

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 560

By Senator Thorne

[Introduced February 20, 2025; referred
to the Committee on Economic Development; and
then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,
2 designated §7-1-3uu, relating to county commissions and municipalities; granting authority
3 to enact ordinances; defining terms; restricting locations of certain energy facilities; and
4 establishing judicial review.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3uu. Authority of counties and municipalities to enact ordinances restricting the location of wholesale renewable energy facilities.

(a) Legislative finding and purpose.

1 The Legislature finds that the placement of utility-scale renewable energy facilities in rural
2 communities has become increasingly controversial and is frequently met with strong citizen
3 objection and community discord for many reasons including their impact on:

4 (1) The value of surrounding residential properties;

5 (2) Nearby residents' peaceful enjoyment of their property;

6 (3) Scenic and rural viewsheds and associated impact on tourism;

7 (4) Wildlife habitat and migration;

8 (5) Erosion and nearby streams and bodies of water;

9 (6) Soils and farmland unless largely as yet demonstrated extraordinary remediation
10 measures are taken at decommissioning;

11 (7) Regional farmland acreage costs;

12 (8) Farm and agriculture economy; and

13 (9) Local economies by pushing out productive land uses that can provide much longer-
14 term benefits to local communities.

15 Further, the Legislature finds that these impacts are primarily local in nature and therefore
16 should be subject primarily to local jurisdiction for review and approval.

17 (b)(1) For the purpose of this section:

"Wholesale renewable energy facility" means a wind and/or solar energy facility that has a production capacity of five electric megawatts or greater and whose energy is primarily sold into the electric power grid, wholesale or otherwise. It shall not mean those wind and/or solar energy facilities whose energy is consumed primarily on site or by adjacent consumers for the purpose of local agriculture, residential, or commercial operations.

(2) Notwithstanding any other provision of this code, a county commission or governing body of a municipality may, by order entered of record in the case of county commissions, adopt an ordinance that sets forth any combination of the following:

(A) Limits on the areas of the county and/or municipality in which a wholesale renewable energy facility may be constructed or operated within the county and/or municipality;

(B) Setback and/or screening requirements for the construction or expansion of any wholesale renewable energy facility, to include but not limited to setbacks from educational and residential areas as defined by the governing body or county commission;

(C) Limits on the total area of any wholesale renewable energy facility;

(D) Limits on the height of any component of a wholesale renewable energy facility;

(E) Limits on facilities pertaining to local capacity for fire prevention and emergency response, or requirements for exactions related thereto;

(F) Criteria for design to mitigate local environmental impacts;

(G) Criteria and assurance – financial or otherwise – that the land on which a wholesale renewable energy facility is located is restored to its original productivity; and

(H) Criteria for the restriction of wholesale renewable energy facilities based upon impact on historical, cultural, or other scenic viewsheds.

(c) The ordinance adopted pursuant to the provisions of this section shall be subject to the provisions of §8A-7-10: *Provided*, That in the event of the partial or total loss of any existing facility or component thereof subject to this section due to fire, flood, accident, or any other unforeseen act, that facility or component may be repaired or replaced and the use of that structure may

continue notwithstanding the existence of any ordinance authorized by this section. Any repair or replacement is limited to restoring or replacing the damaged or lost facility or component with one reasonably similar, or smaller, in size as measured in square footage and/or height, and any enlargement of the business structure subjects the structure to any existing ordinance authorized by this section.

(d) No ordinance enacted by a county commission pursuant to the provision of this section applies to or affects any municipal corporation that either:

(1) Has adopted and has in effect a zoning ordinance regulating wholesale renewable energy facilities or an ordinance regulating wholesale renewable energy facilities pursuant to this section; or

(2) Adopts an ordinance to exempt itself from any county ordinance enacted pursuant to this section.

(e) The requirements and/or restrictions set forth in any ordinance enacted pursuant to the provisions of this section shall be in addition to, and not in lieu of, any federal or state restrictions or requirements.

(f) Any person adversely affected by an ordinance enacted pursuant to the authority granted in subsection (b) of this section is entitled to seek direct judicial review with regard to whether the ordinance impermissibly burdens his or her right to establish or operate a wholesale renewable energy facility.

(g) The provisions of this section shall be liberally construed to allow the governing bodies of municipalities and county commissions to take those actions deemed necessary to eliminate, reduce, or control the adverse secondary effects caused by wholesale renewable energy facilities within their communities.

NOTE: The purpose of this bill is to grant counties and municipalities the authority to enact ordinances restricting the location of wholesale renewable energy facilities.

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