

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

### **Introduced**

## **House Bill 3410**

By Delegates Riley, Fehrenbacher, Hanshaw (Mr.  
Speaker), Akers, and Anderson

[Introduced March 17, 2025; referred to the  
Committee on Energy and Public Works]

1 A BILL amend and reenact §5B-2-21 of the Code of West Virginia, 1931, as amended; to amend  
2 the code by adding a new article, designated §11-6M-1, and to amend the code by adding  
3 a new article, designated §24-2J-1, §24-2J-2, §24-2J-3, §24-2J-4, §24-2J-5, §24-2J-6,  
4 §24-2J-7, and §24-2J-8, all relating to the Economic Development Act Of 1985;  
5 establishing the Business Expansion Development Program administered within the  
6 Department of Economic Development; creating the Modern American Generation Act;  
7 creating the certified microgrid program; providing for taxation for certified microgrid  
8 districts; providing for power generation facility regulation and property taxation of power  
9 generation facilities; identifying and certifying high impact business development districts  
10 and electricity generated within those districts; limiting certification of no more of these  
11 development districts by the Secretary of the Department of Economic Development;  
12 determining eligible electric customers in business development districts; requiring  
13 approval of special electric utility rates for an eligible electric retail electric customer by the  
14 Public Service Commission; providing that construction, operational or other development  
15 costs are to be borne by customers in high impact business development districts;  
16 providing a method of property taxation for certified microgrid districts; providing method  
17 for qualification as non-interconnected microgrid operators and the authority of the Public  
18 Service Commission in determining compliance by a microgrid operator; stating the role of  
19 the secretary of the Department of Economic Development in determining the  
20 qualifications of microgrid operators; clarifying the obligations and qualification  
21 requirements by microgrid operators; establishing minimum terms of service required by  
22 microgrid operators after certification; and stating legislative intent not to alter legal status  
23 of existing certified high impact economic development districts .

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

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

## ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.

### §5B-2-21. Certified Industrial Business Expansion Development Program.

1           (a) *Program established.* — The Certified Industrial Business Expansion Development  
2 Program is hereby created and is to be administered as a program within the Department of  
3 Economic Development to encourage the continued development, construction, operation,  
4 maintenance, and expansion in West Virginia of high impact industrial plants and facilities, in  
5 certain circumstances where the availability of electricity generated from renewable sources is  
6 demonstrated to be necessary. In order to effectuate the purposes of this section, the Department  
7 of Economic Development or any agency, division, or subdivision thereof, may propose for  
8 promulgation of legislative rules, including emergency rules, in accordance with §29A-3-1 *et seq.*  
9 of this code.

10           (b) *District certification.*— The Secretary of the Department of Economic Development  
11 may identify and certify high impact industrial business development districts in this state upon a  
12 finding that the following requirements are met:

13           (1) Certification of the high impact industrial business development district and location of  
14 new or expanded businesses within the district will have a significant and positive economic  
15 impact on the state;

16           (2) Certification of the high impact industrial business development district is necessary to  
17 attract at least two businesses to locate or expand in this state;

18           (3) The area to be certified as a high impact industrial business development district shall  
19 may be no greater than 2,250 acres and ~~must be located on land sold or leased by the state, its~~  
20 ~~agencies, or political subdivisions as defined in §29-12A-3(c) of this code with a purpose of~~  
21 ~~creating a high impact industrial business development district or on land that has been previously~~  
22 ~~used for coal mining operations in the state; and~~

23           (4) The electricity generated from renewable sources within the district will be used within  
24 the district or delivered to the wholesale market.

25           The Secretary of the Department of Economic Development may not certify more than two  
26 high impact ~~industrial~~ business development districts. A designation made pursuant to this section  
27 by the secretary as to the certification of a high impact ~~industrial~~ business development district is  
28 final.

29           (c) *Providing electric service within a certified high impact ~~industrial~~ business development*  
30 *district.*— Within a high impact ~~industrial~~ business development district, any person, firm,  
31 corporation, or entity seeking to provide electric service through the generation of ~~renewable~~  
32 ~~sources~~ electricity from within the high impact ~~industrial~~ business development district ~~of electricity~~  
33 to businesses locating within the certified high impact ~~industrial~~ business development district  
34 may:

35           (1) Not be subject to the jurisdiction of the Public Service Commission with respect to rates,  
36 obtaining a certificate of convenience and necessity, conditions of service or complaints pursuant  
37 to chapter 24 of this code;

38           (2) Not be subject to the net metering and interconnection standards as set forth in §24-2F-  
39 8 of this code;

40           (3) Elect to qualify as an exempt wholesale generator under federal law for purposes of  
41 furnishing electric service through the generation of ~~renewable sources~~ electricity to a utility or  
42 regional transmission organization without being subject to the Public Service Commission's siting  
43 certificate requirements as set forth in §24-2-1(d), §24-2-11c, or §24-2-1o of this code;

44           (4) Provide any such electric service to businesses making a capital investment in a new or  
45 expanded ~~industrial~~ facility located within the certified high impact ~~industrial~~ business  
46 development district; and

47           (5) Not provide any such electric service for purposes of encouraging businesses already  
48 receiving electric service from a regulated utility in this state to relocate to the certified high impact  
49 ~~industrial~~ business development district.

50           (d) *Eligible electric retail customers.* — In order to take advantage of the provisions of this

51 section, ~~an industrial a~~ plant or facility choosing to locate and operate within a high impact  
52 ~~industrial business development district must~~ shall constitute new electric generating load. Any  
53 owner or tenant of ~~an industrial a~~ plant or facility that has not previously received electric service  
54 from a regulated public electric utility located within this state, or who is making a capital  
55 investment in a new ~~industrial~~ facility within the district ~~shall be~~ is considered eligible new electric  
56 generating load. Electric service to any such ~~industrial~~ plant or facility ~~shall be~~ is considered new  
57 electric generating load so long as any customer making a new capital investment within the  
58 district does not decrease the load of an existing facility outside the district in this state in  
59 conjunction with the new capital investment within the district, and regardless of whether or not a  
60 person or entity previously received service from a public electric utility at or near the same  
61 location prior to the certification of the high impact ~~industrial~~ business development district.

62 An eligible ~~industrial~~ plant or facility choosing to locate and operate within a high impact  
63 ~~industrial business development district~~ is not required to connect with and use any public electric  
64 utility: *Provided*, That any plant or facility choosing to do so may participate in net metering with a  
65 public electric utility without being subject to the net metering and interconnection standards set  
66 forth in §24-2F-8 of this code: *Provided, however*, That any such connection with and use of a  
67 public electric utility for purposes of the initial construction and development within the high impact  
68 ~~industrial business development district shall~~ may not impact ~~an industrial a~~ plant or facility's  
69 status as new electric generating load in order to take advantage of the provisions of this section.

70 (e) *Special rates.* — In furtherance of the creation of a high impact ~~industrial~~ business  
71 development district, the Public Service Commission may approve special electric utility rates for  
72 an eligible electric retail electric customer within the high impact ~~industrial~~ business development  
73 district. An eligible retail electric customer seeking to apply for a special rate shall first enter into  
74 negotiations with the utility that provides it with electric power, regarding the terms and conditions  
75 of a mutually agreeable special rate. If the negotiations result in an agreement between the eligible  
76 retail electric customer and the utility, the eligible retail electric customer and the utility shall make

a joint filing with the Public Service Commission seeking approval of the proposed special rate. If the negotiations are unsuccessful, the eligible retail electric customer may file a petition with the Public Service Commission to consider establishing a special rate. The Public Service Commission shall have the authority to may establish a special rate upon the filing of either a joint filing or a petition pursuant to this section.

(f) Regulated electric utility customers may not bear any construction, operational, or capacity-related costs associated with non-utility owned and operated electricity generation co-located with a high impact business development district. Any costs of this nature are to be borne by the customers situated within the high impact business development district that is to be co-located with onsite electricity generation.

~~(f)~~ (g) The provisions of this section shall expire on June 30, 2028: *Provided*, That the expiration of this section shall may not affect any high impact ~~industrial~~ business development district previously approved by the secretary.

## CHAPTER 11. TAXATION.

### **ARTICLE 6M. METHOD OF PROPERTY TAXATION FOR CERTIFIED MICROGRID DISTRICTS.**

#### **§11-6M-1. Taxation for certified microgrid districts.**

(a) Tax treatment of microgrids districts – The provisions of this article are applicable to all property within the boundaries of any certified microgrid district formed pursuant to §24-2J-1 et seq. of this code, titled the Modern American Generation Act, containing property eligible for treatment as specialized high technology property, under the provisions of §11-6J-3 of this code, that results in an increase in the appraised value of property in the district of \$1 billion or more, within three years of the establishment of the district.

(1) As long as the microgrid district exists, the county sheriff and assessor shall divide the ad valorem property tax revenue collected, with respect to taxable property in the district as

9 follows:

10 (A) The amount of *ad valorem* property tax revenue that is generated by multiplying the  
11 assessed value of the property for the then current tax year by the aggregate of applicable levy  
12 rates for the tax year;

13 (B) The amount of *ad valorem* property tax revenue that is generated by multiplying the  
14 base assessed value of the property by the applicable regular *ad valorem* levy rates for the tax  
15 year;

16 (C) The amount of *ad valorem* tax revenue that is generated by multiplying the assessed  
17 value of the property for the current tax year by the applicable levy rates for general obligation  
18 bond debt service for the tax year;

19 (D) The amount of *ad valorem* property tax revenue that is generated by multiplying the  
20 assessed value of the property for the current tax year by the applicable excess levy rates for the  
21 tax year; and

22 (E) The amount of *ad valorem* property tax revenue that is generated by multiplying the  
23 incremental value by the applicable regular levy rates for the tax year.

24 (2) The sheriff shall determine from the calculations set forth in subdivision (1) of this  
25 subsection the percentage share of total *ad valorem* revenue for each levying body according to  
26 paragraphs (B) through (D), inclusive, of that subdivision by dividing each of those amounts by the  
27 total *ad valorem* revenue figure determined by the calculation in paragraph (A) of that subdivision;  
28 and

29 (3) On each date on which *ad valorem* tax revenue is to be distributed to the levying  
30 bodies, the revenue shall be distributed by:

31 (A) Applying the percentage share determined according to paragraph (B), subdivision (1)  
32 of this subsection to the revenues received and distributing that share to the levying bodies entitled  
33 to the distribution pursuant to current law;

34 (B) Applying the percentage share determined according to paragraph (C), subdivision (1)

of this subsection to the revenues received and distributing that share to the levying bodies entitled to the distribution by reason of having general obligation bonds outstanding;

(C) Applying the percentage share determined according to paragraph (D), subdivision (1) of this subsection to the revenues received and distributing that share to the levying bodies entitled to the distribution by reason of having excess levies in effect for the tax year; and

(D) Applying the percentage share determined according to paragraph (E), subdivision (1) of this subsection to the revenues received and distributing that share to a fund dedicated at the time of the establishment of the district.

(4) In each year for which there is a positive tax increment, the county sheriff shall remit to the district fund of the microgrid district that portion of the *ad valorem* property taxes collected that consists of the tax increment and shall be distributed as follows: to the State General Fund, 60 percent, to the county 20 percent, to the county school board 20 percent.

(5)(A) *Payment In Lieu Of Taxes, Increment Property* -- Notwithstanding the provisions of §5D-1-14, §7-5-13, §7-11B-3(b), §7-11B-8(c)(4), §7-11B-15(a)(7), §7-11B-15(a)(15), §7-11B-18, §8-19-4, §8-29A-7, §8A-12-12, §11-13-2p, §11-13C-5(l)(1)(A), §16-13A-21, §16-15-18(b)(6), §17-16A-16(b), §17-16B-20(b), §18-9A-12(c), §31-21-5, and §31-21-15 of this code, or any other provision of this code, no payment in lieu of taxes may be entered into with relation to any property subject to this article or any leasehold interest related thereto, or any other property interest related thereto.

(B) *Tax Increment Financing, Increment Property* -- Notwithstanding the provisions of §7-11B-1 *et seq.* of this code, or any other provision of this code, no tax increment financing project, plan or arrangement may be entered into or undertaken with relation to any property subject to this subsection.

(6)(A) *Payment In Lieu Of Taxes Electricity Generation and Distribution* -- Notwithstanding the provisions of §5D-1-14, §7-5-13, §7-11B-3(b), §7-11B-8(c)(4), §7-11B-15(a)(7), §7-11B-15(a)(15), §7-11B-18, §8-19-4, §8-29A-7, §8A-12-12, §11-13-2p, §11-13C-5(l)(1)(A), §16-13A-21,



§16-15-18(b)(6), §17-16A-16(b), §17-16B-20(b), §18-9A-12(c), § 31-21-5, and §31-21-15 of this code, or any other provision of this code, no payment in lieu of taxes may be entered into with relation to the property of any electricity generating plant, facility, or generating unit or any property comprising, in whole or in part, any electricity distribution apparatus, equipment, lines or facilities (i) located in the county and (ii) directly or indirectly dedicated to providing electric power to any plant, facility or property subject to this subsection. Nor may any payment in lieu of taxes be entered into with relation to any leasehold interest or any other property interest related thereto.

(B) *Tax Increment Financing* -- Notwithstanding the provisions of §7-11B-1 *et seq.* of this code, or any other provision of this code, no tax increment financing project, plan or arrangement may be entered into or undertaken with relation to any electricity generation or distribution property subject to this article.

(C) For purposes of this article an electricity generating plant, facility, or generating unit or electricity distribution apparatus, equipment, lines or facilities are considered to be "dedicated" to providing electric power to any plant, facility or property subject to this section if not less than 75 percent of the output of the electricity generation property or electricity distribution property, measured in kilowatt hours, are used to supply electricity to a facility, project or series of related or integrated facilities within the microgrid district subject to this subsection.

(D) For purposes of this article property included for purposes of this article includes all real property, all buildings and structures affixed to land, and all tangible personal property, including, but not limited to equipment, inventories and mobile equipment, and also including property subject to special salvage valuation under §11-6A-1 *et seq.*, §11-6E-1 *et seq.*, §11-6H-1 *et seq.*, §11-6J-1 *et seq.*, §11-6F-1 *et seq.*, §11-6L-1 *et seq.*, and §11-6L-1 *et seq.* all of this code, or any other special *ad valorem* property valuation provision of this code; *Provided*, That property subject to special valuation shall be allowed that special valuation as authorized by law, for purposes of calculating and determining the *ad valorem* property tax imposed with relation thereto, notwithstanding being otherwise subject to the provisions of this article.

(7) The following definitions apply to the provisions of this article:

"Base assessed value" means the taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a microgrid district as shown upon the landbooks and personal property books of the assessor on July 1 of the calendar year preceding the effective date of the certification by the Public Service Commission of the microgrid district: *Provided*, That personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a microgrid district are excluded from the base assessed value.

"Current assessed value" means the annual taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a microgrid district as shown upon the landbook and personal property records of the assessor: *Provided*, That personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a microgrid district are excluded from the current assessed value.

"District fund" means a separate fund for a microgrid district established by the county commission into which all tax increment revenues and other pledged revenues are deposited and from which distributions are made in accordance with the provisions of this section.

"Incremental value", for any microgrid district, means the difference between the base assessed value and the current assessed value. The incremental value will be positive if the current value exceeds the base value, and the incremental value will be negative if the current value is less than the base assessed value.

"Tax increment" means the amount of regular levy property taxes attributable to the amount by which the current assessed value of real and tangible personal property having a tax situs in a microgrid district exceeds the base assessed value of the property.

(8) The provisions of this article shall be effective for taxable years beginning on and after

July 1, 2025.

## CHAPTER 24. PUBLIC SERVICE COMMISSION.

**ARTICLE      2J.      MODERN      AMERICAN      GENERATION      ACT.**

<b>§24-2J-1.</b>	<b>Short</b>	<b>title.</b>
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This article shall be known as the Modern American Generation Act.

<b>§24-2J-2.</b>	<b>Legislative</b>	<b>findings.</b>
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The Legislature hereby finds that:

(a) New commercial or industrial customers of electricity may require, as a prerequisite to locating a facility in West Virginia, electricity power options in terms of fuel source, generation method, date of availability of firm service, price, or other terms which are not or cannot be offered by a local distribution electric utility which holds a certificate of convenience and necessity from the Public Service Commission;

(b) The location of new commercial or industrial customers of electricity in West Virginia will increase employment opportunities in the state, increase the value of real and personal property subject to taxation, improve economic vitality generally, and perpetuate West Virginia's tradition of providing competitive options for electricity to electricity customers;

(c) The location of new commercial or industrial customers of electricity in West Virginia will  
provide increased investment, employment, and taxes related to these facilities.

**§24-2J-3. Certified microgrid program, rulemaking authority.**

The certified microgrid program is hereby created. In order to effectuate the purposes of this article, the Public Service Commission, the Department of Economic Development or any agencies or subdivisions thereof, may, as applicable, propose legislative rules, including emergency rules, for promulgation in accordance with §29A-3-1 *et seq.* of this code.

**§24-2J-4. Non-interconnected microgrids sized over 100 megawatts of new load.**

(a) To become a non-interconnected microgrid operator under this section, the operator

shall present to the local distribution electric utility and the secretary of the Department of

Economic Development a confidential letter of intent to become a certified non-interconnected microgrid operator. The letter of intent shall include sufficient economic, financial, and engineering information concerning the proposed project to adequately inform the local distribution electric utility and the department of the size and scope of the project, including without limitation, the approximate proposed acreage and location, estimated capital investment, evidence of financial capacity, estimated project completion date, major project milestones, estimated annual generation capacity internal to the microgrid, estimated annual power loading internal to the microgrid, and the type or source of the generation. The letter of intent shall be presented at least 90 days prior to filing a petition with the Public Service Commission and shall be held in confidence by the department and utility.

(b) To qualify as a non-interconnected microgrid operator under this section, more than 90 days after presentation of the confidential letter of intent, the operator shall present to the Public Service Commission a petition, verified by an appropriate microgrid project official, for designation as a non-interconnected microgrid operator which satisfies the following criteria:

(1) The microgrid operator has identified a defined microgrid district consisting of a contiguous area, no greater than 2,250 acres, which is presently lacking or will lack electric transmission and distribution facilities, or both, which contain facilities which may be removed or rerouted during or at the end of construction. The Microgrid operator shall be liable for all costs, expenses, and damages incurred by any party as a result of the removal or rerouting of all transmission and distribution lines and other electrical infrastructure necessary to isolate the project from any external power source.

(2) The microgrid operator has prepared a preliminary engineering report showing the defined property boundaries, no greater than 2,250 contiguous acres, and the approximate location within the microgrid district and environs of proposed electric generation facilities, internal transmission and distribution lines, internal electric substations, and the distances between the property boundaries and the nearest external electric distribution and transmission facilities after

29 construction is complete.

30 (3) The microgrid operator presents commitments for the new commercial or industrial  
31 customer(s) and tenant(s), or both, of the microgrid district to purchase at least an annual average  
32 of 100 megawatts of power.

33 (4) The microgrid operator has entered into agreements, which may be contingent, to  
34 provide electric distribution services to new commercial or industrial customer(s) and tenant(s), or  
35 both, located within the microgrid district; and

36 (5) The microgrid operator has served a copy of the verified petition upon the proximate  
37 local distribution electric utility to the microgrid district simultaneously with the filing of the petition  
38 with the commission.

39 (c) Upon receipt of the petition, the local distribution electric utility and the Public Service  
40 Commission shall verify that there will be no interconnection to the surrounding electrical  
41 transmission and distribution system after construction is complete.

42 (d) In order for new commercial or industrial customers of electricity to receive electric  
43 distribution service from a non-interconnected microgrid operator, the customer(s) and tenant(s),  
44 or both, shall satisfy the following criteria:

45 (1) Demonstrate a projected aggregate electricity demand of at least 100 megawatts  
46 connected load by the customer(s) and tenant(s), or both, as supported by a preliminary  
47 engineering report or similar document;

48 (2) The new commercial or industrial customer(s) and tenant(s), or both, shall each  
49 constitute new electricity demand within the state, to the exclusion of the relocation, movement, or  
50 decrease of existing electricity demand from facilities receiving service from a certificated local  
51 distribution electric utility in the state to a new location: *Provided*, That utilizing electric power from  
52 a local distribution electric utility holding a certificate of convenience and necessity from the  
53 commission during the construction of a facility, including during construction of electric facilities,  
54 does not disqualify a new commercial or industrial customer(s) and tenant(s), or both, from taking

55 electric service from a microgrid operator; and

56 (3) The new commercial or industrial customer(s) and tenant(s), or both, or the microgrid  
57 operator which proposes to serve the new commercial industrial customer(s) and tenant(s), or  
58 both, shall assume all responsibility and liability for power service, including backup power, after  
59 construction is complete.

60 (e) (1) The commission shall issue a final order limited to determining whether the petition  
61 has satisfied the criteria set forth in this section within 90 days of the filing of the petition or the  
62 petition is considered approved, and the certification shall issue, contingent upon total isolation  
63 after construction is complete.

64 (2) A microgrid operator, which has been designated as such by the commission, shall file  
65 certification to the commission as a closed entry notice within 10 days of when any new  
66 commercial or industrial customer and tenant, or both, have commenced taking service from the  
67 microgrid operator and also shall file notice within 10 days after total isolation from the local  
68 distribution electric utility once construction is complete.

69 (3) The commission may establish a special rate during construction upon the filing of  
70 either a joint filing or a petition pursuant to this section. A special contract or rate shall meet the  
71 marginal costs of the local distribution electric utility to provide service, and provide some  
72 contribution by the microgrid operator, the new commercial or industrial customer(s) and tenant(s),  
73 or both, as applicable, to the local distribution electric utility's fixed cost of providing service.  
74 Regulated electric utility customers may not bear any construction, operational, or capacity-  
75 related costs associated with non-utility owned and operated electricity generation co-located  
76 within a microgrid district. All costs of this nature shall be borne by the microgrid operator, its new  
77 commercial or industrial customer(s) and tenant(s), or both, situated within the microgrid district.

**§24-2J-5. Interconnected microgrids sized between 100 and 300 megawatts of new load.**

1 (a) To become a microgrid operator under this section, the operator shall first present to the  
2 local distribution electric utility and the secretary of the Department of Economic Development a

confidential letter of intent to become a certified microgrid operator. The letter of intent shall include sufficient economic, financial, and engineering information concerning the proposed project to adequately inform the local distribution electric utility and the department of the size and scope of the project, including without limitation, the approximate proposed acreage and location, estimated capital investment, evidence of financial capacity, estimated project completion date, major project milestones, estimated annual generation capacity, estimated annual power loading internal to the microgrid, estimated annual power requirements, including backup power, needed from the local distribution electric utility, and the type or source of the generation. The letter of intent shall be presented at least 90 days prior to filing a petition with the Public Service Commission and shall be held in confidence by the department and utility. Within this 90-day period or prior to a microgrid operator filing a petition with the Public Service Commission, whichever time is greater, the local distribution electric utility may exercise a right of first refusal in writing to supply all electricity needs for the project, thereby precluding the formation of the proposed microgrid.

(b) To qualify as a microgrid operator under this section, more than 90 days after presentation of the confidential letter of intent, the operator shall present to the Public Service Commission a petition, verified by an appropriate microgrid project official, for designation as a microgrid operator which satisfies the following criteria:

(1) The microgrid operator shall state whether the local distribution electric utility either affirmatively rejected the opportunity in writing under the right of first refusal or failed to make an election in writing before the period expired.

(2) The microgrid operator has identified a defined microgrid district consisting of an area presently lacking electric transmission and distribution facilities, or both, capable of meeting a minimum connected load of between 100 MW and 300 MW of new large commercial or industrial customer(s) and tenant(s), or both, an estimated five year completion schedule with verifiable milestones, and with a defined contiguous area no greater than 2,250 acres;

29       (3) The microgrid operator has prepared a preliminary engineering report showing the  
30 defined property boundaries and the approximate location within the microgrid district and  
31 environs of an electric substation which will receive and step-down high voltage power, electric  
32 distribution facilities, electric generation facilities, if any, and high voltage intrastate or interstate  
33 electric transmission lines, if any;

34       (4) The microgrid operator presents commitments for the new large commercial or  
35 industrial customer(s) and tenant(s), or both, of the microgrid district to purchase at least 75  
36 percent of the amount of power which it proposes to generate annually from electricity generating  
37 facilities located in West Virginia, and the power may be marketed by the microgrid operator and  
38 delivered to the new large commercial or industrial customer(s) and tenant(s), or both, by  
39 intrastate or interstate transmission lines, or a combination of intrastate and interstate  
40 transmission lines;

41       (5) The microgrid operator has entered into agreements, which may be contingent, to  
42 provide electric distribution services to new large commercial or industrial customer(s) and  
43 tenant(s), or both, located within the microgrid district; and

44       (6) The microgrid operator has served a copy of the verified petition upon the proximate  
45 local distribution electric utility to the microgrid district simultaneously with the filing of the petition  
46 with the commission.

47       (c) In order for new large commercial or industrial customers of electricity to receive electric  
48 distribution service from a microgrid operator, the customer(s) and tenant(s), or both, shall satisfy  
49 the following criteria:

50       (1) Demonstrate a projected aggregate electricity demand of between 100 and 300  
51 megawatts connected load by the customer(s) and tenant(s), or both, as supported by a  
52 preliminary engineering report or similar document;

53       (2) The new large commercial or industrial customer(s) and tenant(s), or both, shall each  
54 constitute new electricity demand within the state, to the exclusion of the relocation, movement, or



decrease of existing electricity demand from facilities receiving service from a certificated local distribution electric utility in the state to a new location: *Provided*, That utilizing electric power from a local distribution electric utility holding a certificate of convenience and necessity from the commission during construction of facilities, including during construction of electric facilities, does not disqualify a new large commercial or industrial customer(s) and tenant(s), or both, from taking electric service from a microgrid operator; and

(3) The new large commercial or industrial customer(s) and tenant(s), or both, or the microgrid operator which proposes to serve the new large commercial industrial customer(s) and tenant(s), or both, have requested backup power service from the proximate local distribution electric utility which may or may not be located within the state, either according to tariff or special contract terms.

(d) (1) The commission shall issue a final order limited to determining whether the petition has satisfied the criteria set forth in this section within 90 days of the filing of the petition or the petition is deemed approved, and the certification shall issue.

(2) A microgrid operator which has been designated as such by the commission shall file certification to the commission as a closed entry notice within 10 days of when any new large commercial or industrial customer(s) and tenant(s), or both, have commenced taking service from the microgrid operator.

(e) (1) The microgrid operator or new large commercial or industrial customer(s) and tenant(s), or both, seeking to apply for a backup rate or contract from the proximate certificated local distribution electric utility located in the state shall first enter negotiations with the local distribution utility regarding the terms and conditions of a mutually agreeable backup rate or contract. The microgrid operator shall provide reasonable access and terms to the local distribution utility to enable the electric utility's transmission and distribution facilities, or both, to tie into those of the microgrid operator.

(2) If the negotiations result in an agreement within 90 days between the microgrid

operator, the new large commercial or industrial customer(s) and tenant(s), or both, and the local distribution utility, the contracting parties shall make a joint filing with the commission seeking approval of the proposed backup contract or rate.

(3) If negotiations for a backup contract or rate with the local distribution utility are unsuccessful, after 90 days the microgrid operator, or the new large commercial or industrial customer(s) and tenant(s), or both, as applicable, may file a petition with the commission to consider establishing a backup contract or rate.

(4) The commission may establish a special rate upon the filing of either a joint filing or a petition pursuant to this section. A special contract or rate shall meet the marginal costs of the local distribution electric utility to provide service, and provide some contribution by the microgrid operator, the new large commercial or industrial customer(s) and tenant(s), or both, as applicable, to the local distribution electric utility's fixed cost of providing service. Regulated electric utility customers may not bear any construction, operational, or capacity-related costs associated with non-utility owned and operated electricity generation co-located within a microgrid district. All costs of this nature are to be borne by the microgrid operator, its new large commercial or industrial customer(s) and tenant(s), or both, situated within the microgrid district.

(5) The commission shall issue a final order determining the terms of a backup contract or rate under this subsection within 90 days of filing of a petition or joint petition.

**§24-2J-6. Interconnected microgrids sized equal to or greater than 300 megawatts of new load.**

(a) To become a microgrid operator under this section, the operator shall first present to the local distribution electric utility and the secretary of the Department of Economic Development a confidential letter of intent to become a certified microgrid operator. The letter of intent shall include sufficient economic, financial, and engineering information concerning the proposed project to adequately inform the local distribution electric utility and the department of the size and scope of the project, including without limitation, the approximate proposed acreage and location,

estimated capital investment, evidence of financial capacity, estimated project completion date, major project milestones, estimated annual generation capacity, estimated annual power loading internal to the microgrid, estimated annual power requirements, including backup power, needed from the local distribution electric utility, and the type or source of the generation. The letter of intent shall be presented at least 90 days prior to filing a petition with the Public Service Commission and shall be held in confidence by the department and utility.

(b) To qualify as a microgrid operator under this section, more than 90 days after presentation of the confidential letter of intent, the operator shall present to the Public Service Commission a petition, verified by an appropriate microgrid project official, for designation as a microgrid operator which satisfies the following criteria:

(1) The microgrid operator has identified a defined microgrid district consisting of an area presently lacking electric transmission and distribution facilities, or both, capable of meeting a minimum connected load of 300 MW of new large commercial or industrial customer(s) and tenant(s), or both, with an aggregate capital investment of \$2 billion or more, with estimated aggregate annual payroll upon full development of \$7.5 million, an estimated five year completion schedule with verifiable milestones, and with a defined contiguous area no greater than 2,250 acres;

(2) The microgrid operator has prepared a preliminary engineering report showing the defined property boundaries and the approximate location within the microgrid district and environs of an electric substation which will receive and step-down high voltage power, electric distribution facilities, electric generation facilities, if any, and high voltage intrastate or interstate electric transmission lines, if any;

(3) The microgrid operator presents commitments for the new large commercial or industrial customer(s) and tenant(s), or both, of the microgrid district to purchase at least 75 percent of the amount of power which it proposes to generate annually from electricity generating facilities located in West Virginia, and the power may be marketed by the microgrid operator and

delivered to the new large commercial or industrial customer(s) and tenant(s), or both, by intrastate or interstate transmission lines, or a combination of intrastate and interstate transmission lines;

(4) The microgrid operator has entered into agreements, which may be contingent, to provide electric distribution services to new large commercial or industrial customer(s) and tenant(s), or both, located within the microgrid district; and

(5) The microgrid operator has served a copy of the verified petition upon the proximate local distribution electric utility to the microgrid district simultaneously with the filing of the petition with the commission.

(c) In order for new large commercial or industrial customers of electricity to receive electric distribution service from a microgrid operator, the customer(s) and tenant(s), or both, shall satisfy the following criteria:

(1) Demonstrate a projected aggregate electricity demand of at least 300 megawatts connected load by the customer(s) and tenant(s), or both, as supported by a preliminary engineering report or similar document;

(2) The new large commercial or industrial customer(s) and tenant(s), or both, shall each constitute new electricity demand within the state, to the exclusion of the relocation, movement, or decrease of existing electricity demand from facilities receiving service from a certificated local distribution electric utility in the state to a new location: *Provided*, That utilizing electric power from a local distribution electric utility holding a certificate of convenience and necessity from the commission during construction of facilities, including during construction of electric facilities, does not disqualify a new large commercial or industrial customer(s) and tenant(s), or both, from taking electric service from a microgrid operator; and

(3) The new large commercial or industrial customer(s) and tenant(s), or both, or the microgrid operator which proposes to serve the new large commercial industrial customer(s) and tenant(s), or both, have requested backup power service from the proximate local distribution

59 electric utility which may or may not be located within the state, either according to tariff or special  
60 contract terms.

61 (d) (1) The commission shall issue a final order limited to determining whether the petition  
62 has satisfied the criteria set forth in this section within 90 days of the filing of such petition or the  
63 petition is deemed approved, and the certification shall issue.

64 (2) A microgrid operator which has been designated as such by the commission shall file  
65 certification to the commission as a closed entry notice within 10 days of when any new large  
66 commercial or industrial customer(s) and tenant(s), or both, have commenced taking service from  
67 the microgrid operator.

68 (e) (1) The microgrid operator or a new large commercial or industrial customer(s) and  
69 tenant(s), or both, seeking to apply for a backup rate or contract from the proximate certificated  
70 local distribution electric utility located in the state shall first enter negotiations with the local  
71 distribution utility regarding the terms and conditions of a mutually agreeable backup rate or  
72 contract. The microgrid operator shall provide reasonable access and terms to the local  
73 distribution utility to enable the electric utility's transmission and distribution facilities, or both, to tie  
74 into those of the microgrid operator.

75 (2) If the negotiations result in an agreement within 90 days between the microgrid  
76 operator, the new large commercial or industrial customer(s) and tenant(s), or both, and the local  
77 distribution utility, the contracting parties shall make a joint filing with the commission seeking  
78 approval of the proposed backup contract or rate.

79 (3) If negotiations for a backup contract or rate with the local distribution utility are  
80 unsuccessful, after 90 days the microgrid operator, or the new large commercial or industrial  
81 customer(s) and tenant(s), or both, as applicable, may file a petition with the commission to  
82 consider establishing a backup contract or rate.

83 (4) The commission may establish a special rate upon the filing of either a joint filing or a  
84 petition pursuant to this section. A special contract or rate shall meet the marginal costs of the local

distribution electric utility to provide service, and provide some contribution by the microgrid operator, the new large commercial or industrial customer(s) and tenant(s), or both, as applicable, to the local distribution electric utility's fixed cost of providing service. Regulated electric utility customers may not bear any construction, operational, or capacity-related costs associated with non-utility owned and operated electricity generation co-located within a microgrid district. All costs of this nature shall be borne by the microgrid operator, its new large commercial or industrial customer(s) and tenant(s), or both, situated within the microgrid district.

(5) The commission shall issue a final order determining the terms of a backup contract or rate under this subsection within 90 days of filing of a petition or joint petition.

**§24-2J-7. Certified Microgrids terms of service.**

(a) Upon certification by the commission as a microgrid operator, the microgrid operator and new commercial or industrial customer(s) and tenant(s), or both, shall be subject to the following minimum terms of service:

(1) The certified microgrid operator may not be or become a public utility subject to the jurisdiction of the commission from or in connection with purchasing, using, selling, giving, buying, providing, transporting to or from, distributing, constructing, installing, owning, or operating electric microgrid facilities, or otherwise supplying or using electricity.

(2) The certified microgrid operator, any electric generating facility located within the microgrid district, and any electric transmission facility tying into the microgrid operator's electric substation are not obligated to obtain a certificate of convenience and necessity from the commission, a siting certificate, an order from the commission approving a modification to a siting certificate, or a certificate of convenience and necessity for a transmission line, and are not subject to the jurisdiction of the commission with respect to rates, conditions and terms of service, or complaints, and are not subject to the net metering and interconnection standards as set forth in §24-2F-8 of this code;

(3) New commercial or industrial customer(s) and tenant(s), or both, served by a

17 designated microgrid operator may resell power, and, in so doing may not be or become a public  
18 utility subject to the jurisdiction of the commission from or in connection with purchasing, using,  
19 selling, giving, buying, providing, transporting to or from, or otherwise supplying or using electricity,  
20 and are not obligated to obtain a certificate of convenience and necessity from the commission,  
21 and are not subject to the jurisdiction of the commission with respect to rates, conditions and terms  
22 of service, or complaints, and are not subject to the net metering and interconnection standards as  
23 set forth in §24-2F-8 of this code, as applicable.

24 (b) A certified microgrid operator may provide electric service to additional new commercial  
25 or industrial customer(s) and tenant(s), or both, located within the territory described in the  
26 microgrid designation petition without further order from the commission. Businesses and facilities  
27 located within the microgrid district which are not initially served by a microgrid operator may  
28 obtain electric service, as needed, from the proximate local distribution electric utility.

29 (c) The certified microgrid operator, as applicable, may elect to qualify as an exempt  
30 wholesale generator under federal law for purposes of furnishing electric service through the  
31 generation of electricity to a utility or regional transmission organization without being subject to  
32 the public service commission's siting certificate requirements as set forth in §24-2-1(d), §24-2-  
33 11c, or §24-2-1o of this code.

**§24-2J-8. High impact economic development districts preserved.**

1 The legislature does not intend, nor may this article be interpreted, to alter the legal status  
2 of existing high impact economic development districts certified and formed pursuant to §5B-2-21  
3 of this code. If qualified under this article, an entity providing electric service within a high impact  
4 economic development district pursuant to §5B-2-21 of this code, may elect to become a microgrid  
5 operator under this article by notifying the local distribution electric utility, the Public Service  
6 Commission, and the secretary of the Department of Economic Development of its election.  
7 Qualifications for making this election are to be reviewed by the Public Service Commission.

NOTE: The purpose of this bill is to establish a framework for microgrid operators to provide

electricity to large commercial and industrial customers in West Virginia, outlining eligibility, approval processes, and interactions with local utilities.

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