

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 2059**

By Delegate Keaton

[Introduced January 11, 2023; Referred to the  
Committee on Economic Development and Tourism]

1 A BILL to amend and reenact §24-2-1n of the Code of West Virginia, 1931, as amended, relating to  
 2 the West Virginia Business Ready Sites Program; removing minimum size restrictions and  
 3 maximum number of sites permitted together with requirement that the program be pilot  
 4 program; and providing that a potential site may be identified by an economic development  
 5 agency.

*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 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) Responsibly increasing the number of industrial sites with adequate and fully  
 12 developed utility services is in the public interest of the state.

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

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

18 (2) "Industrial Development Site" means a land development ~~containing a minimum of 50~~

19 ~~contiguous acres~~ that is identified by the secretary or economic development agency as having  
20 potential for industrial development and that does not currently have adequate public utility  
21 services from one or more public utilities regulated by the Public Service Commission;

22 (3) "Secretary" means the Secretary of the Department of Commerce; 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 secretary shall identify a pilot program known hereafter as "The West Virginia  
26 Business Ready Sites Program" for the purpose of promoting economic development in certain  
27 areas of the state by facilitating the construction of utility infrastructure necessary to increase the  
28 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 secretary for approval of the site as an industrial development site.

31 (e) Upon receipt of the application, the secretary shall determine whether the potential  
32 industrial development site has the attributes to accomplish the public purposes of this section;  
33 and, upon determining that the site has such attributes, the secretary may certify the site as an  
34 industrial development site and communicate such certification to the Public Service Commission.

35 (f) After the Public Service Commission receives the certification described in subsection  
36 (e) of this section, public utilities may file with the Public Service Commission an application for a  
37 multi-year comprehensive plan for infrastructure development to construct public utility  
38 infrastructure and provide services to industrial development sites. Subject to commission review  
39 and approval, a plan may be amended and updated by the public utility as circumstances warrant.  
40 The recovery of costs in support of the plans shall be allowed in the manner set forth in this section  
41 if the proposed plans have been found to be prudent and useful.

42 (g) The application submitted to the Public Service Commission under subsection (f) of this  
43 section is in lieu of a proceeding pursuant to §24-2-11 of this code and shall contain the following:

44 (1) A description of the infrastructure program, in such detail as the Public Service

45 Commission prescribes, and the projected annual amount in approximate line sizes and feet,  
46 general location, type, and projected installation timing of the facilities that the applicant proposes  
47 to replace, construct, or improve;

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

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

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

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

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

57 (7) Other information the applicant considers relevant, or the Public Service Commission  
58 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 §59-  
63 3-1 *et seq.* of this code, the publication area to be each county in which service is provided by the  
64 public utility, a notice of the filing of the application, and that the commission shall hold a hearing on  
65 the application within 90 days of the notice; unless no opposition to the rate change is received by  
66 the commission within one week of the proposed hearing date, in which case the hearing can be  
67 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 the  
76 effective date of this section: *Provided, further however*, That if the number of congressional  
77 districts is reduced to two, that no more than five industrial development sites shall be located in  
78 any one congressional district.

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to remove minimum size restrictions and maximum number of sites permitted in the West Virginia Business Ready Sites Program together with the removing the requirement that the program be a pilot program. The bill also provides that a potential site may be identified by an economic development agency.

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