ENROLLED

House Bill 3428

BY DELEGATE HOWELL

[Passed March 2, 2023; in effect from passage.]
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AN ACT to amend and reenact §24-2-1n of the Code of West Virginia, 1931, as amended, relating to the West Virginia Business Ready Sites Program; establishing the West Virginia Business Ready Sites Program as a permanent program; authorizing industrial development agencies to recommend required criteria for utility service to certain industrial development sites; giving Public Service Commission discretion to certify sites based on required criteria for utility service; providing for public utilities that can meet required criteria to apply to Public Service Commission for a certain plan to provide utility services to industrial development sites; waiving public hearing on proposed rate change for utility service to industrial development sites if no substantial opposition is received; eliminating the cap on the number of industrial development sites that may be designated by the Public Service Commission; eliminating certain requirements that industrial development sites be apportioned geographically amongst West Virginia’s congressional districts; and eliminating the sunset provision of the West 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.

(a) The Legislature finds and declares that:

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

(2) Having construction-ready industrial sites with adequately developed utility infrastructure will increase the state’s potential to attract new industrial projects to the state and advance the state’s economic development efforts;

(3) Incentivizing utilities to construct adequate public utility infrastructure and provide services to sites identified as having industrial potential will increase the likelihood that such sites are developed; and
Responsibly increasing the number of industrial sites with adequate and fully developed utility services is in the public interest of the state.

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

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

"Industrial Development Site" means a land development containing a minimum of 50 contiguous acres that is identified by the secretary as having potential for industrial development and that does not currently have adequate public utility services from one or more public utilities regulated by the Public Service Commission;

"Secretary" means the Secretary of the Department of Commerce; and

"Utility" means electricity, natural gas, water, or sewage service provided by a public utility regulated by the Public Service Commission.

(c) The secretary shall administer a program known hereafter as "The West Virginia Business Ready Sites Program" for the purpose of promoting economic development in certain areas of the state by facilitating the construction of utility infrastructure necessary to increase the attractiveness of such sites for industrial development within the state.

(d) An industrial development agency may identify a potential industrial development site and apply to the secretary for approval of the site as an industrial development site, including recommendations as to any required criteria for utility service to the site.

(e) Upon receipt of the application, the secretary shall determine whether the potential industrial development site has the attributes to accomplish the public purposes of this section; and, upon determining that the site has such attributes, the secretary may certify the site as an
industrial development site subject to, at his or her discretion, all or some of the identified required
criteria for utility service and communicate such certification to the Public Service Commission.

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

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

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

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

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

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

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

(6) A proposed full and timely cost recovery mechanism consistent with this section; and
(7) Other information the applicant considers relevant, or the Public Service Commission requires.

(h) Upon filing of the application, the applicant shall publish, in the form the Public Service Commission directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate increase under the proposal, by average percentage and dollar amount for customers within a class of service, as a Class I legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code, the publication area to be each county in which service is provided by the public utility, a notice of the filing of the application, and that the commission shall hold a hearing on the application within 90 days of the notice; unless no substantial opposition to the rate change is received by the commission within one week of the proposed hearing date, in which case the hearing can be waived, and issue a final order within 150 days of the application filing date.

(i) Upon notice and hearing, if required by the Public Service Commission, the commission shall approve the infrastructure program and allow expedited recovery of costs related to the expenditures, as provided in subsection (i) of this section, if the commission finds that the expenditures and the associated rate requirements are just, reasonable, and are not contrary to the public interest.

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

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

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

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

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

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

(k) The public utility may make any accounting accruals necessary to establish a
regulatory asset or liability through which actual incremental costs incurred and costs recovered
through the rate mechanism are tracked.
(I) Utilities may defer incremental operation and maintenance expenditures attributable to regulatory and compliance-related requirements introduced after the public utility's last rate case proceeding and not included in the public utility's current rates. In a future rate case, the Public Service Commission may allow recovery of the deferred costs amortized over a reasonable period of time to be determined by the commission provided the commission finds that the costs were reasonable and prudently incurred and were not reflected in rates in prior rate cases.

(m) The provisions of this section are effective upon passage.
The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

Clerk of the House of Delegates

Clerk of the Senate

Originated in the House of Delegates.

In effect from passage.

Speaker of the House of Delegates

President of the Senate

The within is approved this the 23rd day of March, 2023.

Governor