

# WEST VIRGINIA CODE: §5B-2-21

## §5B-2-21. Certified Industrial Business Expansion Development Program.

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

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

- (1) Certification of the high impact industrial business development district and location of new or expanded businesses within the district will have a significant and positive economic impact on the state;
- (2) Certification of the high impact industrial business development district is necessary to attract at least two businesses to locate or expand in this state;
- (3) The area to be certified as a high impact industrial business development district shall be no greater than 2,250 acres and must be located on land sold or leased by the state, its agencies, or political subdivisions as defined in §29-12A-3(c) of this code with a purpose of creating a high impact industrial business development district or on land that has been previously used for coal mining operations in the state; and
- (4) The electricity generated from renewable sources within the district will be used within the district or delivered to the wholesale market.

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

(c) *Providing electric service within a certified high impact industrial business development district.*— Within a high impact industrial business development district, any person, firm, corporation, or entity seeking to provide electric service through the generation of renewable sources from within the high impact industrial business development district of electricity to businesses locating within the certified high impact industrial business

development 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 renewable sources 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 industrial facility located within the certified high impact industrial business development district; and
- (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 high impact industrial business development district.

(d) *Eligible electric retail customers.* — In order to take advantage of the provisions of this section, an industrial plant or facility choosing to locate and operate within a high impact industrial business development district must constitute new electric generating load. Any owner or tenant of an industrial 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 industrial facility within the district shall be considered eligible new electric generating load. Electric service to any such industrial plant or facility shall be considered new electric generating load so long as any customer making a new capital investment within the district does not decrease the load of an existing facility outside the district in this state in conjunction with the new capital investment within the 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 high impact industrial business development district.

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

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

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