

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 3024**

BY DELEGATES HANSHAW (MR. SPEAKER) (BY REQUEST),

ATKINSON AND NELSON

[Originating in the Committee on Government

Organization, February 20, 2019.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §24-2-1n, relating to creating a pilot program to encourage utility infrastructure  
3 development to certain lands; declaring certain legislative findings; defining certain terms;  
4 requiring the West Virginia Development Office to consider certain applications; requiring  
5 the Public Service Commission consider certain plans; providing the Public Service  
6 Commission with the authority to allow certain public utility infrastructure projects to  
7 recover certain costs via ratemaking; providing for the expiration of certain statutory  
8 provisions; and providing for an effective date of the provisions of this section.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

**§24-2-1n. West Virginia Business Ready Sites Program.**

1 (a) The Legislature finds and declares that:

2 (1) Presently, West Virginia's available industrial sites lack competitiveness with industrial  
3 sites in surrounding states due in part to the lack of presently constructed, adequate utility  
4 infrastructure serving sites having industrial potential;

5 (2) Having as many construction ready industrial sites with adequately developed utility  
6 infrastructure will increase the state's potential to attract new industrial projects to the state and  
7 advance the state's economic development efforts;

8 (3) Incentivizing utilities to construct adequate public utility infrastructure and provide  
9 services to sites identified as having industrial potential will increase the likelihood that such sites  
10 are developed; and

11 (4) Increasing the number of industrial sites with adequate and fully developed utility  
12 services is in the public interest of the state.

13 (b) Definitions. – For the purpose of this section:

14 (1) "Development Office" means the West Virginia Development Office;

15           (2) “Industrial Development Agency” means any incorporated organization, foundation,  
16 association, or agency to whose members or shareholders no profit inures, which has as its  
17 primary function the promotion, encouragement and development of industrial, commercial,  
18 manufacturing and tourist enterprises or projects in this state;

19           (3) “Industrial Development Site” means a land development containing a minimum of 50  
20 contiguous acres that is identified by the Development Office as having potential for industrial  
21 development and that does not currently have adequate public utility services from one or more  
22 public utilities regulated by the Public Service Commission; and

23           (4) “Utility” means electricity, natural gas, water or sewage service provided by a public  
24 utility regulated by the Public Service Commission.

25           (c) The West Virginia Development Office shall identify a pilot program known hereafter  
26 as “The West Virginia Business Ready Sites Program” for the purpose of promoting economic  
27 development in certain areas of the state by facilitating the construction of utility infrastructure  
28 necessary to increase the attractiveness of such sites for industrial development within the state.

29           (d) An Industrial Development Agency may identify a potential Industrial Development Site  
30 and apply to the Development Office for approval of the site as an Industrial Development Site.

31           (e) Upon receipt of the application, the Development Office shall determine whether the  
32 potential Industrial Development Site has the attributes to accomplish the public purposes of this  
33 section; and, upon determining that the site has such attributes, the Development Office shall  
34 certify the site as an Industrial Development Site and communicate such certification to the  
35 commission.

36           (f) After the Public Service Commission receives the certification described in subsection  
37 (e) of this section, public utilities may file with the commission an application for a multi-year  
38 comprehensive plan for infrastructure development to construct public utility infrastructure and  
39 provide services to Industrial Development Sites. Subject to commission review and approval, a  
40 plan may be amended and updated by the public utility as circumstances warrant. The recovery

41 of costs in support of the plans shall be allowed in the manner set forth in this section if the  
42 proposed plans have been found to be prudent and useful.

43 (g) The application is in lieu of a proceeding pursuant to §24-2-11 of this code and shall  
44 contain the following:

45 (1) A description of the infrastructure program, in such detail as the Public Service  
46 Commission prescribes, and the projected annual amount (in approximate line sizes and feet),  
47 general location, type, and projected installation timing of the facilities that the applicant proposes  
48 to replace, construct, or improve;

49 (2) The projected net cost, on an annual basis, of the replacement, construction, or  
50 improvements;

51 (3) The projected start date for the infrastructure program;

52 (4) The projected numbers of potential new customers that may be served by the  
53 infrastructure program and the projected annual demand for public utility services of the  
54 customers;

55 (5) The projected debt for the infrastructure program funding and the projected capital  
56 structure for infrastructure program funding;

57 (6) A proposed full and timely cost recovery mechanism consistent with this section; and

58 (7) Other information the applicant considers relevant or the commission requires.

59 (h) Upon filing of the application, the applicant shall publish, in the form the Public Service  
60 Commission directs, which form shall include, but not be limited to, the anticipated rates and, if  
61 any, rate increase under the proposal, by average percentage and dollar amount for customers  
62 within a class of service, as a Class I legal advertisement in compliance with the provisions of  
63 §59-3-1 et seq. of this code, the publication area to be each county in which service is provided  
64 by the public utility, a notice of the filing of the application, and that the commission shall hold a  
65 hearing on the application within 90 days of the notice; unless no opposition to the rate change is

66 received by the commission within one week of the proposed hearing date, in which case the  
67 hearing can be waived, and issue a final order within 150 days of the application filing date.

68 (i) Upon notice and hearing, if required by the Public Service Commission, the commission  
69 shall approve the infrastructure program and allow expedited recovery of costs related to the  
70 expenditures as provided in subsection (j) of this section if the commission finds that the  
71 expenditures and the associated rate requirements are just, reasonable, and are not contrary to  
72 the public interest: *Provided*, That the commission may approve infrastructure programs  
73 undertaken in connection with a maximum of 10 Industrial Development Sites under this program:  
74 *Provided, however*, That no more than four Industrial Development Sites shall be located in any  
75 one congressional district, as such congressional districts are defined in §1-2-3 of this code on  
76 the effective date of this section.

77 (j) Upon Public Service Commission approval, utilities will be authorized to implement the  
78 infrastructure programs and to recover related incremental costs, net of contributions to recovery  
79 of return, operation and maintenance, depreciation and tax expenses directly attributable to the  
80 infrastructure program served by the infrastructure program investments, if any, as provided in  
81 the following:

82 (1) An allowance for return shall be calculated by applying a rate of return to the average  
83 planned net incremental increase to rate base attributable to the infrastructure program for the  
84 coming year, considering the projected amount and timing of expenditures under the  
85 infrastructure program plus any expenditures in previous years of the infrastructure program. The  
86 rate of return shall be determined by utilizing the rate of return on equity authorized by the Public  
87 Service Commission in the public utility's most recent rate case proceeding or in the case of a  
88 settled rate case, a rate of return on equity as determined by the commission, and the projected  
89 cost of the public utility's debt during the period of the infrastructure program to determine the  
90 weighted cost of capital based upon the public utility's capital structure.

91 (2) Income taxes applicable to the return allowed on the infrastructure program shall be  
92 calculated at the statutory tax rate for inclusion in rates.

93 (3) Incremental operation and maintenance, depreciation and property tax expenses  
94 directly attributable to the infrastructure program shall be estimated for the upcoming year.

95 (4) Following Public Service Commission approval of its infrastructure program, a public  
96 utility shall place into effect rates that include an increment that recovers the allowance for return,  
97 related income taxes at the statutory rate, operation and maintenance, depreciation, and property  
98 tax expenses associated with the public utility's estimated infrastructure program investments for  
99 the upcoming year, net of contributions to recovery of those incremental costs provided by new  
100 customers served by the infrastructure program investments, if any, ("incremental cost recovery  
101 increment"). In each year subsequent to the order approving the infrastructure program and an  
102 incremental cost recovery increment, the public utility shall file a petition with the commission  
103 setting forth a new proposed incremental cost recovery increment based on investments to be  
104 made in the subsequent year, plus any under-recovery or minus any over-recovery of actual  
105 incremental costs attributable to the infrastructure program investments, for the preceding year.

106 (5) The facilities installed in an application approved by the Public Service Commission  
107 shall be considered used and useful as of the date of construction expenditure for rate recovery.

108 (k) The public utility may make any accounting accruals necessary to establish a  
109 regulatory asset or liability through which actual incremental costs incurred and costs recovered  
110 through the rate mechanism are tracked.

111 (l) Utilities may defer incremental operation and maintenance expenditures attributable to  
112 regulatory and compliance-related requirements introduced after the public utility's last rate case  
113 proceeding and not included in the public utility's current rates. In a future rate case, the Public  
114 Service Commission may allow recovery of the deferred costs amortized over a reasonable period  
115 of time to be determined by the commission provided the commission finds that the costs were  
116 reasonable and prudently incurred and were not reflected in rates in prior rate cases.

117            (m) The provisions of this section shall expire on December 31, 2024. The expiration of  
118 this section shall not affect the full and timely cost recovery of constructing project that is  
119 commenced pursuant to this section prior to such date.

120            (n) The provisions of this section are effective upon passage.

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