

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

House Bill 3428

BY DELEGATE HOWELL

[Passed March 2, 2023; in effect from passage.]

FILED

2023 MAR 23 P 3:32

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SECRETARY OF STATE

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1 AN ACT to amend and reenact §24-2-1n of the Code of West Virginia, 1931, as amended, relating
2 to the West Virginia Business Ready Sites Program; establishing the West Virginia
3 Business Ready Sites Program as a permanent program; authorizing industrial
4 development agencies to recommend required criteria for utility service to certain industrial
5 development sites; giving Public Service Commission discretion to certify sites based on
6 required criteria for utility service; providing for public utilities that can meet required
7 criteria to apply to Public Service Commission for a certain plan to provide utility services
8 to industrial development sites; waiving public hearing on proposed rate change for utility
9 service to industrial development sites if no substantial opposition is received; eliminating
10 the cap on the number of industrial development sites that may be designated by the
11 Public Service Commission; eliminating certain requirements that industrial development
12 sites be apportioned geographically amongst West Virginia's congressional districts; and
13 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.

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

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

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

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

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

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

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

36 industrial development site subject to, at his or her discretion, all or some of the identified required
37 criteria for utility service and communicate such certification to the Public Service Commission.

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

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

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

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

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

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

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

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

62 (7) Other information the applicant considers relevant, or the Public Service Commission
63 requires.

64 (h) Upon filing of the application, the applicant shall publish, in the form the Public Service
65 Commission directs, which form shall include, but not be limited to, the anticipated rates and, if
66 any, rate increase under the proposal, by average percentage and dollar amount for customers
67 within a class of service, as a Class I legal advertisement in compliance with the provisions of
68 §59-3-1 *et seq.* of this code, the publication area to be each county in which service is provided
69 by the public utility, a notice of the filing of the application, and that the commission shall hold a
70 hearing on the application within 90 days of the notice; unless no substantial opposition to the
71 rate change is received by the commission within one week of the proposed hearing date, in which
72 case the hearing can be waived, and issue a final order within 150 days of the application filing
73 date.

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

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
83 the 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
87 infrastructure program plus any expenditures in previous years of the infrastructure program. The

88 rate of return shall be determined by utilizing the rate of return on equity authorized by the Public
89 Service Commission in the public utility's most recent rate case proceeding or in the case of a
90 settled rate case, a rate of return on equity as determined by the commission, and the projected
91 cost of the public utility's debt during the period of the infrastructure program to determine the
92 weighted cost 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
107 the 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 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.

Steve Hovine

Clerk of the House of Delegates

Ja Lynn
Clerk of the Senate

FILED
2023 MAR 23 P 3:32
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Originated in the House of Delegates.

In effect from passage.

Don Hanshaw

Speaker of the House of Delegates

Cyber
President of the Senate

The within is *approved* this the *23rd*
Day of *March* 2023.

James Justice
Governor

PRESENTED TO THE GOVERNOR

MAR 13 2023

Time 12:30 pm