

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 188

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HAMILTON, AND NELSON

[Originating in the Committee on Economic

Development; reported on January 26, 2023]

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 to the Grid Stabilization and Security Act of 2023; providing for a short
5 title; making legislative findings and declarations; identifying economically viable sites for
6 natural gas electric generation projects; establishing criteria for identifying economically
7 viable sites; requiring Secretary of Department of Economic Development to notify the
8 Department of Environmental Protection and the Public Service Commission of sites
9 designated as economically viable for natural gas electric generation facility; providing for
10 application for a siting certificate to Public Service Commission and final order on
11 application within a certain time period; clarifying that Public Service Commission
12 jurisdiction is not modified; requiring collection of additional data for modeling if necessary;
13 requiring construction and operating permits for natural gas electric generation facilities;
14 providing for expedited consideration of permit application; and requiring administrative
15 review board to hold hearing and issue decision on natural gas electric generation facility
16 permit appeal within a certain period of time.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

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

§5B-2N-1. Short title.

1 This article shall be known and cited as the 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 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 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 approving natural gas 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 Grid Stabilization and Security Act and
22 providing as much assistance as possible to grow and sustain the natural gas electric generation
23 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,

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 natural gas electric generation projects.

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

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

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

6 (b) The Secretary of the Department of Economic Development shall use the following
7 criteria in identifying economically viable sites for natural gas electric generation projects:

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

11 (2) Geographic locations near existing electric transmission infrastructure capable of
12 transmitting the generated electricity to wholesale markets.

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

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

20 (A) Any national or West Virginia ambient air quality standard in any air quality control
21 region; or

22 (B) Any applicable maximum allowable increase over the baseline concentration in any
23 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 Secretary of the Department of Economic Development shall
3 identify and designate each site it has determined to be suitable for natural gas electric generation
4 projects as a "designated site", and shall communicate the designated sites to the West Virginia
5 Department of Environmental Protection's Division of Air Quality and the West Virginia Public
6 Service Commission as sites suitable for the construction and operation of natural gas electric
7 generation projects.

8 (b) Any application for a siting certificate filed with the Public Service Commission to
9 construct or to construct and operate a natural gas electric generation project at a designated site
10 shall be adjudicated, inclusive of public hearings, and a final order issued by the Public Service
11 Commission, within 270 calendar days after the date of the filing of the application,
12 notwithstanding the requirements of any other provision of this code.

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

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

17 (2) The right of end-user consumers of electricity to develop, invest in, or otherwise
18 contract for on-site electric self-generation or cogeneration facilities, including those utilizing
19 natural gas as a fuel source;

20 (3) This section does not alter, modify, or cancel any existing cogeneration tariffs
21 authorized by the Public Service Commission; and

22 (4) This section does not authorize the sale of electricity to end-users in the state.

23 (d) Where a designated site has been identified, in accordance with §22-5-11b(b) of this
24 code, as a location where additional data would be helpful for modeling or other evaluation of the

25 potential emission of a natural gas electric generation project, the Department of Economic
26 Development shall construct such facilities as are necessary to acquire such data.

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 Secretary of the Department of Economic Development as
3 sites that may be suitable for one or more natural gas electric generation facilities in accordance
4 with §5B-2N-1 et seq. of this code, or as identified by an applicant for a construction and operating
5 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 Secretary of the Department of Economic
8 Development as a site suitable for use as a natural gas electric generation facility and
9 communicated to the secretary in accordance with §5B-2N-1 et seq. of this code. Such steps shall
10 include:

11 (1) An initial determination of whether the identified site is in compliance with national
12 ambient air quality standards and the West Virginia State Implementation Plan; and

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

17 (c) Unless otherwise specifically provided in this article, the secretary shall act on a permit
18 for a natural gas electric generation facility which is determined to be a major stationary source
19 within a reasonable time, not to exceed 270 calendar days, and for a minor stationary source, 90

20 days, after the secretary determines that the application is complete. The secretary must
21 determine whether an application is complete within 30 days from the date the permit application
22 is filed with the secretary and communicated to the 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
4 of the chief of air quality, the chief of water resources, the chief of waste management, the chief
5 of 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~~ oversee the facility or activity involved, or to the permittee; or by tendering a copy by registered
18 or certified mail, return receipt requested to the last known address of the person on record with
19 the agency. Service is not incomplete by refusal to accept. Notice of appeal must be filed in a

20 form prescribed by the rule of the board for such purpose. Persons entitled to appeal may also
21 file a notice of appeal related to the failure or refusal of the appropriate chief or the secretary to
22 act within a specified time on an application for a permit; such notice of appeal shall be filed within
23 a 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
32 stay or suspension of the order, permit or official action and fix its terms: *Provided*, That unjust
33 hardship shall not be grounds for granting a stay or suspension of an order, permit or official
34 action for an order issued pursuant to §22-3-1 *et seq.* of this code. A decision shall be made on
35 any request for a stay within five days of the date of receipt of the request for stay. The notice of
36 appeal shall set forth the terms and conditions of the order, permit, or official action complained
37 of and the grounds upon which the appeal is based. A copy of the notice of appeal shall be filed
38 by the board with the appropriate chief or secretary within seven days after the notice of appeal
39 is filed with the board.

40 (e) Within 14 days after receipt of a copy of the notice of appeal, the appropriate chief or
41 the secretary ~~as the case may be~~ shall prepare and certify to the board a complete record of the
42 proceedings out of which the appeal arises including all documents and correspondence in the
43 applicable files relating to the matter in question. With the consent of the board and upon such
44 terms and conditions as the board may prescribe, any person affected by the matter pending
45 before the board may, by petition, intervene as a party appellant or appellee. In any appeal

46 brought by a third party, the permittee or regulated entity shall be granted intervenor status as a
47 matter of right where issuance of a permit or permit status is the subject of the appeal. The board
48 shall hear the appeal *de novo*, and evidence may be offered on behalf of the appellant, appellee,
49 and by any intervenors. The board may visit the site of the activity or proposed activity which is
50 the subject of the hearing and take such additional evidence as it considers necessary: *Provided*,
51 That all parties and intervenors are given notice of the visit and are given an opportunity to
52 accompany the board. The appeal hearing shall be held at such location as may be approved by
53 the board including Kanawha County, the county wherein the source, activity, or facility involved
54 is located or such other location as may be agreed to among the parties.

55 (f) Any such hearing shall be held within 30 days after the date upon which the board
56 received the timely notice of appeal, unless there is a postponement or continuance. The board
57 may postpone or continue any hearing upon its own motion, or upon application of the appellant,
58 the appellee, or any intervenors for good cause shown: *Provided, That an appeal from a permit*
59 *issued or denied for the construction and operation of a natural gas electric generation facility*
60 *shall be heard by the Air Quality Board within 60 days of the filing of the notice of appeal, unless*
61 *all parties to the appeal consent to a postponement or continuance, and issue its decision on the*
62 *appeal as promptly as reasonably possible following the hearing, but in no event later than two*
63 *months after the completion of the hearing.* The chief or the secretary, as appropriate, may be
64 represented by counsel. If so represented, they shall be represented by the Attorney General or
65 with the prior written approval of the Attorney General may employ counsel who shall be a special
66 assistant Attorney General. At any such hearing the appellant and any intervenor may represent
67 themselves or be represented by an attorney-at-law admitted to practice before the Supreme
68 Court of Appeals.

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

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

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

80 (h) In appeals of an order, permit or official action taken pursuant to §22-6-1 *et seq.*, §22-
81 11-1 *et seq.*, §22-12-1 *et seq.*, §22-13-1 *et seq.*, or §22-15-1 *et seq.* of this code, the
82 environmental quality board established in §22B-3-1 *et seq.* of this code shall take into
83 consideration, in determining its course of action in accordance with subsection (g) of this section,
84 not only the factors which the appropriate chief or the secretary was authorized to consider in
85 issuing an order, in granting or denying a permit, in fixing the terms and conditions of any permit,
86 or in taking other official action, but also the economic feasibility of treating, ~~or~~ controlling, or both,
87 the discharge of solid waste, sewage, industrial wastes, or other wastes involved.

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

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