

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3428

By Delegate Howell

[Introduced February 13, 2023; Referred to the
Committee on Economic Development and Tourism]

1 A BILL to amend and reenact §24-2-1n, relating to the West Virginia Business Ready Sites
2 Program; to eliminate the West Virginia Business Ready Sites Program as a pilot program;
3 to eliminate the maximum number of industrial development sites; to eliminate certain
4 requirements that industrial development sites be apportioned geographically amongst
5 West Virginia's congressional districts; and to eliminate the sunset provision of the West
6 Virginia Business Ready Sites Program.

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 (4) "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 as having potential for industrial development
20 and that does not currently have adequate public utility services from one or more public utilities
21 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~~ administer a program known hereafter as "The West
26 Virginia Business Ready Sites Program" for the purpose of promoting economic development in
27 certain areas of the state by facilitating the construction of utility infrastructure necessary to
28 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 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)~~ (e) of
43 this section is in lieu of a proceeding pursuant to §24-2-11 of this code and shall contain the
44 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 Public Service Commission
59 requires.

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

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

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

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

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

92 public utility's debt during the period of the infrastructure program to determine the weighted cost
93 of capital based upon the public utility's capital structure.

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

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

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

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

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

114 (l) Utilities may defer incremental operation and maintenance expenditures attributable to
115 regulatory and compliance-related requirements introduced after the public utility's last rate case
116 proceeding and not included in the public utility's current rates. In a future rate case, the Public
117 Service Commission may allow recovery of the deferred costs amortized over a reasonable period

118 of time to be determined by the commission provided the commission finds that the costs were
119 reasonable and prudently incurred and were not reflected in rates in prior rate cases.

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

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

NOTE: The purpose of this bill is to make the West Virginia Business Ready Sites Program permanent. This bill eliminates the designation of the West Virginia Business Ready Sites Program as a pilot program, eliminates the cap on the number of sites that may be designated as industrial development sites under the program, and eliminates provisions requiring industrial development sites to be apportioned geographically amongst West Virginia's congressional districts.

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