

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3482

By Delegate Howell

[Introduced February 14, 2023; Referred to the
Committee on Economic Development and Tourism]

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 Coal Fired Grid Stabilization and Security Act of 2023;
5 providing for a short title; making legislative findings and declarations; requiring
6 designation of suitable sites for coal electric generation and reporting to the Division of Air
7 Quality of the West Virginia Department of Environmental Protection and the West Virginia
8 Public Service Commission; requiring construction and operating permits for coal electric
9 generation facilities, including expedited consideration; and requiring prompt
10 consideration of appeals by the Air Quality Board concerning permit issued or denied.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2N. COAL FIRED GRID STABILIZATION AND SECURITY ACT OF 2023.

§5B-2N-1. Short title.

1 This article shall be known and cited as the "Coal Fired Grid Stabilization and Security 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 mining/drilling
3 practices have created the opportunity for efficient mining of coal in West Virginia, including
4 opportunities for the production of electricity;

5 (2) Production of electricity utilizing coal produced in West Virginia is now inadequately
6 developed in comparison to nearby states with which West Virginia competes for economically
7 beneficial projects. Coal electric generation projects have been undermined by existing regulatory
8 requirements and related time delays;

9 (3) In developing regulatory actions and identifying appropriate approaches to encourage
10 development of coal 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 coal electric generation projects. Agencies should also evaluate the data that
18 they have to determine what information might be useful to prompt permitting and approval of coal
19 generated electricity; and

20 (5) The West Virginia Department of Economic Development established in §5B-2-1 et
21 seq. of this code is responsible for implementing this Coal Fired Grid Stabilization and Security Act
22 of 2023 and provide as much assistance as possible to grow and sustain the coal electric
23 generation segment of the economy.

24 (b) The Legislature declares that facilitating the development of business activity directly
25 and indirectly related to coal electric generation development, transportation, storage, and use
26 serves the public interest of the citizens of this state by promoting economic development, by
27 improving economic opportunities for the citizens of this state, and providing additional
28 opportunities to stabilize the price of electricity while increasing its reliability and availability.

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

1 (a) The Department of Economic Development is authorized and directed to identify
2 economically viable sites within the state that are:

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

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

5 and,

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

8 (b) The Department of Economic Development shall use the following criteria in identifying
9 economically viable sites for coal electric generation projects:

10 (1) Geographic locations near coal deposits in the state capable of supplying and
11 sustaining one or more coal electric generation facilities for the economic life of the facilities;

12 (2) Geographic locations near existing electric transmission infrastructure capable of
13 transmitting the generated electricity to wholesale markets for the benefit of end-user consumers
14 of electricity by one or more coal electric generation facilities for the economic life of the facilities;

15 (3) Geographic locations that fulfill the air quality conditions imposed by the Division of Air
16 Quality of the West Virginia Department of Environmental Protection for one or more coal electric
17 generation facilities; and

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

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

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

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

1 (a) Following identification of economically viable sites that may be suitable for coal electric
2 generation projects, the Department of Economic Development shall identify and designate each
3 site it has determined to be suitable for coal electric generation projects as a "Designated Site,"
4 and shall communicate the Designated Sites to the West Virginia Department of Environmental

4 Protection's Division of Air Quality and the West Virginia Public Service Commission as sites
5 suitable for the construction and operation of coal electric generation projects.

6 (b) Any application for a Certificate of Public Convenience and Necessity filed with the
7 Public Service Commission for development of a coal electric generation project at a Designated
8 Site shall be adjudicated, inclusive of public hearings, and a final order issued by the Public
9 Service Commission, within 270 calendar days after the date of the filing of the application,
10 notwithstanding the requirements of any other provision of this code.

11 (c) Nothing in this section is intended to preclude, modify, or establish new Public Service
12 Commission jurisdiction over:

13 (1) Any exercise of powers, duties, and obligations pursuant to the West Virginia Public
14 Energy Authority Act; and

15 (2) The right of end-user consumers of electricity to develop, invest in, or otherwise
16 contract for on-site electric self-generation or cogeneration facilities, including those utilizing coal
17 as a fuel source.

18 (3) This section does not alter, modify and/or cancel any existing cogeneration tariffs
19 authorized by the Public Service Commission

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 5. AIR POLLUTION CONTROL.

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

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

6 (b) The secretary shall take all reasonable steps to expedite consideration of permit
7 applications utilizing sites designated by the Department of Economic Development as a site
8 suitable for use as a coal electric generation facility and communicated to the secretary in
9 accordance with §5B-2N-1 et 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; and

12 (2) Evaluation of whether there is sufficient data, meteorological and otherwise, that would
13 allow acceptable modeling of the impacts of emissions from a coal electric generation facility, and
14 if not, inform the Department of Economic Development where to initiate construction of sampling
15 and measuring devices to acquire such data at the site.

16 (c) Unless otherwise specifically provided in this article, the secretary shall issue a permit
17 for a coal electric generation facility which is determined to be a major stationary source within a
18 reasonable time, not to exceed 270 calendar days, after the secretary determines that the
19 application is complete. The secretary must determine whether an application is complete within
20 30 days from the date the permit application is filed with the secretary and communicated to the
21 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 pursuant to §22-5-14 of the code shall be heard by the Air Quality Board within 60

59 days of the filing of the notice of appeal, unless all parties to the appeal consent to a postponement
60 or continuance, and issue its decision on the appeal as promptly as reasonably possible following
61 the hearing, but in no event later than two months after the completion of the hearing. The chief or
62 the secretary, as appropriate, may be represented by counsel. If so represented, they shall be
63 represented by the Attorney General or with the prior written approval of the Attorney General may
64 employ counsel who shall be a special assistant Attorney General. At any such hearing the
65 appellant and any intervenor may represent themselves or be represented by an attorney-at-law
66 admitted to practice before the Supreme Court of Appeals.

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

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

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

78 (h) In appeals of an order, permit or official action taken pursuant to §22-6-1 *et seq.*, §22-
79 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
80 quality board established in article three of this chapter, shall take into consideration, in
81 determining its course of action in accordance with subsection (g) of this section, not only the
82 factors which the appropriate chief or the secretary was authorized to consider in issuing an order,
83 in granting or denying a permit, in fixing the terms and conditions of any permit, or in taking other

84 official action, but also the economic feasibility of treating, ~~or~~ controlling, or both, the discharge of
85 solid waste, sewage, industrial wastes, or other wastes involved.

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

90 (j) The board shall also cause a notice to be served with the copy of such order, which
91 notice shall advise the appellant, the appellee, and any intervenors of their right to judicial review,
92 in accordance with the provisions of this chapter. The order of the board shall be final unless
93 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 coal as the energy source for generating electricity by directing the West Virginia Department of Economic Development to identify and designate sites suitable for coal electric generation facilities and by providing for timely consideration and decision concerning applications for permits to construct and operate coal electric generation facilities and by requiring the Air Quality Board to promptly hear and issue decisions on appeals of permit decisions concerning coal 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.