

# **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]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §55-7-32, relating to limitations on actions related to certain electric generating  
3 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.**

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

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

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

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

13 (4) "Siting certificate" means: (A) A certificate of public convenience and necessity issued  
14 by the public service commission under §24-2-11 of this code in respect of an electric generating  
15 facility on or before July 1, 2003, inclusive of any material modifications thereof; or (B) a siting  
16 certificate issued by the public service commission under §24-2-11c of this code after July 1,  
17 2003, inclusive of any material modifications thereof.

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

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

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

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