

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

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

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

87 (f) (g) The provisions of this section shall expire on June 30, 2028: *Provided*, That the
 88 expiration of this section shall may not affect any high impact ~~industrial~~ business development
 89 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.

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

7 (1) As long as the microgrid district exists, the county sheriff and assessor shall divide the
 8 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)

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

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

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

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

47 (5)(A) *Payment In Lieu Of Taxes, Increment Property* -- Notwithstanding the provisions of
48 §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,
49 §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-
50 16A-16(b), §17-16B-20(b), §18-9A-12(c), §31-21-5, and §31-21-15 of this code, or any other
51 provision of this code, no payment in lieu of taxes may be entered into with relation to any property
52 subject to this article or any leasehold interest related thereto, or any other property interest
53 related thereto.

54 (B) *Tax Increment Financing, Increment Property* -- Notwithstanding the provisions of §7-
55 11B-1 *et seq.* of this code, or any other provision of this code, no tax increment financing project,
56 plan or arrangement may be entered into or undertaken with relation to any property subject to this
57 subsection.

58 (6)(A) *Payment In Lieu Of Taxes Electricity Generation and Distribution* -- Notwithstanding
59 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-
60 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,

61 §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
62 code, or any other provision of this code, no payment in lieu of taxes may be entered into with
63 relation to the property of any electricity generating plant, facility, or generating unit or any property
64 comprising, in whole or in part, any electricity distribution apparatus, equipment, lines or facilities
65 (i) located in the county and (ii) directly or indirectly dedicated to providing electric power to any
66 plant, facility or property subject to this subsection. Nor may any payment in lieu of taxes be
67 entered into with relation to any leasehold interest or any other property interest related thereto.

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

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

78 (D) For purposes of this article property included for purposes of this article includes all real
79 property, all buildings and structures affixed to land, and all tangible personal property, including,
80 but not limited to equipment, inventories and mobile equipment, and also including property
81 subject to special salvage valuation under §11-6A-1 *et seq.*, §11-6E-1 *et seq.*, §11-6H-1 *et seq.*,
82 §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
83 other special *ad valorem* property valuation provision of this code; *Provided*, That property subject
84 to special valuation shall be allowed that special valuation as authorized by law, for purposes of
85 calculating and determining the *ad valorem* property tax imposed with relation thereto,
86 notwithstanding being otherwise subject to the provisions of this article.

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

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

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

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

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

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

111 (8) The provisions of this article shall be effective for taxable years beginning on and after
112 July 1, 2025.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2J. MODERN AMERICAN GENERATION ACT.

§24-2J-1. Short title.

1 This article shall be known as the Modern American Generation Act.

§24-2J-2. Legislative findings.

1 The Legislature hereby finds that:

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

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

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

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

1 The certified microgrid program is hereby created. In order to effectuate the purposes of
2 this article, the Public Service Commission, the Department of Economic Development or any
3 agencies or subdivisions thereof, may, as applicable, propose legislative rules, including
4 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.

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

3 Economic Development a confidential letter of intent to become a certified non-interconnected
4 microgrid operator. The letter of intent shall include sufficient economic, financial, and engineering
5 information concerning the proposed project to adequately inform the local distribution electric
6 utility and the department of the size and scope of the project, including without limitation, the
7 approximate proposed acreage and location, estimated capital investment, evidence of financial
8 capacity, estimated project completion date, major project milestones, estimated annual
9 generation capacity internal to the microgrid, estimated annual power loading internal to the
10 microgrid, and the type or source of the generation. The letter of intent shall be presented at least
11 90 days prior to filing a petition with the Public Service Commission and shall be held in confidence
12 by the department and utility.

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

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

24 (2) The microgrid operator has prepared a preliminary engineering report showing the
25 defined property boundaries, no greater than 2,250 contiguous acres, and the approximate
26 location within the microgrid district and environs of proposed electric generation facilities, internal
27 transmission and distribution lines, internal electric substations, and the distances between the
28 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

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

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

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

24 (2) The microgrid operator has identified a defined microgrid district consisting of an area
25 presently lacking electric transmission and distribution facilities, or both, capable of meeting a
26 minimum connected load of between 100 MW and 300 MW of new large commercial or industrial
27 customer(s) and tenant(s), or both, an estimated five year completion schedule with verifiable
28 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

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

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

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

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

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

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

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

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

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

97 (5) The commission shall issue a final order determining the terms of a backup contract or
98 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.

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
3 confidential letter of intent to become a certified microgrid operator. The letter of intent shall
4 include sufficient economic, financial, and engineering information concerning the proposed
5 project to adequately inform the local distribution electric utility and the department of the size and
6 scope of the project, including without limitation, the approximate proposed acreage and location,

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

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

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

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

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

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

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

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

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

45 (1) Demonstrate a projected aggregate electricity demand of at least 300 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 large 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 construction of facilities, including during construction of electric facilities, does
54 not disqualify a new large commercial or industrial customer(s) and tenant(s), or both, from taking
55 electric service from a microgrid operator; and

56 (3) The new large commercial or industrial customer(s) and tenant(s), or both, or the
57 microgrid operator which proposes to serve the new large commercial industrial customer(s) and
58 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

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

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

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

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

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

8 (2) The certified microgrid operator, any electric generating facility located within the
 9 microgrid district, and any electric transmission facility tying into the microgrid operator's electric
 10 substation are not obligated to obtain a certificate of convenience and necessity from the
 11 commission, a siting certificate, an order from the commission approving a modification to a siting
 12 certificate, or a certificate of convenience and necessity for a transmission line, and are not subject
 13 to the jurisdiction of the commission with respect to rates, conditions and terms of service, or
 14 complaints, and are not subject to the net metering and interconnection standards as set forth in
 15 §24-2F-8 of this code;

16 (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.