

WEST VIRGINIA LEGISLATURE
2019 FIRST EXTRAORDINARY SESSION

ENROLLED

House Bill 144

BY DELEGATES HANSHAW (MR. SPEAKER), MILEY, AND

HOWELL

[Passed June 24, 2019; in effect ninety days from
passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new
2 section, designated §24-2-1n, relating to creating a pilot program to encourage utility
3 infrastructure development to certain lands; declaring certain legislative findings; defining
4 certain terms; requiring the Secretary of Commerce to consider certain applications;
5 allowing the secretary to certify sites that do not currently have adequate public utility
6 services from one or more public utilities regulated by the Public Service Commission as
7 having potential for industrial development; requiring the Public Service Commission to
8 consider certain multi-year comprehensive plans for infrastructure development to
9 construct public utility infrastructure and provide services to industrial development sites
10 as certified by the secretary, in lieu of a proceeding pursuant to §24-2-11 of the code;
11 requiring the applicant to publish the anticipated rates and, if any, rate increase under the
12 proposal, by average percentage and dollar amount for customers within a class of
13 service, as a Class I legal advertisement; providing the Public Service Commission with
14 the authority to allow certain public utility infrastructure projects to recover certain costs
15 via ratemaking; providing for the expiration of certain statutory provisions; and providing
16 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) “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 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
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
64 §59-3-1 *et seq.* of this code, the publication area to be each county in which service is provided
65 by the public utility, a notice of the filing of the application, and that the commission shall hold a
66 hearing on the application within 90 days of the notice; unless no opposition to the rate change is
67 received by the commission within one week of the proposed hearing date, in which case the
68 hearing can be 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) 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
77 the 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
84 the 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
88 infrastructure program plus any expenditures in previous years of the infrastructure program. The
89 rate of return shall be determined by utilizing the rate of return on equity authorized by the Public
90 Service Commission in the public utility's most recent rate case proceeding or in the case of a
91 settled rate case, a rate of return on equity as determined by the commission, and the projected
92 cost of the public utility's debt during the period of the infrastructure program to determine the
93 weighted cost 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
108 the 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
121 this 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) The provisions of this section are effective upon passage.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2019.

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Governor