



JEFFERSON COUNTY, WEST VIRGINIA

Office of Planning and Zoning

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MEMO

TO: Planning Commission of Jefferson County
FROM: Luke Seigfried, Chief County Planner
DATE: May 13, 2025
RE: Proposed Text Amendment to Section 2.2, Appendix C – Principal Permitted and Consitional Use Table, and Addition of Section 8.21 of the Zoning and Land Development Ordinance (amended 2022) and Proposed Text Amendment of Appendix A and Addition of Section 21.106 of the Subdivision & Land Development Regulations (amended 2024).

At their April 29, 2025 meeting, Planning Commissioner Daniel Hayes requested to propose revisions to the Zoning and Land Development Ordinance and the Subdivision & Land Development Regulations to better define Data Center guidelines at the next available Planning Commission meeting. The following amendment is for the Planning Commission's discussion and consideration (see attached).

State Code Changes

On April 12, 2025 Governor Morrissey approved House Bill 2014 to establish the microgrid district and put into place regulations for microgrid districts and high impact data centers (see attached). The definitions for both are below. The bill will take effect July 11, 2025.

(6) "High Impact Data Center" means a facility or group of facilities that:

(A) Consists of one or more parcels in this state, along with the buildings, substations and other infrastructure, fixtures, and personal property located on the parcels;

(B) Is owned, operated, or leased by an entity or affiliated group of entities;

(C) Is used to house and operate equipment that receives, stores, aggregates, manages, processes, transforms, retrieves, researches, or transmits data; or that is necessary for the proper operation of equipment that receives, stores, aggregates, manages, processes, transforms, retrieves, researches, or transmits data;

(D) Has a critical IT load in the aggregate of 90 megawatts total or higher; and

(E) Is placed into service on or after July 1, 2025.

(8) "Microgrid power generator" includes any entity supplying power under the rules provided in §5B-2-21 of this code to a high impact data center.

(9) "Microgrid power generator property" means and includes any and all property used by microgrid power generator within a certified microgrid district.

Most notably in regards to data centers in Jefferson County, **§5B-2-21b.(c)**

(c) This section prohibits:

(1) Counties and municipalities, whether by ordinance, resolution, administrative act, or otherwise, from enacting, adopting, implementing, or enforcing ordinances, regulations, or rules which limit, in any way, the creation of, and acquisition, construction, equipping, development, expansion, and operation of any certified microgrid district or certified high impact data center project; an

(2) Counties and municipalities from imposing or enforcing local laws and ordinances concerning the creation or regulation of any certified microgrid district or certified high impact data center therein.

(d) In accordance with §5B-2-21(b) and §5B-2-21(c) of this code, and notwithstanding any provision of this code to the contrary, or any municipality's home rule powers with respect to ordinances and ordinance procedures, including any authority pursuant to the Municipal Home Rule Program under §8-1-5a of this code, certified microgrid districts and certified high impact data centers may not be subject to the following:

- 1) County or municipal zoning, horticultural, noise, viewshed, lighting, development, or
- 2) land use ordinances, restrictions, limitations, or approvals;
- 3) County or municipal building permitting, inspection, or code enforcement;
- 4) County or municipal license requirements;
- 5) The legal jurisdiction of the county or municipality in which the certified microgrid district
- 6) or certified high impact data center is entirely or partially located, except as specifically provided
- 7) in this article.

Staff Reports and Comments

Due to the incoming changes to state code, staff would recommend a memo be prepared that requests data center projects provide documents showing the scope, size, layout, and any state issued permits of the project. The intent would be solely be for record keeping of the subject parcels and does not entail any processing through any ordinance. Additionally, by requesting existing documents that are ready for public consumption and not requesting the creation of new documents for this purpose, meeting this request should not be onerous for the developers of the project. If documents are provided at the discretion of the developers of a certified microgrid district or certified high impact data center project, staff will be able to accurately answer questions from the public regarding the project.

This memo could also be prepared in the event that a certified microgrid district or certified high impact data center approaches the County regarding suggestions for development. These suggestions for certified microgrid districts or certified high impact data centers could be to follow the lighting ordinance, implement landscaping along the project, applying for a zoning certificate, and reducing the use of lights affixed to the top of buildings.

Subdivision & Land Development Regulations (amended 2024) Process:

Note that West Virginia State Code §8A-4-5. Amendments to the subdivision and land development ordinance: “After the enactment of the subdivision and land development ordinance by the governing body, all amendments to the subdivision and land development ordinance shall be made by the governing body after holding a public hearing with public notice.”

Note that Jefferson County Subdivision and Land Development Regulations (amended 2024):

“Sec. 23.201 County Commission

The County Commission is responsible for setting in place a means of administering these Subdivision and Land Development Regulations and ensuring enforcement of the County's Zoning Ordinance. As such it has the following powers and duties:

- A. Adoption and Amendment. As specified in Chapter 8A of the West Virginia Code, the County Commission has sole responsibility for the adoption and amendment of the subdivision and site development regulations. It is advised in these matters by staff and the Planning Commission.”

Zoning and Land Development Ordinance (amended 2022) Process:

Note that West Virginia State Code §8A-7-8a. Amendments to the zoning ordinance by the governing body: “a) Before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.”

Note that Jefferson County Zoning and Land Development Ordinance (amended 2022):

“Section 12.4 Procedure for Initiating a Zoning Ordinance Text Amendment

C. Text Amendments by the Planning Commission

If the Planning Commission determines that a text amendment to the Zoning Ordinance is required in accordance with its work plan, for the purpose of improving or clarifying the ordinance, or for consistency with adopted policies, the Planning Commission will develop a draft of the proposed amendment, receive public input, conduct a Public Hearing in accordance with Section 12.2D, and make a recommendation for action to the County Commission through a regular agenda request process. Any such amendment proposal will include the background and reasoning of the proposed amendment as well as a discussion of consistency with the adopted Comprehensive Plan.

With its recommendation, the Planning Commission will request that the County Commission schedule a workshop, if necessary, and a Public Hearing at dates to be determined by the County Commission to receive comment and take action on the proposed amendment.

D. Text Amendments by the Planning Commission by Petition

The Planning Commission may alternatively submit a text amendment by petition to the County Commission. The procedure for processing a formal text amendment petition initiated by the Planning Commission shall be as dictated in §8A-7-9 et seq of the West Virginia State Code, as amended. Petitions for a text amendment initiated by the Planning Commission shall be presented to the County Commission

and submitted to the County Clerk for filing on the same date. Such petitions for a text amendment shall be clearly labeled as “§8A-7-9 Petition” in the heading and contain the following information:

1. Substantiation for the request;
2. Notation that said text amendment applies county-wide;
3. Discussion on why such proposal is consistent with the adopted Comprehensive Plan.

The County Commission is required to set a public hearing on the proposed Zoning Text amendment within 60 days of the date upon which the petition is presented to the County Commission at a County Commission meeting. The petition and related agenda request form must be submitted to the County Commission office for placement on a County Commission agenda at least one (1) week prior to the meeting date or in accordance with the agenda request procedure of the County Commission.”

If the Planning Commission chooses to move forward with this proposed text amendment, a Public Hearing will be required before both the Planning commission and the County Commission.

Attachments

- Data Centers – Draft Text Amendment
- 2045 Comprehensive Plan Data Center Extract
- West Virginia House Bill 2014 - Enrolled Committee Substitute
- West Virginia House Bill 2014 - Bill History

DRAFT TEXT AMENDMENTS - DATA CENTERS (04/29/25)

Section 2.2 – Terms Defined (Add):

Data Center: A facility used primarily for the storage, management, processing, and transmission of digital data. Data centers may include server rooms, backup power supplies, cooling systems, cybersecurity systems, and network infrastructure. Ancillary office and support uses are permitted.

Amend Appendix C – Principal Permitted and Conditional Uses Table:

Institutional Uses	NC	GC	HC	LI	MI	PND	OC	R	RG	RLIC	IC	V
Data Center	NP	NP	NP	P	P	NP	NP	NP	NP	NP	P	NP

Additional Standards: Sec. 8.21

ADD

Section 8.21 – Data Centers

A. Applicability: These standards apply to all new or expanded data center facilities.

B. Site Design & Operational Standards

1. **Setbacks:** Minimum 200 feet from all residential property lines. Parking setbacks will remain consistent with underlying zoning.
2. **Height:** Maximum building height shall not exceed 60 feet unless otherwise allowed by zoning.
3. **Screening:** Mechanical equipment (including HVAC, backup generators, and substations) shall be screened from adjacent properties and roads using architectural treatments and evergreen landscaping unless the adjacent properties are compatible with industrial uses. The buffer shall be either one or a combination of the following:
 - A staggered triple row of native evergreen trees that are a minimum of 8 feet in height at the time of planting and are spaced to provide a minimum 75% visual opacity year-round within two years of installation. The use of fast-growing species in combination with slower-maturing native trees is encouraged to achieve both immediate impact and long-term screening.

- Maintenance Requirements: A landscape maintenance agreement must be submitted with the Concept Plan and recorded with the property deed. This agreement must outline the property owner's responsibility to inspect, replace, and maintain vegetative buffers to ensure continued compliance. Dead, diseased, or dying plant material shall be replaced within 60 days of identification with plantings that meet or exceed the initial installation size and opacity requirements. Failure to maintain the buffer shall constitute a zoning violation and be subject to enforcement action, including fines and potential suspension of operational permits.

Existing natural vegetation may be used to meet these buffer requirements only if a certified arborist or landscape architect provides documentation verifying that the existing vegetation meets or exceeds the above opacity and height standards and can be sustained with normal maintenance practices.

- An 8-foot-tall opaque fence may be used in lieu of or in addition to vegetative buffering. Fences must be dark-colored and non-reflective.
4. **Noise:** All equipment must comply with the county noise ordinance. Generators must use sound attenuation and be tested only during designated hours.
 5. **Lighting:** Lighting shall be full cut-off and downward-directed to minimize off-site glare. Lighting levels must meet dark sky standards.
 6. **Cooling and Water Use:**
 - Use of closed-loop or air-cooled systems is required.
 - Water use shall be quantified at site plan review, and systems evaluated for efficiency.

C. Traffic and Access

- Access roads must be paved and capable of handling occasional heavy equipment transport.
- Delivery and service traffic must be confined to daylight hours unless emergency maintenance is required.

D. Emergency Power

- Backup generators shall be subject to screening and noise compliance requirements.
- Fuel storage must comply with applicable state and federal environmental safety standards.

E. Submittal Requirements

- Site plan shall include a **power and cooling systems narrative**, noise mitigation plan, and landscape plan.

SUBDIVISION & LAND DEVELOPMENT REGULATIONS AMENDMENTS

ADD

Section 21.106 – Data Center Design Standards

A. Site plans for data centers must address:

1. Power infrastructure layout
2. Emergency generator location and screening
3. Cooling system type and placement
4. Access circulation for equipment delivery and emergency service
5. Vegetative screening for all structures and equipment yards

B. Subdivisions creating industrial parcels intended for future data center use shall:

1. Provide for utility corridors and electrical service stubs
 2. Design internal circulation for industrial truck and service access
-

Appendix A – Plan and Plat Standards:

Section 1.3 – Preliminary Site Plan Requirements:

- 38 For data centers, the preliminary site plan must include:
- Acoustic analysis
 - Cooling system schematic
 - Generator and battery storage layout
 - Landscaping and screening cross-sections

Land Use Planning

The Shepherdstown Growth Management Boundary (GMB) is not considered an area for future Urban Development if it remains unincorporated with the exception of the Shepherdstown PGA.

In 2018 the JCBOE acquired 101 acres along Shepherdstown Pike for the purpose of establishing the new Shepherdstown Campus including Shepherdstown Elementary and Shepherdstown Middle Schools. While the importance of walkability for students has been noted elsewhere in this Plan, a change in land use classifications or the creation of a new Preferred Growth Area around the new Shepherdstown Campus is not suitable based on the lack of water and sewer service. In the event that water and sewer service is extended to the Shepherdstown Campus, traffic safety will need to be evaluated before considering higher intensity development. This location is a rural gateway that encourages tourism and supports the historic and cultural resources in the greater Shepherdstown area.

As data centers have developed in the region it is important to address where such development would be appropriate in Jefferson County. Data centers require large amounts of power and may require large amounts of water for their essential operation and cooling. Data centers require large buildings with cooling operations and generators, which have the potential to generate noise that most closely aligns to industrial land uses. Due to the nature of data centers, this Plan supports the development of data centers in the Industrial Commercial and Major Industrial zoning districts.

Objective 2.1

Encourage and support the adaptive reuse of existing buildings, previously used sites, dilapidated structures, and vacant buildings within Jefferson County, paying particular attention to brownfield and greyfield sites.

1. Collaborate with stakeholders to recruit new and existing businesses and industries to use existing buildings and previously used parcels for new development including business parks and commercial sites.

JCDA | 6-10 years

2. Create, publish, and maintain a directory of previously used sites, including brownfield and greyfield sites, that are good candidates for redevelopment.

JCDA • HLC | Yearly

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2014

BY DELEGATES HANSHAW (MR. SPEAKER), RILEY,
FEHRENBACHER, ANDERSON, ZATEZALO, AKERS AND
HORNBUCKLE

(BY REQUEST OF THE EXECUTIVE)

[Passed April 12, 2025; in effect 90 days from
passage (July 11, 2025)]

1 AN ACT to amend and reenact §5B-2-21, §24-2-1d, §24-2-1q, §24- 2-15, §24-2-19, and §24-2-
2 21a of the Code of West Virginia, 1931, as amended; to amend the code by adding four
3 new sections, designated §5B-2-21a, §5B-2-21b, §5B-2N-2a, and §11B-2- 33, and to
4 amend the code by adding a new article, designated §11-6N-1, §11-6N-2, §11-6N-3, §11-
5 6N-4, and §11-6N-5, all relating to the generation and consumption of electric power;
6 establishing the certified microgrid development program; providing for microgrid
7 certification requirements; providing for microgrid electric service requirements; providing
8 for microgrid customer eligibility; providing for microgrid special contracts; prohibiting
9 microgrids from participating in Pilot and tax increment financing programs; defining
10 microgrid property subject to property tax; providing for microgrid letter of intent, notice
11 period and negotiation; providing for microgrid special contracts; establishing the high
12 impact data center program; providing for notification, certification, and recordkeeping;
13 authorizing certain agencies to assist certified microgrid districts and certified high impact
14 data centers; prohibiting local jurisdiction regulation of microgrid districts and high impact
15 data centers; providing for payment of certain fees and taxes; providing for certain services
16 to microgrid districts and certified high impact data centers; establishing the electric grid
17 stabilization and security fund and its purpose; creating new article relating to special
18 method for valuation of certain high technology property; defining terms; providing for
19 microgrid districts and certified high impact data centers property returns to be filed with
20 Board of Public Works; providing for special rules for tax distribution; establishing certain
21 funds to receive distributions; terminating article; establishing the personal income tax
22 reduction fund and providing for purpose; providing for additional duties of public service
23 commission 2 relating to future electric generating capacity, base fuel coal supply for
24 electric grid resiliency, consumer rate relief bonds, and automatic adjustment clauses,
25 price indexes, or fuel adjustment; providing for rulemaking; and providing that certain
26 funds may not be used by a public utility to close or cease operations at an electric
27 generating plant.

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 Microgrid Development Program.

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

9 (b) *District certification.* — The Secretary of the Department of Commerce may identify
10 and certify microgrid districts in this state upon a finding that the following requirements are met:

11 (1) Certification of the microgrid district and location of new or expanded businesses within
12 the microgrid district will have a significant and positive economic impact on the state;

13 (2) Certification of the microgrid district is necessary to attract at least two businesses to
14 locate or expand in this state;

15 (3) The area to be certified as a microgrid district shall be no greater than 2,250 acres and
16 nearly contiguous;

17 (4) The electricity generated within the microgrid district will be used only within the
18 microgrid district or delivered to the wholesale market;

19 (5) The information described in §5B-2-21(h) of this code has been provided to the
20 Department of Commerce;

21 (6) The requirements of §5B-2-21(i) of this code have been satisfied; and

(7) The requirements of §5B-2-21(b)(5) and (6) of this code may not apply to microgrid districts certified on or before January 1, 2024;

(8) The requirements of subsections (d), (e), (g), (h), and (j) of this section enacted during the regular session of the Legislature, 2025, shall not apply to any microgrid district certified on or before January 1, 2024, or any special contract entered into and approved by the Public Service Commission on or before January 1, 2025. No amendments to this section enacted during the regular session of the Legislature, 2025, shall be interpreted to remove an existing microgrid district certification.

The Secretary of the Department of Commerce may not certify more than two microgrid districts: *Provided*, That this limit on certifying microgrid districts shall not apply to any microgrid district wherein greater than 70% of the electricity generated within the microgrid district is consumed by one or more high impact data centers, as defined in §11-6N-2 of this code, or will be consumed by one or more high impact data centers, when such data centers are completed and fully operational. A designation made pursuant to this section by the secretary as to the certification of a microgrid district is final.

(c) *Providing electric service within a certified microgrid district.* — Within a microgrid district, any person, firm, corporation, or entity or their lessees and tenants seeking to provide electric service through the generation or distribution of electricity within the microgrid district to businesses locating within the microgrid district may:

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

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

(3) Elect to qualify as an exempt wholesale generator under federal law for purposes of furnishing electric service through the generation of electricity to a utility or regional transmission

organization without being subject to the Public Service Commission's siting certificate requirements as set forth in §24-2-1(d), §24-2-11c, or §24-2-1o of this code;

(4) Provide any such electric service to businesses making a capital investment in a new or expanded facility located within the certified microgrid district;

(5) Not provide any such electric service for purposes of encouraging businesses already receiving electric service from a regulated utility in this state to relocate to the certified microgrid district; and

(6) Not deliver outside the microgrid district more than 10% of the electricity generated within the certified microgrid district and only delivered to the wholesale market.

(d) *Microgrid customers; eligibility.* — In order to take advantage of the provisions of this section, a plant or facility choosing to locate and operate within a microgrid district must constitute new electric load. Any owner, lessee, or tenant of a plant or facility that has not previously received electric service from a regulated public electric utility located within this state, or who is making a capital investment in a new facility within the microgrid district shall be considered eligible new electric load. Electric service to any such plant or facility shall be considered new electric load so long as any customer making a new capital investment within the microgrid district does not decrease the load of an existing facility outside the microgrid district in this state in conjunction with the new capital investment within the microgrid district, and regardless of whether or not a person or entity previously received service from a public electric utility at or near the same location prior to the certification of the microgrid district.

An eligible plant or facility choosing to locate and operate within a microgrid district is not required to connect with and use any public electric utility: *Provided*, That any connection with and use of a public electric utility for purposes of the initial construction and development within the microgrid district shall not impact a plant or facility's status as new electric load in order to take advantage of the provisions of this section.

73 (e) *Microgrid customers; special contracts and rates.* — After certification of a microgrid
74 district, the Public Service Commission may approve special contracts for a a microgrid customer
75 within the microgrid district. For purposes of this section, a “special contract” is:

76 (1) a written agreement between an electric utility and an eligible retail electric microgrid
77 customer within the microgrid district that is filed with the Public Service Commission and that
78 provides that an eligible retail electric microgrid customer will receive utility service on terms and
79 conditions, including rates, that vary from the utility’s tariff on file with the Public Service
80 Commission, or

81 (2) electric utility service terms and conditions, including rates, ordered by the Public
82 Service Commission that vary from the electric utility’s tariff to be in effect between a utility and
83 an eligible retail electric microgrid customer when the electric utility and the eligible retail electric
84 microgrid customer are unable to negotiate a written agreement.

85 A microgrid customer seeking a special contract shall first enter into negotiations with the
86 utility within whose service territory the microgrid district is located regarding the terms and
87 conditions of a mutually agreeable special contract. If the negotiations result in an agreement
88 between the microgrid customer and the utility within 120 days, the microgrid customer and the
89 utility shall jointly file with the Public Service Commission the special contract. If the negotiations
90 are unsuccessful in the 120-day period, the microgrid customer may file a petition with the Public
91 Service Commission to consider establishing a special contract. The Public Service Commission
92 shall consider all relevant factors in establishing a special contract. Upon the filing of a petition
93 pursuant to this section, the Public Service Commission shall establish a special contract for the
94 provision of requested service, including backup and supplemental service to a microgrid
95 customer within the microgrid district. Microgrid customers’ load within the microgrid district not
96 covered by a contract for back up and supplemental service shall be considered non-firm and
97 interruptible. The Public Service Commission shall establish a special contract upon the filing of
98 a petition pursuant to this section and shall do so within 90 days of filing.

99 (f) *Electrical infrastructure costs.* — Regulated electric utility customers shall not bear any
100 costs including, but not limited to, construction, operational, ancillary services, grid-related,
101 energy-related, or capacity-related costs, associated with any electricity generation, transmission
102 or distribution facilities that provide electrical service to a microgrid district. Any costs of this nature
103 are to be borne by the generator or electricity consumers situated within the microgrid district.

104 (g)(1) *Payment In Lieu Of Taxes Electricity Generation and Distribution.* — Notwithstanding
105 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-
106 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-
107 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
108 this code, or any other provision of this code, no payment in lieu of taxes shall be entered into
109 with relation to the property of any electricity generating plant, facility, or generating unit or any
110 property comprising, in whole or in part, any electricity distribution apparatus, equipment, lines or
111 facilities (A) located in the county and (B) directly or indirectly dedicated to providing electric power
112 to any plant, facility or property subject to this subsection. Nor shall any payment in lieu of taxes
113 be entered into with relation to any leasehold interest or any other property interest related thereto.

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

118 (3) For purposes of this subsection, an electricity generating plant, facility, or generating
119 unit or electricity distribution apparatus, equipment, lines, or facilities shall be deemed to be
120 "dedicated" to providing electric power to any plant, facility, or property subject to this subsection
121 if not less than 75% of the output of the electricity generation property or electricity distribution
122 property, measured in kilowatt hours, are used to supply electricity to a facility, project, or series
123 of related or integrated facilities within the county or counties subject to this subsection.

(4) For purposes of this section, property 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.*, and §11-6L-1 *et seq.* 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 section.

(h) *Microgrid District Development; Letters of Intent.* — To become a certified microgrid district under this section, the person or entity must present the Secretary of the Department of Commerce with a confidential letter of intent. The letter of intent shall include sufficient economic, financial, and engineering information concerning the proposed project with sufficient detail to adequately inform the department of the size, scope, and nature of the target customers 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 generation capacity, estimated power loading internal to the microgrid, estimated power, including backup power, needed from the local distribution electric utility, estimated power supplied to the wholesale market, and the types or sources of each electric power generation unit. The letter of intent and all supplied information shall be held in confidence pursuant to §5B-2-21a(e) of this code by the department.

(i) *Microgrid District Development; Notice Period and Negotiation.* — At least 120 days before submitting a letter of intent and other materials to the department, an applicant seeking a microgrid district certification must make good faith efforts to negotiate for the supply of all or part of its electricity needs for the project from the local distribution electric utility. The letter of intent must also include documentation evidencing the good faith efforts to negotiate. This time-period

150 limitation and negotiation requirement does not apply to microgrid districts proposing to produce
151 300 megawatts or more of electricity or for microgrid districts that are proposing to not be
152 connected in any way to the local distribution electric utility after completion of all construction.

153 (j) *Microgrid District Development; Special Contracts and Power Rates.* — (1) A certified
154 microgrid district seeking a special contract from a local distribution electric utility located in the
155 state shall first enter negotiations for not more than 120 days with the local distribution utility
156 regarding the terms and conditions of a special contract. The microgrid district shall provide
157 reasonable access and terms to the local distribution utility to enable the electric utility's
158 transmission and/or distribution facilities to tie into those of the microgrid district. The 120-day
159 negotiation period required by this section may be satisfied by the precertification negotiation
160 period required by §5B-2-21(i) of this code.

161 (2) If the negotiations result in a mutually agreeable special contract, the contracting
162 parties shall jointly file the special contract pursuant to the rules of the commission.

163 (3) If negotiations for a special contract with the local distribution utility are unsuccessful,
164 a certified microgrid district may file a petition with the commission to establish a special contract.

165 (4) The commission shall establish a special contract upon the filing of a petition pursuant
166 to this section. The Public Service Commission shall consider all relevant factors in establishing
167 special contracts. The Public Service Commission shall establish a special rate for the requested
168 service, including backup and supplemental service to a microgrid district. The microgrid district's
169 load not covered by a contract shall be considered non-firm and interruptible. The commission
170 shall issue a final order determining the terms of a special contract within 90 days of filing of a
171 petition.

§5B-2-21a. Data Centers.

1 (a) *Findings and purpose.* — The Legislature hereby finds and declares the following:

2 (1) Data centers represent a significant and growing sector of the economy, generating
3 substantial economic activity, including jobs, infrastructure investments, and technological
4 innovation.

5 (2) Data centers are critical national infrastructure that require abundant, low-cost energy
6 to protect sensitive data, operate high-level computation assets, and ensure the resilience of the
7 digital economy.

8 (3) The People's Republic of China is positioning itself to be the global leader of data
9 centers and is investing in technology to encourage the flow of data toward China instead of
10 toward the United States.

11 (4) It is in the United States' national security interests to limit the flow of data to China
12 and to protect the flow of data and maximize computational power inside the United States. The
13 President has declared that it is the policy of the United States "to sustain and enhance America's
14 global AI dominance in order to promote human flourishing, economic competitiveness and
15 national security." Removing Barriers to American Leadership in Artificial Intelligence, Executive
16 Order 14179 (Jan 23, 2025).

17 (5) As of early 2025, the highest concentration of high-level computational power and data
18 centers in the world is located in Loudoun County, Virginia. This severe concentration of data
19 centers in one location is a national security vulnerability because it invites the potential for
20 cyberattacks and espionage against the Nation's critical data infrastructure.

21 (6) Data centers have historically obtained their electricity from the electric grid. Some
22 data center developers now seek or require the use of microgrids to provide their primary and
23 backup power.

24 (7) West Virginia is strategically positioned as the best location in the United States to
25 place data centers due to: (A) its close proximity to Washington, D.C., and the federal government;
26 (B) its close proximity to the majority of the Nation's population; (C) its low tax rates; (D) it having
27 the least restrictive regulatory environment in the Nation; (E) its supply of abundant energy and

28 natural resources to power the data centers; (F) its supply of resources, such as coal mine
29 methane blended with natural gas, to assist data centers locating in West Virginia to meet their
30 energy needs and environmental goals; and (G) its skilled and loyal workforce that has some of
31 the lowest turnover rates in the Nation.

32 As such, the state has a significant interest in encouraging the development and
33 expansion of data centers, which can serve as drivers of broader economic growth. The
34 Legislature finds that these externalities transcend local borders, including environmental
35 concerns, energy consumption, and regional economic growth. Additionally, the provisions in this
36 section align with the Legislature's goal of fostering a competitive, forward-thinking economy that
37 benefits all residents.

38 (b) *Program established.* — The High Impact Data Center Program is hereby created and
39 is to be administered as a program within the Division of Economic Development to encourage
40 the continued development, construction, operation, maintenance, and expansion in West
41 Virginia of high impact data centers. In order to effectuate the purposes of this section, the Division
42 of Economic Development, or any agency, division, or subdivision thereof, may promulgate
43 legislative rules, including emergency rules, in accordance with §29A-3-1 *et seq.* of this code.

44 (c) *Notification.* — Any data center shall compare its current or planned operations against
45 the definition of "high impact data center" established in §11-6N-2 of this code and provide
46 notification to the Division of Economic Development when the data center becomes aware that
47 it will satisfy or has satisfied that definition. The notification will include information addressing
48 the elements of that definition, including known or expected power consumption of the data
49 center. This notification shall be made (1) within 30 days after the data center determines that it
50 meets these requirements, or (2) when the data center reasonably anticipates that it will, at some
51 future date, meet these requirements, in which case the data center may provide that anticipated
52 future date in its notification.

53 (d) *Certification.* — The Secretary of the Department of Commerce shall identify and certify
54 high impact data centers in this state upon a finding that a data center satisfies the requirements
55 for the definition of "high impact data center" set forth in §11-6N-2 of this code. The Secretary
56 shall issue confirmation of certification to a high impact data center within 14 days following receipt
57 of the notification from the data center required by this section.

58 (e) *Recordkeeping.* — Any information provided by a data center pursuant to this section
59 that is identified by the data center as confidential business information shall be exempt from the
60 Freedom of Information Act. The Secretary shall take reasonable and appropriate steps to protect
61 this information. Notwithstanding the foregoing, the Secretary shall maintain a complete list of all
62 certified high impact data centers and all relevant information that can be made available to the
63 Governor and Legislature, removing specifically identifying information to ensure confidentiality
64 of any such information as identified by any high impact data center.

**§5B-2-21b. Authority to assist certified microgrid district projects and certified high impact
data center projects; legislative findings.**

1 (a) *Findings and purpose.* — The Legislature hereby finds and declares the following:

2 (1) The findings and purpose set forth in §5B-2-21a(a) (2025), except to the extent
3 expressly modified herein, are hereby incorporated herein by reference with the same force and
4 effect as though fully set forth herein.

5 (2) It is in the best interests of the state to induce and assist in development of these
6 projects, in order to advance the public purposes of relieving unemployment by preserving and
7 creating jobs, and preserving and creating new and greater sources of revenue for the support of
8 public services provided by the state and local government.

9 (3) It is the intent of the Legislature to occupy the whole field of the creation and regulation
10 of certified microgrid districts and certified high impact data centers. The stated purpose of this
11 section is to promote uniform and consistent application of the act within the state.

(b) The Department of Commerce shall assist projects developing or operating a certified microgrid district pursuant to §5B-2-21 of this code or a certified high impact data center pursuant to §5B-2-21a of this code. The Secretary of Commerce shall designate one of their personnel as "Data Economy Liaison" to serve as a single point-of-contact for certified microgrid districts and high impact data centers to assist coordinate and expedite their development and operation, including, but not limited to site selection and permitting. A "certified microgrid district" is a microgrid project, regardless of stage of development or operation, that has been certified by the Secretary of the Department of Commerce as set forth in §5B-2-21 of this code. A "certified high impact data center" is a data center project, regardless of stage of development or operation, that has been certified by the Secretary of the Department of Commerce as set forth in §5B-2-21a of this code.

(c) This section prohibits:

(1) Counties and municipalities, whether by ordinance, resolution, administrative act, or otherwise, from enacting, adopting, implementing, or enforcing ordinances, regulations, or rules which limit, in any way, the creation of, and acquisition, construction, equipping, development, expansion, and operation of any certified microgrid district or certified high impact data center project; and

(2) Counties and municipalities from imposing or enforcing local laws and ordinances concerning the creation or regulation of any certified microgrid district or certified high impact data center therein.

(d) In accordance with §5B-2-21(b) and §5B-2-21(c) of this code, and notwithstanding any provision of this code to the contrary, or any municipality's home rule powers with respect to ordinances and ordinance procedures, including any authority pursuant to the Municipal Home Rule Program under §8-1-5a of this code, certified microgrid districts and certified high impact data centers may not be subject to the following:

(1) County or municipal zoning, horticultural, noise, viewshed, lighting, development, or land use ordinances, restrictions, limitations, or approvals;

(2) County or municipal building permitting, inspection, or code enforcement;

(3) County or municipal license requirements;

(4) The legal jurisdiction of the county or municipality in which the certified microgrid district or certified high impact data center is entirely or partially located, except as specifically provided in this article;

(5) Any requirement under state law for the consent or approval of the municipality in which a certified microgrid district or certified high impact data center is entirely or partially located of any state or county action pursuant to this code, specifically including, but not limited to, §7-11B-1 *et seq.* of this code, for formal consent of the governing body of a municipality for county or state action regarding the establishment of tax increment financing development or redevelopment districts or the approval of tax increment financing development or redevelopment plans.

(e) Notwithstanding the creation of a certified microgrid district or a certified high impact data center, the owner, operator, or manager, as applicable, and all tenants, lessees or licensees thereof, of a certified microgrid district or a certified high impact data center shall:

(1) Pay business and occupation tax, if applicable, pursuant to §8-13-5 of this code, to the municipality in the same manner as any other business or commercial venture located within the municipality;

(2) Collect and remit municipal sales and service tax and municipal use tax, if applicable, pursuant to §8-1-5a, §8-13C-4, and §8-13C-5 of this code, to the municipality in the same manner as any other business or commercial venture located within the municipality;

(3) Pay ad valorem real and personal property tax pursuant to the same millage rates as any other business or commercial venture located within the county and municipality;

(4) Pay all municipal service fees enacted pursuant to §8-13-13 of this code, including, but not limited to, fire, police, sanitation, or city service fees;

(5) Pay all utility rates, fees, and charges for utilities used or consumed during construction and operation of premises within the certified microgrid district or certified high impact data center, including, but not limited to, water, sewer, stormwater, and garbage and recycling collection: *Provided, That* (A) The rates, fees, and charges for such services shall be based on the cost of providing such service and the utility shall enter into a contract under the rules of the Public Service Commission for each such service with the developer and file the special contract with the Public Service Commission; and (B) the developer shall only be required to pay any capacity improvement fee or impact fee to the extent that capital additions, betterments, and improvements must be designed, acquired, constructed, and equipped by the utility to provide such service to the project; Utility customers outside of the microgrid district shall not bear any construction or operational costs associated with any new utility property built solely to provide service within a microgrid district;

(6) Be entitled to municipal police protection and municipal fire protection, if available, in the same manner as any other business or commercial venture located within the municipality; and

(7) Design, acquire, construct, and equip the certified microgrid district or certified data center pursuant to the State Building Code in accordance with §8-12-13 of this code and the corresponding State Rule 87 CSR 4.

(f) The Department of Commerce, Department of Environmental Protection, and Department of Transportation may take actions necessary in support of the development of any certified microgrid district or certified data center, including, but not limited to, the development or improvement of such highways, roads, thoroughfares, and sidewalks within any county or

86 municipality in which the certified microgrid district or certified data center is partially or entirely
87 located.

88 (g) In order to effectuate the purposes of this section, the Department of Commerce, or
89 any agency, division, or subdivision thereof, may promulgate legislative rules, including
90 emergency rules, in accordance with §29A-3-1 *et seq.* of this code.

ARTICLE 2N. GRID STABILIZATION AND SECURITY ACT OF 2023.

§5B-2N-2a. Creating the Electric Grid Stabilization and Security Fund.

1 (a) The Electric Grid Stabilization and Security Fund is hereby created. The fund shall be
2 administered by the Department of Commerce and shall consist of all moneys made available for
3 the purposes and from the sources set forth in this section of the code.

4 (b) The fund consists of moneys received from the following sources:

5 (1) All moneys received pursuant to §11-6N-4(b)(4)(C) of this code;

6 (2) All appropriations provided by the Legislature;

7 (3) Any moneys available from external sources; and

8 (4) All interest and other income earned from investment of moneys in the fund.

9 (c) The Department of Commerce shall use moneys in the fund to provide support for
10 electric grid stabilization for regulated utilities and grid security, including development, efficiency,
11 and environmental upgrades, but not decommissioning and replacement of existing facilities;
12 maintenance of utility owned and operated coal and natural gas electric generation, regardless of
13 unit or plant ownership by different regulatory jurisdictions; and transmission resources which
14 solely serve West Virginia rate payers.

15 (d) Any balance, including accrued interest and any other returns, in the Electric Grid
16 Stabilization and Security Fund at the end of each fiscal year may not expire to the General
17 Revenue Fund but remain in the fund and be expended for the purposes provided by this section.

(e) Fund balances may be invested with the state's Consolidated Investment Fund. Earnings on the investments shall be used solely for the purposes defined in §5B-2-16(c) of this code.

(f) In order to effectuate the purposes of this section, the Department of Commerce may promulgate legislative rules, including emergency rules, in accordance with §29A-3-1 *et seq.* of this code.

CHAPTER 11. TAXATION.

ARTICLE 6N. SPECIAL METHOD FOR VALUATION OF CERTAIN HIGH-TECHNOLOGY PROPERTY.

§11-6N-1. Legislative findings and purpose.

The Legislature hereby finds and declares the following:

The findings and purpose set forth in §5B-2-21a(a) (2025) (except to the extent expressly modified herein) are hereby incorporated herein by reference with the same force and effect as though fully set forth herein.

§11-6N-2. Definitions.

(a) *General* — When used in this article, words defined in §11-6N-2(b) of this code have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature.

(b) *Definitions* — For purposes of this section, the following terms shall mean:

(1) "Affiliated group" means one or more chains of corporations, limited liability entities, or partnerships, or any combination thereof, connected through the ownership of stock or ownership interests with a common parent which is a corporation, limited liability entity, or partnership, but only if the common parent owns directly, or indirectly, a controlling interest in each of the members of the group.

(2) "Base assessed value" means the taxable assessed value of all data center property of a high impact data center as shown upon the landbooks and personal property books of the assessor on July 1 of the calendar year preceding certification as a high impact data center.

(3) "Current assessed value" means the annual taxable assessed value of all data center property of a high impact data center as shown upon the landbook and personal property records of the assessor.

(4) "Critical IT load" means that portion of electric power capacity, expressed in terms of megawatts, which is reserved solely for owners or tenants of a data center to operate their computer server and required supporting equipment.

(5) "Data center property" means property used exclusively at a data center to construct, outfit, operate, support, power, cool, dehumidify, secure, or protect a data center and any contiguous dedicated substations. The term includes, but is not limited to, construction materials, component parts, machinery, equipment, computers, servers, installations, redundancies, and operating or enabling software, including any replacements, updates and new versions, and upgrades to or for such property, regardless of whether the property is a fixture or is otherwise affixed to or incorporated into real property.

(6) "High Impact Data Center" means a facility or group of facilities that:

(A) Consists of one or more parcels in this state, along with the buildings, substations and other infrastructure, fixtures, and personal property located on the parcels;

(B) Is owned, operated, or leased by an entity or affiliated group of entities;

(C) Is used to house and operate equipment that receives, stores, aggregates, manages, processes, transforms, retrieves, researches, or transmits data; or that is necessary for the proper operation of equipment that receives, stores, aggregates, manages, processes, transforms, retrieves, researches, or transmits data;

(D) Has a critical IT load in the aggregate of 90 megawatts total or higher; and

(E) Is placed into service on or after July 1, 2025.

(7) "Incremental value", for any high impact data center, 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.

(8) "Microgrid power generator" includes any entity supplying power under the rules provided in §5B-2-21 of this code to a high impact data center.

(9) "Microgrid power generator property" means and includes any and all property used by microgrid power generator within a certified microgrid district.

(10) "Situs county" means the county or counties in which any High Impact Data Center property subject to tax is located, in relative proportion to the amount of data center property located therein.

(11) "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 that is data center property of a high impact data center exceeds the base assessed value of the property.

§11-6N-3. Returns of property of high impact data centers to Board of Public Works.

(a) On or before May 1 in each year, a return in writing shall be filed with the Board of Public Works: By the owner or operator of any company holding data center property of a high impact data center or a microgrid power generator supplying microgrid power to a high impact data center.

(b) The words "owner or operator," as applied herein to high impact data centers, shall include any owner or operator of a high impact data center or microgrid power generator.

(c) The return shall be signed and sworn to by the owner or operator if a natural person, or, if the owner or operator shall be a corporation, shall be signed and sworn to by its president, vice president, secretary, or principal accounting officer.

(d) The return required by this section of every owner or operator shall cover the year ending on December 31, next preceding, and shall be made on forms prescribed by the Board of

Public Works, which board is hereby invested with full power and authority and it is hereby made its duty to prescribe the forms required from any owner or operator herein mentioned information as in the judgment of the board may be of use to it in determining the true and actual value of the properties of the owners or operators.

(e) Except for the special rules for tax distribution provided in §11-6N-4 of this code, the provisions of this article are subject to the Assessment of Public Service Businesses, set forth in §11-6-1, *et seq.* of this code, as if the provisions thereof were set forth in extenso in this article.

§11-6N-4. Special Rules for Tax Distribution of High Impact Data Centers.

(a) On and after July 1, 2025, any property subject to valuation under §11-6N-3 of this code shall be subject to the rules on tax distribution provided under this section.

(b) The State Auditor shall maintain a separate and discrete accounting of each High Impact Data Center project regarding tax distribution provided in this section and any distribution to which a county is entitled as provided by this section shall be distributed directly to the situs county for each project.

(c) *Ad Valorem* Property Tax Distribution — The provisions of this subsection are applicable to all data center property of a high impact data center upon certification as a high impact data center per §11-6N-2 of this code.

(1) For so long as the high impact data center exists, the State Auditor shall divide the *ad valorem* property tax revenue collected, with respect to taxable data center property of a high impact data center as follows:

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

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

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

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

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

(2) The State Auditor shall determine from the calculations set forth in subdivision (1) of this subsection the percentage share of total *ad valorem* revenue for each levying body according to paragraphs (B) through (D), inclusive, of said subdivision by dividing each of such amounts by the total *ad valorem* revenue figure determined by the calculation in paragraph (A) of said subdivision; and

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

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

(B) Applying the percentage share determined according to paragraph (C), subdivision (1) of this subsection to the revenues received and distributing such share to the levying bodies entitled to such 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 such share to the levying bodies entitled to such 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 such share to a fund dedicated at the time of construction of a high impact data center.

(4) In each year for which there is a positive tax increment, the State Auditor shall remit that portion of the *ad valorem* property taxes collected that consists of the tax increment and shall be distributed as follows:

(A) 50 percent of the increment shall be placed in the Personal Income Tax Reduction Fund provided in §11B-2-33 of this code;

(B) 30 percent of the increment to the situs county as defined in this article;

(C) 10 percent of the increment to all counties on a per capita basis according to the most recent census;

(D) 5 percent of the increment shall be placed Economic Enhancement Grant Fund administered by the Water Development Authority provided in §22C-1-6a; and

(E) 5 percent of the increment shall be placed in the Electric Grid Stabilization and Security Fund provided in §5B-2N-2a.

(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 shall be entered into with relation to any property subject to this section 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,

67 plan or arrangement shall be entered into or undertaken with relation to any property subject to
68 this section.

§11-6N-5. Termination.

1 The provisions of this article shall sunset, expire, and be of no force and effect on or after
2 December 31, 2055.

CHAPTER 11B. DEPARTMENT OF REVENUE

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-33. Personal Income Tax Reduction Fund.

1 (a) The personal income tax reduction fund is hereby established. The personal income
2 tax reduction fund shall be funded continuously and on a revolving basis in accordance with this
3 section, with all interest or other earnings on the moneys therein credited to the fund. The personal
4 income tax reduction fund shall be funded as provided in §11-6N-4(b)(4) of this code. Moneys in
5 the personal income tax reduction fund may be expended solely for the purposes set forth in this
6 section.

7 (b) Notwithstanding any other provision of this code to the contrary, on or before the last
8 day of any fiscal year, the net proceeds of the personal income tax reduction fund will be certified
9 and included as a portion of adjusted general revenue fund collections under the provisions of
10 §11-21-4h of this code for that fiscal year.

11 (c) Not later than 60 days following the certification, the Secretary of Revenue shall
12 transfer the certified amount determined in subsection (b) of this section to the general revenue
13 fund. The amounts transferred will not be included as a portion of adjusted general revenue fund
14 collections under the provisions of §11-21-4h of this code for the fiscal year in which the money
15 is transferred.

16 (d) The moneys in the income tax reduction fund shall be made available to the West
17 Virginia Board of Treasury Investments and to the West Virginia Investment Management Board
18 for management and investment of the moneys in accordance with the provisions of §12-6C-1 *et*
19 *seq.* of this code in such amounts as may be directed in the discretion of the Secretary of

Revenue. Any balance of the income tax reduction fund, including accrued interest and other return earned thereon at the end of any fiscal year, shall not revert to the General Fund but shall remain in the income tax reduction fund for the purposes set forth in this section.

(e) Termination – Upon the certification of a reduction in the personal income tax under the provisions of §11-21-4h of this code that results in the elimination of the personal income tax, or if the personal income tax provided for under §11-21-1 *et seq.* is eliminated by separate enactment of the Legislature, this fund will be thereby eliminated and any monies dedicated thereto shall be dedicated to the general revenue of the state.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1d. Future electric generating capacity requirements.

(a) In order to maximize the use of electricity generated within the state by using coal or natural gas produced within the state, the Public Service Commission shall by order, no later than December 31, 1989, establish the schedule and amount of future electric generating capacity additions required by each West Virginia electric utility, for the next ten years, taking into account:

(i) Projected load growth; (ii) existing generating capacity; (iii) existing contractual commitments to sell or purchase capacity; (iv) planned retirement and life extensions of existing capacity; (v) planned construction of capacity; (vi) availability of capacity from generating units of affiliated companies; (vii) capacity factors for existing generation; and (viii) such other reasonable factors as the commission may deem relevant and appropriate to consider. For purposes of this section, "capacity factor" shall mean the ratio of the actual energy produced by a power plant over a specific period to the maximum possible energy it could have produced if running at full capacity during that same period.

(b) If the commission determines after considering all such named and other relevant and appropriate factors that a utility will be required to purchase electric generating capacity beyond those agreements approved by the Federal Energy Regulatory Commission or the West Virginia Public Service Commission in order to serve its West Virginia customers, the amount of such

required additional purchased capacity so identified by the commission will for purposes of this section be referred to as the utility's "projected deficient capacity": *Provided*, That this subsection shall not include power generating facilities whose total production of electricity is sold outside the State of West Virginia.

(c) In the interests of: Keeping utility rates of residential customers as low as possible; keeping utility rates for commercial and industrial customers competitive with those of other states; attracting new industry for which electric power costs are a major factor in location determinations; and of not placing any greater cost burden on government than is absolutely necessary for its electric power needs, each utility shall acquire, if reasonable, its projected deficient capacity from electric generation situated in West Virginia which burns coal or gas produced in West Virginia and which will provide the most reliable supply of capacity and energy at the least cost to those customers of the utility who will be served by such electric generation: *Provided*, That all power purchase contracts executed prior to the effective date of this section which satisfy the following requirements, regardless of location, shall be considered, for the purposes of this subsection, as electric generation situated in West Virginia: (1) Said contracts were negotiated in accordance with procedures and priced according to methodologies of other contracts which the commission has ordered approved; (2) said contracts either guarantee or are substantially amended to guarantee for the life of the contract the use of an amount of West Virginia fuel which equals or exceeds the amount which would be required, on a percentage of output basis, to produce the amount of electric power to be consumed in West Virginia; and (3) said contracts meet the requirements for a qualifying facility established by the Federal Energy Regulatory Commission pursuant to the Public Utility Regulatory Policies Act of 1978.

(d) The commission shall evaluate each capacity auction conducted by PJM Interconnection, LLC, or its successor and, to the maximum extent permitted by law, encourage the coordination of the voluntary participation of every electric generating unit in the state in each capacity auction for the benefit of ratepayers in the state.

(e) In order to ensure the state's existing generating units can continue to meet future generation needs, the commission shall conduct a review of each generating unit's current consumer economic dispatch. Factors to be considered by the commission in reviewing consumer economic dispatch shall include, but not be limited to: (1) current capacity factors; (2) management of fuel supplies and contracts; (3) overall plant operation and maintenance; (4) placement of bids in the PJM Interconnection, LLC, or its successor's day-ahead and real-time energy markets; (5) utilization of the PJM Interconnection, LLC, or its successor's Reliability Pricing Model (RPM) or Fixed Resource Requirement (FRR); and (6) the utilization of automatic adjustment clauses, price indexes, or fuel adjustment clauses by the utilities. For purposes of this section, "consumer economic dispatch" shall mean the process of operating generation facilities to produce electricity at the lowest cost while reliably meeting consumer demand, considering the operational limits of generation and transmission facilities.

(f) Electric utilities shall be prepared to maximize the production of electricity from their generating units when such self-generation will result in reduced energy costs for West Virginia ratepayers. The commission shall require the utilities to maintain their thermal baseload generating units in a manner to allow them to be able to self-generate and achieve at least a sixty-nine percent capacity factor. Nothing herein shall require a utility to operate a generating unit at a sixty-nine percent capacity if doing so will cause an increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll or schedule. The commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to carry out its duties and obligations as set forth herein.

§24-2-1q. Base fuel coal supply requirements for electric grid resiliency.

Recognizing that coal inventories at coal-fired power plants may increase and decrease over time, in order to ensure grid resiliency and homeland security, each generating public utility shall plan incoming and outgoing coal so as to maintain an average annual minimum 30-day aggregate coal supply on site at each coal-fired power plant. The commission may propose rules

for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to carry out its duties and obligations as set forth herein.

§24-2-15. Certain Automatic adjustment clauses, price indexes or fuel adjustment.

The commission shall not enforce, originate, continue, establish, change or otherwise authorize or permit an increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll or schedule as the result of any automatic adjustment clause, fuel supply price index, or fuel adjustment clause. Automatic adjustment clauses, fuel supply contract price indexes, or fuel adjustment clauses that do not create a net increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll, or schedule shall be permitted by the commission. For purposes of this section, a "net increase" in the charge or charges for electric service shall mean that for the calendar year in which the automatic adjustment clause, fuel supply contract price index, or fuel adjustment clause is utilized, the average charge or charges for electric energy are higher than they would have been if the adjustment clause, fuel supply contract price index, or fuel adjustment clause were not utilized. The commission shall encourage the use of permitted automatic adjustment clauses, fuel supply contract price indexes, or fuel adjustment clauses as a means of increasing the generation of coal-fired power plants within the state. The Commission shall promulgate procedural rules governing the utilization of automatic adjustment clauses, fuel supply contract price indexes, and fuel adjustment clauses.

§24-2-19. Integrated Resource Planning Required.

(a) Not later than March 31, 2015, the Public Service Commission shall issue an order directing any electric utility that does not have an existing requirement approved by the Public Service Commission that provides for the future review of both supply side and demand side resources to develop an initial integrated resource plan to be filed not later than January 1, 2016, in conjunction with other similar deadlines required by other states or entities of the electric utilities. This order may include guidelines for developing an integrated resource plan.

7 (b)(1) Any electric utility that has an existing requirement approved by the Public Service
8 Commission that provides for the future review of both supply side and demand side resources is
9 exempt from this initial integrated resource plan filing until such time as that existing requirement
10 has been satisfied. Thereafter, such electric utility is required to file an integrated resource plan
11 pursuant to §24-2-19(a) of this code.

12 (2) Each electric utility that has filed the initial integrated resource plan shall file an updated
13 plan at least every five years after the initial integrated resource plan has been filed. Any electric
14 utility that was exempt from filing an initial integrated resource plan shall file an integrated
15 resource plan within five years of satisfying any existing requirement and at least every five years
16 thereafter. All integrated resource plans shall comply with the provisions of any relevant order of
17 the Public Service Commission establishing guidelines for the format and contents of updated
18 and revised integrated resource plans.

19 (c) The Public Service Commission shall analyze and review an integrated resource plan.
20 The Public Service Commission may request further information from the utility, as necessary.
21 Nothing in this section affects the obligations of utilities to obtain otherwise applicable commission
22 approvals.

23 (d) The Commission may consider both supply-side and demand-side resources when
24 developing the requirements for the integrated resource plans. The plan shall compare projected
25 peak demands with current and planned capacity resources in order to develop a portfolio of
26 resources that represents a reasonable balance of cost and risk for the utility and its customers
27 in meeting future demand for the provision of adequate and reliable service to its electric
28 customers as specified by the Public Service Commission.

29 (e) The commission shall by order, entered no later than July 1, 2025, require all electric
30 utilities operating in the state to supplement their existing integrated resource plans to include a
31 detailed plant upgrade and maintenance plan, improvement compliance schedule, and cost
32 estimate for ensuring the operation of each generating unit through their planned retirement date.
33 The supplemental integrated resource plan shall also include an analysis of the action necessary

34 to extend the life of each generating unit beyond their planned retirement date. Subject to notice
35 and comment from interested parties, the commission may approve the supplemental integrated
36 resource plan without modification or require modification of the supplemental plan before it is
37 approved. The commission shall promulgate rules requiring the supplementation of integrated
38 resource plans as required by this provision. The rules shall also provide a procedure for utilities
39 to submit an independent evaluation of any modification required by the commission hereunder
40 or to challenge such required modification.

**§24-2-21a. Commission authority required when closing an electric generating plant and
circumstances of closure in another jurisdiction.**

41 (a) A public electric utility may not retire, abandon, close, or otherwise permanently render
42 incapable of operating, any electric generating plant or unit without the prior consent and approval
43 of the commission. No funds obtained from (1) the Grid Stabilization and Security Fund set forth
44 in 5B-2N-2a, (2) an environmental control bond issued pursuant to 24-2-4e, (3) a consumer rate
45 relief bond issued pursuant to 24-2-4f, (4) or a utility consumer rate relief bond issued pursuant
46 to 24-2-4h shall be used by a public utility to retire, abandon, close, or otherwise permanently
47 render incapable of operating, any electric generating plant or unit.

48 (b) If an electric utility serving customers in both West Virginia and in an area not subject
49 to the jurisdiction of the commission is ordered to cease operations of a generating plant or unit
50 by the regulating authority of the other jurisdiction and the costs of the plant or unit had been
51 shared through an allocation process for rate making purposes and after a commission
52 proceeding and determination that a generating plant or unit should continue to operate, then the
53 utility shall recover all of the capital, operating and maintenance costs of the electric generation
54 plant or unit from its West Virginia customers to the extent that such costs are no longer allocable
55 to the other jurisdiction, and all of the associated capacity, energy, and environmental attributes
56 shall be assigned to its customers and operations in West Virginia.

The Clerk of the House of Delegates and the Clerk of the Senate hereby
certify that the foregoing bill is correctly enrolled.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

Originated in the House of Delegates.

In effect 90 days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2025.

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Governor