

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 438

By Senator Rose

[Introduced February 13, 2025; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,
2 designated §5D-1-24, relating to establishing the West Virginia Intrastate Energy Use Act;
3 designating which environmental regulation of coal, oil, and natural gas extracted and
4 used within West Virginia is exclusively regulated by the West Virginia Department of
5 Environmental Protection; legislative authority; and providing definitions related to these
6 energy sources.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-24. West Virginia Intrastate Energy Use Act.

1 (a) The Tenth Amendment to the Constitution of the United States guarantees to the states
2 and their people all powers not explicitly granted to the federal government, reserving certain
3 powers to West Virginia as understood at its admission to statehood in 1863. This guarantee is a
4 contractual matter between West Virginia and the United States; and

5 The Ninth Amendment ensures rights not specified in the Constitution, reserving such
6 rights to the people of West Virginia as understood at statehood in 1863. This is also a contractual
7 aspect of the compact between West Virginia and the United States.

8 Regulation of intrastate commerce, including the environmental impact of such activities,
9 falls under the states' jurisdiction under the Ninth and Tenth Amendments, specifically retained by
10 West Virginia.

11 (b) "Borders of West Virginia "means the geographical boundaries as described in the
12 West Virginia Constitution.

13 "Coal mine" means operations and facilities related to the extraction of coal from West
14 Virginia's substrata.

15 "Oil well" means those operations and facilities producing oil from the substrata within
16 West Virginia.

17 "Gas well" means operations and facilities producing natural gas from the substrata within
18 West Virginia.

19 (c) Environmental regulation within West Virginia for business activities involving coal, oil,
20 and natural gas, where the products are consumed or retained within the state, is under the
21 jurisdiction of the West Virginia Department of Energy.

22 (d) Any coal mine, oil, or gas well in West Virginia producing these resources for
23 commercial or private use within the state, including those undergoing primary conversion
24 processes, shall first receive an operational permit from the West Virginia Department of Energy
25 after compliance certification with applicable state and federal laws.

26 (e) The Legislature asserts that the U.S. Environmental Protection Agency (EPA), under
27 its claim to regulate interstate commerce, lacks authority to deny operational permits for these
28 resources since they do not enter interstate commerce.

29 (f) This act applies to coal, oil, and natural gas produced within West Virginia and pertains
30 solely to the issuance of operational permits for coal mines, oil, and gas wells as required by
31 environmental regulations such s the Clean Water Act or equivalent statutes. It does not limit the
32 enforcement of other state or federal environmental laws or regulations.

33 (h) Power Generation: This act extends to include the regulation of power generation
34 facilities in West Virginia using coal, oil, or natural gas, ensuring that such facilities also fall under
35 the purview of the WVDEP for environmental compliance when the energy is generated and
36 consumed within the state.

37 (i) This legislation is intended to clarify and assert West Virginia's authority over its natural
38 resources, particularly in terms of environmental regulation, in alignment with constitutional rights
39 and state sovereignty.

NOTE: The purpose of this bill is to create the West Virginia Intrastate Energy Use Act, designating which environmental regulation of coal, oil, and natural gas extracted and used within West Virginia is exclusively regulated by the West Virginia Department of Environmental Protection; legislative authority; and provides definitions related to these energy sources.`

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