

WEST VIRGINIA LEGISLATURE
2019 FIRST EXTRAORDINARY SESSION

Introduced

Senate Bill 1041

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Introduced June 1, 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; allowing
 5 the Secretary of the Department of Commerce to certify sites that do not currently have
 6 adequate public utility services from one or more public utilities regulated by the Public
 7 Service Commission as having potential for industrial development, upon the
 8 recommendation of the Development Office; requiring the Public Service Commission
 9 consider certain multi-year comprehensive plans for infrastructure development to
 10 construct public utility infrastructure and provide services to industrial development sites
 11 as certified by the Secretary, in lieu of a proceeding pursuant to §24-2-11 of this code;
 12 requiring the applicant to publish, in the form the Public Service Commission directs, the
 13 anticipated rates and, if any, rate increase under the proposal, by average percentage and
 14 dollar amount for customers within a class of service, as a Class I legal advertisement in
 15 compliance with the provisions of §59-3-1 *et seq.* of this code; providing the Public Service
 16 Commission with the authority to allow certain public utility infrastructure projects to
 17 recover certain costs via ratemaking; providing for the expiration of certain statutory
 18 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 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) "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;

23 (4) "Secretary" means the Secretary of the Department of Commerce; and

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

26 (c) The West Virginia Development Office shall identify a pilot program known hereafter
27 as "The West Virginia Business Ready Sites Program" for the purpose of promoting economic
28 development in certain areas of the state by facilitating the construction of utility infrastructure
29 necessary to increase the 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 Development Office for its recommendation of approval of the site as an Industrial

32 Development Site to the Secretary.

33 (e) Upon receipt of the application, the Development Office, in consultation with the
34 Secretary, shall determine whether the potential Industrial Development Site has the attributes to
35 accomplish the public purposes of this section; and, upon determining that the site has such
36 attributes, the Development Office may recommend to the Secretary that the site be certified as
37 an Industrial Development Site.

38 (f) Upon receiving a recommendation from the Development Office that the site be certified
39 as an Industrial Development Site, the Secretary may certify the site as an Industrial Development
40 Site and communicate such certification to the Public Service Commission.

41 (g) After the Public Service Commission receives the certification described in subsection
42 (f) of this section, public utilities may file with the Public Service Commission an application for a
43 multiyear comprehensive plan for infrastructure development to construct public utility
44 infrastructure and provide services to Industrial Development Sites. Subject to commission review
45 and approval, a plan may be amended and updated by the public utility as circumstances warrant.
46 The recovery of costs in support of the plans shall be allowed in the manner set forth in this section
47 if the proposed plans have been found to be prudent and useful.

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

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

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

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

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

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

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

64 (7) Other information the applicant considers relevant or the Public Service Commission
65 requires.

66 (i) Upon filing of the application with the Public Service Commission, the applicant shall
67 publish, in the form the Public Service Commission directs, which form shall include, but not be
68 limited to, the anticipated rates and, if any, rate increase under the proposal, by average
69 percentage and dollar amount for customers within a class of service, as a Class I legal
70 advertisement in compliance with the provisions of §59-3-1 et seq. of this code, the publication
71 area to be each county in which service is provided by the public utility, a notice of the filing of the
72 application, and that the commission shall hold a hearing on the application within 90 days of the
73 notice; unless no opposition to the rate change is received by the commission within one week of
74 the proposed hearing date, in which case the hearing can be waived, and issue a final order within
75 150 days of the application filing date.

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

84 the effective date of this section: *Provided further*, That if the number of congressional districts is
85 reduced to two, that no more than five Industrial Development Sites shall be located in any one
86 congressional district.

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

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

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

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

105 (4) Following Public Service Commission approval of its infrastructure program, a public
106 utility shall place into effect rates that include an increment that recovers the allowance for return,
107 related income taxes at the statutory rate, operation and maintenance, depreciation, and property
108 tax expenses associated with the public utility's estimated infrastructure program investments for
109 the upcoming year, net of contributions to recovery of those incremental costs provided by new

110 customers served by the infrastructure program investments, if any, (“incremental cost recovery
111 increment”). In each year subsequent to the order approving the infrastructure program and an
112 incremental cost recovery increment, the public utility shall file a petition with the commission
113 setting forth a new proposed incremental cost recovery increment based on investments to be
114 made in the subsequent year, plus any under-recovery or minus any over-recovery of actual
115 incremental costs attributable to the infrastructure program investments, for the preceding year.

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

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

121 (m) Utilities may defer incremental operation and maintenance expenditures attributable
122 to regulatory and compliance-related requirements introduced after the public utility’s last rate
123 case proceeding and not included in the public utility’s current rates. In a future rate case, the
124 Public Service Commission may allow recovery of the deferred costs amortized over a reasonable
125 period of time to be determined by the commission provided the commission finds that the costs
126 were reasonable and prudently incurred and were not reflected in rates in prior rate cases.

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

130 (o) The provisions of this section are effective upon passage.

NOTE: The purpose of this bill is to create the Business Ready Sites Program, which would provide for the Development Office to designate industrial sites for installation of utilities to make them more attractive for businesses to locate within West Virginia.

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