness or  
25 execution of the order, permit or official action appealed from, except that the filing of a notice of  
26 appeal regarding a notice of intent to suspend, modify, or revoke and reissue a permit, issued  
27 pursuant to the provisions of §22-5-5 of this code, does stay the notice of intent from the date of  
28 issuance pending a final decision of the board. If it appears to the appropriate chief, the secretary,  
29 or the board that an unjust hardship to the appellant will result from the execution or  
30 implementation of a chief's or secretary's order, permit, or official action pending determination of  
31 the appeal, the appropriate chief, the secretary, or the board, as the case may be, may grant a stay  
32 or suspension of the order, permit or official action and fix its terms: *Provided*, That unjust hardship  
33 shall not be grounds for granting a stay or suspension of an order, permit or official action for an  
34 order issued pursuant to §22-3-1 *et seq.* of this code. A decision shall be made on any request for  
35 a stay within five days of the date of receipt of the request for stay. The notice of appeal shall set  
36 forth the terms and conditions of the order, permit, or official action complained of and the grounds  
37 upon which the appeal is based. A copy of the notice of appeal shall be filed by the board with the

38 appropriate chief or secretary within seven days after the notice of appeal is filed with the board.

39 (e) Within 14 days after receipt of a copy of the notice of appeal, the appropriate chief or the  
40 secretary as the case may be, shall prepare and certify to the board a complete record of the  
41 proceedings out of which the appeal arises including all documents and correspondence in the  
42 applicable files relating to the matter in question. With the consent of the board and upon such  
43 terms and conditions as the board may prescribe, any person affected by the matter pending  
44 before the board may, by petition, intervene as a party appellant or appellee. In any appeal brought  
45 by a third party, the permittee or regulated entity shall be granted intervenor status as a matter of  
46 right where issuance of a permit or permit status is the subject of the appeal. The board shall hear  
47 the appeal *de novo*, and evidence may be offered on behalf of the appellant, appellee, and by any  
48 intervenors. The board may visit the site of the activity or proposed activity which is the subject of  
49 the hearing and take such additional evidence as it considers necessary: *Provided*, That all parties  
50 and intervenors are given notice of the visit and are given an opportunity to accompany the board.  
51 The appeal hearing shall be held at such location as may be approved by the board including  
52 Kanawha County, the county wherein the source, activity, or facility involved is located or such  
53 other location as may be agreed to among the parties.

54 (f) Any such hearing shall be held within 30 days after the date upon which the board  
55 received the timely notice of appeal, unless there is a postponement or continuance. The board  
56 may postpone or continue any hearing upon its own motion, or upon application of the appellant,  
57 the appellee, or any intervenors for good cause shown: *Provided*, That an appeal from a permit  
58 issued or denied for the construction and operation of a natural gas electric generation facility shall  
59 be heard by the Air Quality Board within 60 days of the filing of the notice of appeal, unless all  
60 parties to the appeal consent to a postponement or continuance, and issue its decision on the  
61 appeal as promptly as reasonably possible following the hearing, but in no event later than two  
62 months after the completion of the hearing. The chief or the secretary, as appropriate, may be  
63 represented by counsel. If so represented, they shall be represented by the Attorney General or



64 with the prior written approval of the Attorney General may employ counsel who shall be a special  
65 assistant Attorney General. At any such hearing the appellant and any intervenor may represent  
66 themselves or be represented by an attorney-at-law admitted to practice before the Supreme  
67 Court of Appeals.

68 (g) After such hearing and consideration of all the testimony, evidence, and record in the  
69 case:

70 (1) The environmental quality board or the air quality board ~~as the case may be~~ shall make  
71 and enter a written order affirming, modifying, or vacating the order, permit, or official action of the  
72 chief or secretary, or shall make and enter such order as the chief or secretary should have  
73 entered, or shall make and enter an order approving or modifying the terms and conditions of any  
74 permit issued; and

75 (2) The surface mine board shall make and enter a written order affirming the decision  
76 appealed from if the board finds that the decision was lawful and reasonable, or if the board finds  
77 that the decision was not supported by substantial evidence in the record considered as a whole, it  
78 shall make and enter a written order reversing or modifying the decision of the secretary.

79 (h) In appeals of an order, permit or official action taken pursuant to §22-6-1 *et seq.*, §22-  
80 11-1 *et seq.*, §22-12-1 *et seq.*, §22-13-1 *et seq.*, or §22-15-1 *et seq.* of this code, the environmental  
81 quality board established in article three of this chapter, shall take into consideration, in  
82 determining its course of action in accordance with subsection (g) of this section, not only the  
83 factors which the appropriate chief or the secretary was authorized to consider in issuing an order,  
84 in granting or denying a permit, in fixing the terms and conditions of any permit, or in taking other  
85 official action, but also the economic feasibility of treating, or controlling, or both, the discharge of  
86 solid waste, sewage, industrial wastes, or other wastes involved.

87 (i) An order of a board shall be accompanied by findings of fact and conclusions of law as  
88 specified in §29A-5-3 of this code, and a copy of such order and accompanying findings and  
89 conclusions shall be served upon the appellant, and any intervenors, and their attorneys of record,

90 if any, and upon the appellee in person or by registered or certified mail.

91 (j) The board shall also cause a notice to be served with the copy of such order, which  
92 notice shall advise the appellant, the appellee, and any intervenors of their right to judicial review,  
93 in accordance with the provisions of this chapter. The order of the board shall be final unless  
94 vacated or modified upon judicial review thereof in accordance with the provisions of this chapter.

NOTE: The purpose of this bill is to encourage development, transportation and use of electricity generated using West Virginia natural gas as the energy source for generating electricity by directing the West Virginia Economic Development Authority to identify and designate sites suitable for natural gas electric generation facilities and by providing for timely consideration and decision concerning applications for permits to construct and operate natural gas electric generation facilities and by requiring the Air Quality Board to promptly hear and issue decisions on appeals of permit decisions concerning natural gas electric generation facilities.

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