

Five Ways HB 2014 Harms Communities, Local Governments, and Schools

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During the 2025 West Virginia state legislative session, lawmakers passed HB 2014, the Certified Microgrid Program. While proponents focused on how the legislation would permit microgrids and seek to draw High Impact Data Centers (HIDCs) to West Virginia, the law has broad implications for local communities, municipal and county governments, and school districts in which microgrids or HIDCs locate.

While the legislation has several components, this piece will discuss two of them in detail:

- (1) Its dramatic limitation of local legal jurisdiction of sites with microgrids or high impact data centers; and
- (2) Its unconstitutional seizure and redistribution of locally levied tax dollars that would have otherwise gone to school districts and other public services to the state for use toward other priorities.

While many provisions of the law raise concerns for different parties, the taxation-related changes raise serious Constitutional questions, which will be outlined in this piece.

The law seeks to attract data centers by severely limiting local control.

Section 5B-2-21b mandates that High Impact Data Centers and microgrids “*may not be subject to... the legal jurisdiction of the community or municipality in which the certified microgrid district or certified high impact data center is ...located, except as specifically provided in this article.*”

Explicit prohibitions of local governments in §5B-2-21b include any and all ordinances, regulations, or rules that would limit in any way the creation and operation of microgrids and HIDCs. Counties and municipalities are expressly prohibited from enforcing zoning, horticultural, noise, viewshed, lighting, development, or land use ordinances, restrictions, limitations, or approvals. They are also expressly forbidden from enforcing permitting and licensing requirements.

The following narrow enumerated powers are the only ones provided for in the article:

Municipal Authorities Granted	County Authorities Granted
Business and occupation tax	Ad valorem tax (although taken by state and redistributed)
Sales and service tax	Utility fees (water, sewer, stormwater)
Ad valorem tax	
Municipal service fees enacted pursuant to §8-13-13 of this code, including, but not limited to, fire, police, sanitation, or city service fees	
Municipal police and fire protection	

The prohibitions on zoning, land use, and other local governance raise serious concerns given the well-documented environmental and health impacts of data centers. In Tennessee, an xAI data center has caused major backlash from community members about noise and pollutant emissions exacerbating asthma and lung diseases.¹ In Georgia, local officials are grappling with the enormous light pollution and water needs of data centers and how to balance those with drought planning.²

In Tucker County, a permit application for a planned microgrid power plant, presumably intended to power a data center, outlines a plan to use gas-fueled turbines like those in Tennessee that are known for exacerbating respiratory health issues.³ Thirty million gallons of diesel would be kept on site as a backup power source in case of gas line interruptions, with gas leaks anticipated, per the application.

The prohibition of local powers in light of inevitable health and environmental impacts raises many additional questions regarding enforcement and provision of public safety and public health measures including (but not limited to) the following unanswered questions:

- Can county law enforcement enforce laws at HIDC sites?
- Can county emergency responders dispatch services to HIDC sites?
- Can county health departments regulate sewage disposal or food service at HIDC sites?

¹ Ariel Wittenberg, “How come I can’t breathe?: Musk’s data company draws a backlash in Memphis,” *Politico*, May 6, 2025.

² Marisa Mecke, “Data centers use a lot of water. Georgia counties are looking for solutions,” *WABE and Decaturish*, May 30, 2025.

³ Division of Air Quality Permit Application Submittal filed to the West Virginia Department of Environmental Protection by Fundamental Data for Ridgeline Facility and obtained by West Virginia Watch. Retrieved from <https://westvirginiawatch.com/wp-content/uploads/2025/05/FD-air-permit-app.pdf>.

- Can counties enforce permitting and enforcement of storm water runoff and other illicit discharges into surface or ground waters?
- What recourse exists for a county commission if the HIDC violates light restrictions in an airport zone?

The law unconstitutionally seizes and redistributes locally levied tax dollars needed for local public services.

Under the new law, regular tax levies (including state, county, board of education, and municipal) and voter-approved bond levies generated by the increased value of HIDC sites will not all go to those levying bodies to provide local public services but instead will be distributed to state priorities as the legislature directs in § 11-6N-4. The increase between the property's initial assessed value and the assessed value after the development of the HIDC is referred to as the "tax increment" in the law.

The incremental property tax revenue seized by the state is then distributed into five state legislative priorities:

- Personal Income Tax Reduction Fund (50%)
- The county in which the HIDC is located (30%)
- A fund that distributes an increment to all counties on a per capita basis (10%)
- Economic Enhancement Grant Fund (5%)
- Electric Grid Stabilization and Security Fund (5%)

While the state seizes all regular tax levy and bond levy revenue generated from HIDC investments, only 30 percent comes back to the county in which the HIDC is located. As the law is written, we interpret that the 30 percent share distributed to the county in which the HIDC is located and the 10 percent share distributed to all counties on a per capita basis refers to the county commission, but this is unclear since it uses the broad term "county."

If interpreted in this way, the funding the county commission in an impacted HIDC county receives could be less than the percentage of overall property taxes the county commission receives, leaving them worse off under this law than prior to the law's passage. Further, under this interpretation, none of the property tax revenue taken from the school district or municipality (if an HIDC were in a municipality) is returned, meaning those entities lose any benefit of an HIDC, unless the school district has an excess levy, in which they would keep those dollars but no regular levy or bond levy funding.

As an example, consider the impact of seizing the tax increment on a hypothetical High Impact Data Center investment of \$2 billion in Tucker County.⁴

	Prior to Passage of HB 2014	Current Law
Tucker County Commission	\$6,192,000	\$4,651,200
Tucker County Schools	\$9,312,000	\$0
Total Retained by Local Entities	\$15,504,000	\$4,641,200

Overall, \$10,852,800 would be diverted away from local entities, erasing much of any local benefit to landing an HIDC. \$1,540,800 would be diverted away from the Tucker County Commission compared to previous law and Tucker County Schools would lose \$9,312,000. Because Tucker County does not have a school excess levy, they would see no property tax revenue from the HIDC's development.⁵

During committee consideration of this legislation, one local government official shared the unintentional consequence the preemption of local control combined with the seizing of local revenue creates, potentially undermining the legislature's goal of attracting more data centers to West Virginia stating, "With the county restrictions and taxation language added to the 'microgrid bill,' I fear that counties will ultimately shy away from these types of projects."⁶

In addition to undermining local interest in HIDCs, the tax provisions violate the Tax Limitation Amendment and likely other provisions in the West Virginia Constitution.

Article 10 Section 1 of the West Virginia Constitution, the Tax Limitation Amendment, creates an overall limit on combined levy rates of all levying bodies as well as a *strict limit of 1 cent per \$100 on property taxes the State may levy and collect*. That same section states that *"the revenue derived from this source [property taxes] shall be apportioned by the Legislature among the levying units of the state in proportion to the levy laid in said units upon real and other personal property..."*

In effect, HB 2014 converts locally levied taxes to state taxes, which pushes the state's levy above its constitutional maximum (1 cent per \$100 of property taxes) and violates the Tax Limitation Amendment. If allowed to stand, this gives future state legislatures carte blanche authority to raise its property tax levy above its constitutional maximum by seizing

⁴ WVCBP analysis of HB 2014 and property tax data.

⁵ A potential unintended consequence of this legislation is that school districts could be incentivized to enact excess levies to try to capture some benefit from HIDCs locating in their district.

⁶ Jericho Casper, "West Virginia Data Center Bill Gets Local Pushback," *Broadband Breakfast*, April 22, 2025.

revenue from local governments even further. While this legislation seizes local tax dollars only from data centers and microgrids, there is no telling where future state legislatures might decide to seize property tax dollars from.

There are other potential constitutional conflicts that will only be discussed briefly here. Under Article IX Section 11, county commissions are granted “*authority to lay and disburse the county levies,*” whereas under §11-6N-4, the state Auditor is given authority to disburse HIDC county levy dollars to the state priorities and funds highlighted above. Under Article X Section 10, *the maximum rates provided for tax levies by school districts on the several classes of property may be used entirely for current expense purposes.*

Under the law, most seized property tax dollars will be taken from school districts.

The largest diversion of property tax funds as a result of HB 2014 is from local school districts which, on average, receive 68 percent of levied property tax revenue. In effect, the law takes property tax money that would have gone to the public schools in the county in which the HIDC is located and instead distributes it to the funds outlined above. While we interpret the law to return a portion of the seized revenue to the impacted county commission, there is no such mechanism for the school district to receive any property tax revenue from the HIDC or “tax increment.”

Going back to the hypothetical Tucker County example of a \$2 billion data center investment, Tucker County Schools would go from receiving over \$9 million from the HIDC development’s tax increment annually under prior law to receiving \$0—nothing beyond the original value of the property—with the passage of HB 2014.

While proponents of the legislation argued during debate that school districts would be “held harmless” because the state’s school aid formula should bridge the gap between local and state school funding, that is not the case for school districts that already generate a large portion of their total basic

A Short Primer on the School Aid Formula

The school funding formula in West Virginia, known as the Public School Support Plan (PSSP), is resource-based, allocating funding to school districts for the costs of operating schools based on student enrollment.

The PSSP involves a multi-step formula that determines the school district’s total basic foundation allowance. From that allowance, the school district’s local share (or property taxes generated) is subtracted and the difference is funded by state dollars, known as the state aid allowance.

There is significant variance in local property taxes, which means some counties get more or less state aid, which is intended to even out those discrepancies. For example, in the 2025-26 school year, three gas-producing counties generated enough local property tax revenue to cover their entire basic foundation allowance and thus will not receive any state aid toward their basic foundation allowance.

foundation allowance via their local share of school funding or for whom the HIDC development would push them above the basic foundation allowance.⁷

In this hypothetical example, under previous law, with the \$9.3 million in HIDC tax revenue, Tucker's calculated local share would increase to \$12,199,620 and the state share would fall to \$0, with the full sum of \$12,199,620 retained for Tucker County Schools. However, with the passage of HB 2014, the school aid formula would not replace all the revenue lost by Tucker County Schools, with the school district losing out on \$1,876,148, or **\$1,914 per pupil**, compared to what they would receive under previous law. Any counties that generate a large share of local school funding—and, as a result, receive little or no state aid—will lose most or all of the tax revenue generated from HIDCs, as the state aid formula will not, in fact, hold them harmless.

HB 2014 will harm school district's finances in additional ways. In addition to regular school district levies, HB 2014 also seizes bond levy funding generated from an HIDC project, which could place unnecessary strain on funding school buildings and capital improvements.

Further, there are other consequences which may not have been contemplated during consideration of this legislation. §18-9A-2(n) defines the calculation of a school district's local share, wherein 85 percent of the levy rate for county boards of education is counted toward the "levies for general current expense purposes." In effect, that means 85 percent of the school district's levy goes toward their local share of school funding while the school districts keep 15 percent outside the calculations of the school aid formula. Under HB 2014, none of the levy generated from the HIDC project will benefit the school district, including the 15 percent that typically is held aside from the local share.

Additionally, if an HIDC locates in a Growth County (as outlined in § 11-8-6f), that county will not be able to realize 100 percent of the HIDC's levy funds in the first year the new property is on the books to fund capital improvements as they are able to do with other new properties in their county. This undermines a key capital improvement funding source for these counties.

Finally, while HB 2014 seizes the property tax generated by the HIDC, it does not provide for exempting that property tax from the school district's local share calculation. That is because it does not change the levy rates, rather, it only changes where the dollars are distributed. This could result in the HIDC's tax increment counting against a school

⁷ Sean O'Leary, "Senate Amended HB 2014 Has Significant Potential Consequences," West Virginia Center on Budget and Policy, April 11, 2025.

district's local share on paper and, by extension, reducing its state share without the school district actually receiving those funds.

The law undermines state funded programs by narrowing our tax base through its convoluted income tax reduction fund.

As highlighted above, the new law redirects seized property tax dollars into five priority areas, the largest of which, 50 percent, goes into a Personal Income Tax Reduction Fund. As laid out in the law, this seized revenue will go into the newly created fund where, at the end of the fiscal year, it will be counted as part of the adjusted general revenue fund collections calculation that is used to “trigger” additional permanent reductions in the personal income tax.

This creates medium- and long-term concerns for the state budget and state funded programs for multiple reasons.

First, the Special Rules for Tax Distribution of High Impact Data Centers as outlined in §11-6N-4 expire in 2055. If, in 2055, the state has successfully wound down a large portion of the personal income tax, which currently funds 40 percent of the state's general revenue budget, and has replaced those dollars with HIDC property tax revenues, lawmakers will face a very steep budget deficit in 2055.

Notably, there are potentially significant consequences even prior to that. The personal income tax meets conservative principles of tax policy: namely, it has low rates and a broad base. Traditional principles dictate that the budget should not be overly reliant on a particular industry because if there is a large disruption in that industry, the state would have problems meeting its obligations.

Following those principles, swapping a broad-based income tax for property tax revenue generated from a subset of one industry (data centers), is not fiscally sound. If data centers have been replaced by the next innovation in twenty years or if even one major data center closed, the state could have significant problems meeting its budget obligations given its overreliance on one tax of one industry.

The law invites in the worst actors while undermining local development strategies.

By limiting local control to require permitting, zoning, or other restrictions on data centers some have argued that communities will be denied the protections that have mitigated much of the environmental and aesthetic harms of data centers in other places like Loudon County, Virginia, which proponents of HB 2014 have often pointed to. In fact, in

Virginia, there are pushes to add additional regulations and monitoring of environmental impacts.

In an interview with *West Virginia Watch*, Julie Bolthouse, the director of land use at Piedmont Environmental Council in Virginia, warned that this law essentially invites in the worst actors: “What you’re going to get if you do it this way is the worst players ... the players that are wanting that lack of regulations because they didn’t want to abide by rules and didn’t want to or need to protect communities, which is worse for West Virginia and the communities. What West Virginia is doing is not what Virginia is doing.”⁸

By attracting those bad actors, West Virginia runs the risk of undermining what makes our state appealing for families and businesses—things like tourism, clean water, and quiet communities.

Please note, there are other components of this law not explored in this paper including its impact on consumer energy prices and further environmental concerns.

If you are a community member or local official in an impacted county and want to discuss any of the policy or constitutional implications laid out above with more specificity, please reach out to Kelly Allen at kallen@wvpolicy.org.

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⁸ Caity Coyne, “It will destroy this place: Tucker County residents fight for future against proposed data center,” *West Virginia Watch*, May 28, 2025.