

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2870

BY DELEGATE WESTFALL

[Passed March 7, 2023; in effect ninety days from passage.]

1 AN ACT to amend and reenact §24-2-11c of the Code of West Virginia, 1931, as amended,
2 relating generally to siting certificates for certain electric generating facilities; correcting
3 code cross references.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11c. Siting certificates for certain electric generating facilities or material modifications thereof.

1 (a) Notice of an application for a siting certificate required under the provisions of
2 subdivisions (1), (2), (3), (4), and (5), subsection (d), section one of this article shall be given as
3 a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine
4 of this code, with the publication area being each county in which all or a portion of the facility is
5 located or to be located. Such notice shall also be published as a Class I legal advertisement in
6 a newspaper published each weekday in Kanawha County and circulated both within and outside
7 of Kanawha County. If no substantial protest is received within thirty days after the publication of
8 notice, the commission may waive formal hearing on the application.

9 (b) The commission shall render its decision within three hundred days of the date of filing
10 of an application for a siting certificate. If no decision is rendered within such time period, the
11 commission shall issue a siting certificate as applied for.

12 (c) In deciding whether to issue, refuse to issue, or issue in part and refuse to issue in part
13 a siting certificate, the commission shall appraise and balance the interests of the public, the
14 general interests of the state and local economy, and the interests of the applicant. The
15 commission may issue a siting certificate only if it determines that the terms and conditions of any
16 public funding or any agreement relating to the abatement of property taxes do not offend the
17 public interest, and the construction of the facility or material modification of the facility will result
18 in a substantial positive impact on the local economy and local employment. The commission
19 shall issue an order that includes appropriate findings of fact and conclusions of law that address

20 each factor specified in this subsection. All material terms, conditions and limitations applicable
21 to the construction and operation of the proposed facility or material modification of the facility
22 shall be specifically set forth in the commission order.

23 (d) The commission may require an applicant for a siting certificate to provide such
24 documents and other information as the commission deems necessary for its consideration of the
25 application.

26 (e) If the commission issues the siting certificate, the commission shall have continuing
27 jurisdiction over the holder of the siting certificate for the limited purposes of: (1) Considering
28 future requests by the holder for modifications of or amendments to the siting certificate; (2)
29 considering and resolving complaints related to the holder's compliance with the material terms
30 and conditions of the commission order issuing the siting certificate, whether or not the
31 complainant was a party to the case in which the siting certificate was issued, which complaints
32 shall be filed, answered, and resolved in accordance with the commission's procedures for
33 resolving formal complaints; and (3) enforcing the material terms and conditions of a commission
34 order as provided in subsection (f) of this section.

35 (f) If the commission determines, in a proceeding instituted on its own motion or on the
36 motion of any person, that the holder of a siting certificate has failed without reasonable
37 justification to comply with any of the material terms and conditions of a commission order issuing
38 a siting certificate, modifying or amending a siting certificate, or resolving a complaint related to
39 compliance of the holder with the material terms and conditions of a siting certificate, the
40 commission may enforce the material terms and conditions of the commission order: (1) By
41 requiring the holder to show cause why it should not be required so to comply; (2) through a
42 proceeding seeking the imposition of a civil penalty not to exceed \$5,000 or criminal penalties as
43 provided in §24-4-4 of this code, or both such civil and criminal penalties, and the imposition of
44 either or both such civil penalty and criminal penalties shall be subject to the provisions of §24-4-
45 8 of this code; (3) by mandamus or injunction as provided in section two of this article; or (4) prior

46 to the completion of construction of the proposed facility or prior to the completion of construction
47 of a material modification of the facility, by the suspension or revocation of the siting certificate,
48 including the preliminary suspension of the siting certificate under the standards applicable to
49 circuit courts of this state for the issuance of preliminary injunctions.

50 (g) Any person may seek to compel compliance with the material terms and conditions of
51 a commission order issuing, modifying or amending a siting certificate, or resolving a complaint
52 related to the holder's compliance with the material terms and conditions a siting certificate
53 through appropriate proceedings in any circuit court having jurisdiction.

54 (h) The material terms and conditions of a commission order issuing, modifying or
55 amending a siting certificate or resolving a complaint related to the holder's compliance with the
56 material terms and conditions of a commission order issuing a siting certificate shall continue to
57 apply to any transferee of the siting certificate or to any transferee of all or a portion of the
58 ownership interest in an electric generating facility for which a siting certificate has been issued.
59 In either case, the transferee or original holder of the siting certificate shall be subject to the
60 continuing jurisdiction of the commission to the extent provided in subsections (e) and (f) of this
61 section.

62 (i) Any party feeling aggrieved by a final order of the commission under this section may
63 petition for a review thereof by the Supreme Court of Appeals pursuant to section one, article five
64 of this chapter.

65 (j) The commission may prescribe such rules as may be necessary to carry out the
66 provisions of this section in accordance with the provisions of §24-1-7 of this code. Such rules
67 may include and provide for an application fee to be charged an applicant for a siting certificate,
68 or for a modification of, or amendment to, a siting certificate previously issued, under the
69 provisions of this section, which fee shall be paid into the State Treasury and kept in a special
70 fund designated Public Service Commission fund as established in §24-3-6(a) of this code, to be
71 used for the purposes set forth in that subsection.

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

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect ninety 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, 2023.

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Governor