

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3336**

By Delegate Riley

[Introduced February 08, 2023; Referred to the  
Committee on Energy and Manufacturing then the  
Judiciary]

1 A BILL to amend and reenact §5B-2-21 of the Code of West Virginia, 1931, as amended, relating  
2 to expanding the definition of sources of energy for high impact industrial plants and  
3 facilities to include power sources free of carbon dioxide emissions, or through sources  
4 utilizing carbon dioxide sequestration; to increase the certification of business districts  
5 from two to ten; and to modify the expiration date for the provisions of this section.

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

## **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, non-  
6 combustion source, sources that are free of carbon dioxide emissions, or sources utilizing carbon  
7 dioxide sequestration, is demonstrated to be necessary to encourage economic development. In  
8 order to effectuate the purposes of this section, the Department of Economic Development or any  
9 agency, division, or subdivision thereof, may propose for promulgation of legislative rules,  
10 including emergency rules, in accordance with §29A-3-1 *et seq.* of this code.

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

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

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

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

24           (4) The electricity generated from renewable sources, non-combustion sources, sources  
25 that are free of carbon dioxide emissions, or sources utilizing carbon dioxide sequestration within  
26 the district will be used within the district or delivered to the wholesale market.

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

31           (c) *Providing electric service within a certified high impact industrial business development*  
32 *district.*— Within a high impact industrial business development district, any person, firm,  
33 corporation, or entity seeking to provide electric service through the generation of renewable  
34 sources, sources that are free of carbon dioxide emissions, or sources utilizing carbon dioxide  
35 sequestration from within the high impact industrial business development district of electricity to  
36 businesses locating within the certified high impact industrial business development district may:

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

40           (2) Not be subject to the net metering and interconnection standards as set forth in §24-2F-  
41 8 of this code;

42           (3) Elect to qualify as an exempt wholesale generator under federal law for purposes of  
43 furnishing electric service through the generation of renewable sources to a utility or regional  
44 transmission organization without being subject to the Public Service Commission's siting

45 certificate requirements as set forth in §24-2-1(d), §24-2-11c, or §24-2-1o of this code;

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

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

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

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

71 new electric generating load in order to take advantage of the provisions of this section.

72 (e) *Special rates.* — In furtherance of the creation of a high impact industrial business  
73 development district, the Public Service Commission may approve special electric utility rates for  
74 an eligible electric retail electric customer within the high impact industrial business development  
75 district. An eligible retail electric customer seeking to apply for a special rate shall first enter into  
76 negotiations with the utility that provides it with electric power, regarding the terms and conditions  
77 of a mutually agreeable special rate. If the negotiations result in an agreement between the eligible  
78 retail electric customer and the utility, the eligible retail electric customer and the utility shall make  
79 a joint filing with the Public Service Commission seeking approval of the proposed special rate. If  
80 the negotiations are unsuccessful, the eligible retail electric customer may file a petition with the  
81 Public Service Commission to consider establishing a special rate. The Public Service  
82 Commission shall have the authority to establish a special rate upon the filing of either a joint filing  
83 or a petition pursuant to this section.

84 (f) The provisions of this section shall expire on June 30, ~~2028~~ 2030: *Provided*, That the  
85 expiration of this section shall not affect any high impact industrial business development district  
86 previously approved by the secretary.

NOTE: The purpose of this bill is to expand the definition of sources of energy for high impact industrial plants and facilities to include power sources free of carbon dioxide emissions, or through sources utilizing carbon dioxide sequestration. The bill increases the certification of business districts from two to ten. Finally, the bill modifies the expiration date for the provisions of this section.

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