WEST VIRGINIA CODE CHAPTER 11 ARTICLE 6N

WV Legislature

§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.

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§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;

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(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.

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§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.

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§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:

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

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§11-6N-5. Termination.

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

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