WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 615

By Senators Trump, Smith, Swope, and Deeds

[Introduced February 1, 2024; referred  
to the Committee on the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-32, relating to limitations on actions related to certain electric generating facilities designated as exempt wholesale generators under federal law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. actions for injuries.

§55-7-32. Limitations on statutory and common law actions related to certain qualified facilities.

(a) *Definitions*. — As used in this section:

(1) "Covered claim" means, in respect of the construction and commercial operations of a qualified facility, any statutory or common law claim or cause of action by a person alleging: (A) Public or private nuisance; (B) degradation of the value of property owned by the person; (C) degradation or impairment of the person's right of reasonable use or enjoyment of property owned or occupied by the person or any publicly-owned property; or (D) damages resulting from a physical injury or ailment caused by non-physical means.

(2) "Qualified facility" means an electric generating facility located in this state that has been designated as an exempt wholesale generator under applicable federal law prior to commercial operation and that has applied for and received a siting certificate.

(3) "Person" means a person, corporation, limited liability company, partnership, association, organization, or state, county, or municipal governmental body.

(4) "Siting certificate" means: (A) A certificate of public convenience and necessity issued by the public service commission under §24-2-11 of this code in respect of an electric generating facility on or before July 1, 2003, inclusive of any material modifications thereof; or (B) a siting certificate issued by the public service commission under §24-2-11c of this code after July 1, 2003, inclusive of any material modifications thereof.

(b) *Limitations on certain common law and statutory actions*. —

(1) Notwithstanding any other provision of this code or common law to the contrary, the construction and commercial operations of a qualified facility shall not constitute or give rise to a covered claim, and no person may bring a common law or statutory claim or cause of action against the holder of a siting certificate for such qualified facility or the operator of the qualified facility for a covered claim, unless the Public Service Commission has first determined by final order in a formal complaint against the holder of the siting certificate pursuant to §24-2-11c(e)(2) of this code that the qualified facility is not in compliance with the material terms and conditions of the siting certificate, and in any such case, only to the extent that the acts or omissions of the holder of the siting certificate giving rise to the holder's non-compliance with the material terms and conditions of the siting certificate are the proximate cause of the covered claim.

(2) The limitation on claims and causes of action in subdivision (1) of this subsection does not apply to any claim or cause of action by a person alleging physical injury or property damage caused by a physical impact causing injury to the person or a tangible intrusion upon property causing damage to the property.

(c) *Prospective effect*. — The provisions set forth in this section shall apply only to a claim or cause of action that accrues on or after the effective date of this section. A claim or cause of action that accrued prior to the effective date of this section is governed by the law applicable to the claim or cause of action immediately before this amendment became effective, and that law is continued in effect for that purpose.