

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 2870

By Delegate Westfall

[Originating in the Committee on Energy and

Manufacturing, January 26, 2023]

1 A BILL to amend and reenact §24-2-11c of the Code of West Virginia, 1931, as amended, relating
2 generally to siting certificates for certain electric generating facilities; correcting code cross
3 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 ~~(e)~~(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 of
4 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 a
6 newspaper published each weekday in Kanawha County and circulated both within and outside of
7 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 ~~or within four hundred days of the filing of an application for~~
11 ~~a certificate of public convenience and necessity pursuant to section eleven of this article if the~~
12 ~~application is considered as an application for a siting certificate pursuant to this section as~~
13 ~~provided in subdivision (6), subsection (c), section one of this article.~~ If no decision is rendered
14 within such time period, the commission shall issue a siting certificate as applied for.

15 (c) In deciding whether to issue, refuse to issue, or issue in part and refuse to issue in part a
16 siting certificate, the commission shall appraise and balance the interests of the public, the general
17 interests of the state and local economy, and the interests of the applicant. The commission may
18 issue a siting certificate only if it determines that the terms and conditions of any public funding or
19 any agreement relating to the abatement of property taxes do not offend the public interest, and

20 the construction of the facility or material modification of the facility will result in a substantial
21 positive impact on the local economy and local employment. The commission shall issue an order
22 that includes appropriate findings of fact and conclusions of law that address each factor specified
23 in this subsection. All material terms, conditions and limitations applicable to the construction and
24 operation of the proposed facility or material modification of the facility shall be specifically set forth
25 in the commission order.

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

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

38 (f) If the commission determines, in a proceeding instituted on its own motion or on the
39 motion of any person, that the holder of a siting certificate has failed without reasonable
40 justification to comply with any of the material terms and conditions of a commission order issuing
41 a siting certificate, modifying or amending a siting certificate, or resolving a complaint related to
42 compliance of the holder with the material terms and conditions of a siting certificate, the
43 commission may enforce the material terms and conditions of the commission order: (1) By
44 requiring the holder to show cause why it should not be required so to comply; (2) through a
45 proceeding seeking the imposition of a civil penalty not to exceed \$5,000 or criminal penalties as

46 provided in ~~section four, article four of this chapter~~ §24-4-4 of this code, or both such civil and
47 criminal penalties, and the imposition of either or both such civil penalty and criminal penalties
48 shall be subject to the provisions of ~~section eight, article four, of this chapter~~ §24-4-8 of this code;
49 (3) by mandamus or injunction as provided in section two of this article; or (4) prior to the
50 completion of construction of the proposed facility or prior to the completion of construction of a
51 material modification of the facility, by the suspension or revocation of the siting certificate,
52 including the preliminary suspension of the siting certificate under the standards applicable to
53 circuit courts of this state for the issuance of preliminary injunctions.

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

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

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

69 (j) The commission may prescribe such rules as may be necessary to carry out the
70 provisions of this section in accordance with the provisions of ~~section seven, article one of this~~
71 ~~chapter~~ §24-1-7 of this code. Such rules may include and provide for an application fee to be

72 charged an applicant for a siting certificate, or for a modification of, or amendment to, a siting
73 certificate previously issued, under the provisions of this section, which fee shall be paid into the
74 State Treasury and kept in a special fund designated Public Service Commission fund as
75 established in ~~subsection (a), section six, article three of this chapter~~ §24-3-6(a) of this code, to be
76 used for the purposes set forth in that subsection.

NOTE: The purpose of this bill is to correct code cross references.

Strike-throughs indicate language that would be stricken from a heading or the present law
and underscoring indicates new language that would be added.