

1 COMMITTEE SUBSTITUTE

2 for

3 **Senate Bill No. 635**

4 (By Senators Beach, Browning, Kessler (Mr. President), Unger,  
5 Williams, Stollings and Plymale)

6 \_\_\_\_\_  
7 [Originating in the Committee on Economic Development;  
8 reported February 27, 2012.]  
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10  
11 A BILL to amend and reenact §31-15A-2 of the Code of West Virginia,  
12 1931, as amended; and to amend said code by adding thereto  
13 sixteen new sections, designated §31-15A-9a, §31-15A-9b, §31-  
14 15A-10a, §31-15A-11a, §31-15A-12a, §31-15A-13a, §31-15A-14a,  
15 §31-15A-15a, §31-15A-17c, §31-15A-18a, §31-15A-19a, §31-15A-  
16 20a, §31-15A-21a, §31-15A-22a, §31-15A-23a and §31-15A-24a,  
17 all relating generally to development of broadband middle mile  
18 infrastructure in this state; defining terms in West Virginia  
19 Infrastructure and Jobs Development Act; creating separate  
20 infrastructure fund for broadband middle mile infrastructure  
21 projects and providing for deposits and expenditures from the  
22 fund; giving additional powers to Infrastructure and Jobs  
23 Development Council and Water Development Authority regarding  
24 broadband middle mile infrastructure projects; creating  
25 advisory committee to advise Infrastructure and Jobs  
26 Development Council on disposition of applications for grants

1 and loans; providing process for review of applications by  
2 Development Office; requiring notice of public hearing on  
3 applications for grants and loans; providing for hearings and  
4 public comment period; creating Infrastructure Fund for  
5 Broadband Middle Mile Infrastructure Revenue Debt Service  
6 Fund; providing for disposition of funds on termination or  
7 dissolution of authority; providing that broadband middle mile  
8 projects funded by authority are public improvements under  
9 specified circumstances; authorizing authority to issue  
10 broadband middle mile revenue bonds; creating Broadband Middle  
11 Mile Infrastructure Debt Service Fund; providing for funding  
12 of debt service fund; specifying requirements for and manner  
13 of issuance of bonds; providing for contents of trust  
14 agreement and trustee for bonds; specifying legal remedies of  
15 bondholders, noteholders and trustee; making broadband middle  
16 mile infrastructure revenue bonds lawful investments;  
17 providing for purchase, cancellation and refunding of bonds;  
18 and specifying that bonds are not debt of state or any  
19 political subdivision thereof and are exempt from taxation.

20 *Be it enacted by the Legislature of West Virginia:*

21 That §31-15A-2 of the Code of West Virginia, 1931, as amended,  
22 be amended and reenacted; and that said code be amended by adding  
23 thereto sixteen new sections, designated §31-15A-9a, §31-15A-9b,  
24 §31-15A-10a, §31-15A-11a, §31-15A-12a, §31-15A-13a, §31-15A-14a,  
25 §31-15A-15a, §31-15A-17c, §31-15A-18a, §31-15A-19a, §31-15A-20a,  
26 §31-15A-21a, §31-15A-22a, §31-15A-23a and §31-15A-24a, all to read

1 as follows:

2 **ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT**  
3 **COUNCIL.**

4 **§31-15A-2. Definitions.**

5 ~~For purposes of this article:~~

6 (a) General. -- When used in this article, words defined in  
7 subsection (b) of this section have the meaning ascribed to them in  
8 this section, except in those instances where a different meaning  
9 is distinctly expressed or the context in which the word is used  
10 clearly that a different meaning is intended.

11 (b) Definitions. --

12 (1) "Bond" or "infrastructure revenue bond" means a revenue  
13 bond, note, or other obligation issued by the water development  
14 authority pursuant to this article, including bonds to refund such  
15 bonds and notes to renew such notes, and notes in anticipation of  
16 and payable from the proceeds of such bonds;

17 (2) "Broadband" or "broadband service" means any service  
18 providing advanced telecommunications capability with either a  
19 downstream data rate or upstream data rate of at least 200 kilobits  
20 per second, that does not require the end-user to dial up a  
21 connection that has the capacity to always be on, and for which the  
22 transmission speeds are based on regular available bandwidth rates,  
23 not sporadic or burstable rates, with a minimum downstream-to-  
24 upstream data rate of 4:1 for services with a downstream data rate  
25 of up to five megabits per second, and with a minimum upstream data

1 rate of 500 kilobits per second for services with a downstream data  
2 rate of five megabits per second or greater;

3 (3) "Broadband infrastructure" means all facilities, hardware  
4 and software and other intellectual property necessary to provide  
5 broadband services in this state;

6 (4) "Broadband infrastructure project" means any middle mile  
7 project that deploys equipment, fiber optic cables, facilities, or  
8 other technologies necessary to provide broadband transport  
9 services: *Provided*, That nothing in this article may be construed  
10 to provide the Infrastructure and Jobs Development Council  
11 jurisdiction or oversight over broadband infrastructure projects  
12 for the sole use of homeland security agencies in this state.

13 (5) "Broadband infrastructure revenue bond" means a revenue  
14 bond, note, or other obligation issued by the West Virginia  
15 Infrastructure and Jobs Development Council pursuant to this  
16 article to fund one or more broadband middle mile infrastructure  
17 projects, including bonds to refund such bonds and notes to renew  
18 such notes, and notes in anticipation of and payable from the  
19 proceeds of such bonds;

20 (6) "Broadband revenue" means all amounts deposited into the  
21 Fund for Broadband Middle Mile Development; any amounts received  
22 directly or indirectly from any source for the use of all or any  
23 part of any broadband project completed pursuant to this article  
24 and any other amounts received by the Water Development Authority  
25 for the purpose of broadband middle mile development, including the  
26 repayments of any loans made for broadband projects.

1       ~~(b)~~ (7) "Code" means the Code of West Virginia, 1931, as  
2 amended;

3       ~~(c)~~ (8) "Cost" means, as applied to any project to be  
4 financed, in whole or in part, with infrastructure revenues or  
5 funds otherwise provided pursuant to this article, the cost of  
6 planning, acquisition, improvement and construction of the project;  
7 the cost of preliminary design and analysis, surveys, borings; the  
8 cost of environmental, financial, market and engineering  
9 feasibility studies, assessments, applications, approvals,  
10 submissions or clearances; the cost of preparation of plans and  
11 specifications and other engineering services; the cost of  
12 acquisition of all land, rights-of-way, property rights, easements,  
13 franchise rights and any other interests required for the  
14 acquisition, repair, improvement or construction of the project;  
15 the cost of demolishing or removing any buildings or structures on  
16 land so acquired, including the cost of acquiring any lands to  
17 which buildings or structures may be moved; the cost of excavation,  
18 grading, shaping or treatment of earth, demolishing or removing any  
19 buildings or structures; the cost of constructing any buildings or  
20 other improvements; the cost of all pumps, tanks, vehicles,  
21 apparatus and other machinery, furnishings and equipment; loan or  
22 origination fees and all finance charges and interest incurred  
23 prior to and during the construction and for no more than six  
24 months after completion of construction; the cost of all legal  
25 services and expenses; the cost of all plans, specifications,  
26 surveys and estimates of cost; all working capital and other

1 expenses necessary or incident to determining the feasibility or  
2 practicability of acquiring, repairing, improving or constructing  
3 any project; the cost of placing any project in operation; and all  
4 other costs and expenses of any kind or nature incurred or to be  
5 incurred by the project sponsor developing the project that are  
6 reasonable and necessary for carrying out all works and  
7 undertakings necessary or incident to the accomplishment of any  
8 project: *Provided*, That costs shall not include any amounts  
9 related to the ongoing operations of the owner or operator,  
10 depreciation thereof or any other cost which the council, ~~or~~ the  
11 Water Development Authority has not determined to be consistent  
12 with the purposes and objectives of this article;

13 ~~(d)~~ (9) "Council" means the West Virginia infrastructure and  
14 jobs development council created in section three of this article;

15 (10) "Department of Administration" means the Department of  
16 Administration established under article one, chapter five-a of  
17 this code, or any successor to all or any substantial part of its  
18 powers and duties;

19 ~~(e)~~ (11) "Division Department of Environmental Protection"  
20 means the ~~Division Department~~ of Environmental Protection  
21 established under article one, chapter twenty-two of this code, or  
22 any successor to all or any substantial part of its powers and  
23 duties;

24 ~~(f)~~ (12) "Division of Health" means the Division of Health  
25 created in article one, chapter sixteen of this code, or any  
26 successor to all or any substantial part of its powers and duties;

1       ~~(g)~~ (13) "Economic development authority" means the economic  
2 development authority established under article fifteen, chapter  
3 thirty-one of the code, or any successor to all or any substantial  
4 part of its powers and duties;

5       ~~(h)~~ (14) "Emergency project" means a project which the council  
6 has determined: (1) Is essential to the immediate economic  
7 development of an area of the state; and (2) will not likely be  
8 developed in that area if construction of the project is not  
9 commenced immediately;

10       ~~(i)~~ (15) "Governmental agency" means any county; municipality;  
11 watershed improvement district; assessment district; soil  
12 conservation district; sanitary district; public service district;  
13 drainage district; regional governmental authority and any other  
14 state governmental agency, entity, political subdivision or public  
15 corporation or agency authorized to acquire, construct or operate  
16 water or wastewater facilities or broadband middle mile  
17 infrastructure projects;

18       ~~(j)~~ (16) "Housing Development Fund" means the West Virginia  
19 Housing Development Fund established under article eighteen of this  
20 chapter, or any successor to all or any substantial part of its  
21 powers and duties;

22       (17) "Includes" and "including", when used in this article, do  
23 not exclude other things otherwise within the definition or the  
24 sentence in which the term is used;

25       ~~(k)~~ (18) "Infrastructure Fund" means the West Virginia  
26 Infrastructure Fund created and established in section nine of this

1 article;

2       ~~(1)~~ (19) "Infrastructure project" means a project in the state  
3 which the council determines is likely to foster and enhance  
4 economic growth and development in the area of the state in which  
5 the project is developed, for commercial, industrial, community  
6 improvement or preservation or other proper purposes, including,  
7 without limitation, tourism and recreational housing, land, air or  
8 water transportation facilities and bridges, industrial or  
9 commercial projects and facilities, mail order, warehouses,  
10 wholesale and retail sales facilities, and other real and personal  
11 properties, including facilities owned or leased by this state or  
12 any other project sponsor, and includes, without limitation: (1)  
13 The process of acquiring, holding, operating, planning, financing,  
14 demolition, construction, improving, expanding, renovation, leasing  
15 or otherwise disposing of the project or any part thereof or  
16 interest therein; and (2) preparing land for construction and  
17 making, installing or constructing improvements on the land,  
18 including water or wastewater facilities or any part thereof,  
19 steam, gas, telephone and telecommunications and electric lines and  
20 installations, roads, bridges, railroad spurs, buildings, docking  
21 and shipping facilities, curbs, gutters, sidewalks, and drainage  
22 and flood control facilities, whether on or off the site;

23       ~~(m)~~ (20) "Infrastructure revenue" means all amounts  
24 appropriated by the Legislature; all amounts deposited into the  
25 infrastructure fund; any amounts received, directly or indirectly,  
26 from any source for the use of all or any part of any project



1 completed pursuant to this article; and any other amounts received  
2 by the State Treasurer, council, or the Water Development Authority  
3 for the purposes of this article: Provided, That funds for water  
4 and sewer infrastructure projects and funds for broadband middle  
5 mile infrastructure projects shall be kept separate;

6 (21) "Middle mile" when used in the context of broadband means  
7 any wired or wireless facilities, or portions thereof, which  
8 facilitate transport service for service providers or carriers, and  
9 provides connectivity between communities, community access points,  
10 network access points and carrier access points, but does not  
11 include any last mile facilities (or portions thereof) that provide  
12 connectivity to end-users;

13 (22) "Middle mile fiber threshold" means a fiber optic cable  
14 containing no less than seventy-two individual strands of fiber  
15 with minimum performance characteristics consistent with nonzero  
16 dispersion shifted single mode optical fiber cable as defined by  
17 the International Telecommunication Union standard ITU-T G.655;

18 ~~(n)~~ (23) "Need of the project sponsors" means there is a  
19 public need for a project. The council shall for water and sewer  
20 projects construe a population increase evidenced by the last two  
21 decennial censuses in a county in which a project is proposed, as  
22 a factor supporting the conclusion that a need exists for projects  
23 in that county;

24 (24) "Network access point" when used in the context of  
25 broadband means a direct connection to carriers that provide core  
26 interstate TCPIP backbone networks that comprise or make up primary

1 portions of the national Internet backbone system and which provide  
2 direct connectivity on a national scale throughout the United  
3 States in addition to direct or indirect connectivity to  
4 international networks throughout the world;

5 (25) "Open access" when used in the context of broadband means  
6 the equitable and nondiscriminatory use of the new lines by all  
7 broadband service providers including the grant of infeasible  
8 rights to use particular strands if such rights can be granted on  
9 an equitable and non-discriminatory manner, subject to such  
10 appropriate limitations and restrictions as the council may  
11 determine.

12 ~~(o)~~ (26) "Project" means any wastewater facility, water  
13 facility project or any combination thereof, constructed or  
14 operated or to be constructed or operated by a project sponsor;

15 ~~(p)~~ (27) "Project sponsor" means any governmental agency or  
16 person, or any combination thereof, including, but not limited to,  
17 any public utility which intends to plan, acquire, construct,  
18 improve or otherwise develop a project;

19 ~~(q)~~ (28) "Public Service Commission" means the Public Service  
20 Commission of West Virginia created and established under section  
21 three, article one, chapter twenty-four of this code, or any  
22 successor to all or any substantial part of its powers and duties;

23 ~~(r)~~ (29) "Person" means any individual, corporation,  
24 partnership, association, limited liability company or any other  
25 form of business organization;

26 ~~(s)~~ (30) "Public utility" means any person or persons, or

1 association of persons, however associated, whether incorporated or  
2 not, including, without limitation, any governmental agency,  
3 operating a wastewater facility or water facility as a public  
4 service, which is regulated by the Public Service Commission as a  
5 public utility under chapter twenty-four of this code or which is  
6 required to file its tariff with the Public Service Commission;

7 (31) "Service provider" when used in the context of broadband  
8 means any service provider that provides broadband service and is  
9 certified to provide services in accordance with state and federal  
10 regulations;

11 ~~(t)~~ (32) "State Development Office" means the West Virginia  
12 Development Office established under article two, chapter five-b of  
13 this code, or any successor to all or any substantial part of its  
14 powers and duties;

15 ~~(u)~~ (33) "State infrastructure agency" means the division of  
16 health, ~~Division~~ Department of Environmental Protection, Housing  
17 Development Fund, Public Service Commission, State Development  
18 Office, Water Development Authority, Economic Development  
19 Authority, and any other state agency, division, body, authority,  
20 commission, instrumentality or entity which now or in the future  
21 receives applications for the funding of, and provides funding or  
22 technical assistance to, the planning, acquisition, construction or  
23 improvement of a project;

24 (34) "Transport service" when used in the context of broadband  
25 means any service that provides a service provider or carrier with  
26 the ability to transport broadband services between communities,

1 community access points, network access points and carrier access  
2 points. Transport services do not include any last mile broadband  
3 services or other services provided directly to end-users;

4 ~~(v)~~ (35) "Wastewater facility" means all facilities, land and  
5 equipment used for or in connection with treating, neutralizing,  
6 disposing of, stabilizing, cooling, segregating or holding  
7 wastewater, including, without limitation, facilities for the  
8 treatment and disposal of sewage, industrial wastes or other  
9 wastes, wastewater, and the residue thereof; facilities for the  
10 temporary or permanent impoundment of wastewater, both surface and  
11 underground; and sanitary sewers or other collection systems,  
12 whether on the surface or underground, designed to transport  
13 wastewater together with the equipment and furnishings therefor or  
14 thereof and their appurtenances and systems, whether on the surface  
15 or underground including force mains and pumping facilities  
16 therefor;

17 ~~(w)~~ (36) "Water development authority" means the West Virginia  
18 water development authority continued pursuant to the provisions of  
19 article one, chapter twenty-two-c of this code, or any successor to  
20 all or any substantial part of its powers and duties; ~~and~~

21 ~~(x)~~ (37) "Water facility" means all facilities, land and  
22 equipment used for or in connection with the collection and/or  
23 storage of water, both surface and underground, transportation of  
24 water, storage of water, treatment of water and distribution of  
25 water all for the purpose of providing potable, sanitary water  
26 suitable for human consumption and use; and

1       (38) "West Virginia Network for Educational Telecomputing"  
2 means the network managed by the vice chancellor for administration  
3 of the Higher Education Policy Commission as provided in section  
4 two, article four, chapter eighteen-b of this code.

5 **§31-15A-9a.       Infrastructure Fund for broadband middle mile**  
6                   **infrastructure projects; deposits in fund;**  
7                   **disbursements to provide loans, loan guarantees,**  
8                   **grants and other assistance; loans, loan**  
9                   **guarantees, grants and other assistance shall be**  
10                   **subject to assistance agreements; use of funds**  
11                   **for projects.**

12       (a) The Water Development Authority shall create and establish  
13 a special revolving fund of moneys made available by appropriation,  
14 grant, contribution or loan to be known as the "West Virginia  
15 Infrastructure Fund for Broadband Middle Mile Development". This  
16 fund shall be governed, administered and accounted for by the Water  
17 Development Authority as a special purpose account separate and  
18 distinct from any other moneys, funds or funds owned and managed by  
19 the authority for broadband middle mile development. The  
20 Infrastructure Fund for Broadband Middle Mile Development shall  
21 consist of subaccounts, as deemed necessary by the authority, for  
22 the deposit of:

23       (1) Infrastructure revenues for broadband middle mile  
24 deployment;

25       (2) Any appropriations, grants, gifts, contributions, loan

1 proceeds or other revenues received by the Infrastructure Fund for  
2 Broadband Middle Mile Development from any source, public or  
3 private;

4 (3) Amounts received as payments on any loans made by the  
5 Water Development Authority to pay for the cost of a broadband  
6 middle mile infrastructure project;

7 (4) Insurance proceeds payable to Infrastructure and Jobs  
8 Development Council or the Infrastructure Fund For Broadband Middle  
9 Mile Development in connection with any broadband middle mile  
10 infrastructure project;

11 (5) All income earned on moneys held in the Infrastructure  
12 Fund for Broadband Middle Mile Development; and

13 (6) All proceeds derived from the sale of bonds issued  
14 pursuant to this article for broadband middle mile infrastructure  
15 development.

16 (b) Any money collected pursuant to this section shall be paid  
17 into the West Virginia Infrastructure Fund for Broadband Middle  
18 Mile Development by the state agent or entity charged with the  
19 collection of the same, credited to that fund, and used only for  
20 purposes set forth in this article for broadband middle mile  
21 development.

22 (c) Amounts in the Infrastructure Fund for Broadband Middle  
23 Mile Development shall be segregated and administered by the Water  
24 Development Authority separate and apart from its other assets and  
25 programs. Amounts in the Infrastructure Fund for Broadband Middle  
26 Mile Development may not be transferred to any other fund or

1 account or used, other than indirectly, for the purposes of any  
2 other program of the Water Development Authority, except that the  
3 council may use funds in the Infrastructure Fund for Broadband  
4 Middle Mile Development to reimburse itself for any administrative  
5 costs incurred by it and approved by the Infrastructure and Jobs  
6 Development Council in connection with any loan, loan guarantee,  
7 grant or other funding assistance made by the Water Development  
8 Authority pursuant to this article.

9       (d) Notwithstanding any provision of this code to the  
10 contrary, amounts in the Infrastructure Fund for Broadband Middle  
11 Mile Development shall be deposited by the Water Development  
12 Authority in one or more banking institutions: *Provided*, That any  
13 moneys so deposited shall be deposited in a banking institution  
14 located in this state. The banking institution shall be selected  
15 by the Water Development Authority by competitive bid. Pending the  
16 disbursement of any money from the Infrastructure Fund for  
17 Broadband Middle Mile Development as authorized under this section,  
18 the Water Development Authority shall invest and reinvest the  
19 moneys subject to the limitations set forth in section twelve,  
20 article six, chapter twelve of this code.

21       (e) To further accomplish the purposes and intent of this  
22 article, the Water Development Authority may pledge infrastructure  
23 revenues and from time-to-time establish one or more restricted  
24 accounts within the Infrastructure Fund For Broadband Middle Mile  
25 Development for the purpose of providing funds to guarantee loans  
26 for broadband middle mile infrastructure projects: *Provided*, That

1 for any fiscal year the Water Development Authority may not deposit  
2 into the restricted accounts more than twenty percent of the  
3 aggregate amount of revenues for broadband middle mile development  
4 deposited into the Infrastructure Fund for Broadband Middle Mile  
5 Development during the fiscal year. No loan guarantee shall be made  
6 pursuant to this article unless recourse under the loan guarantee  
7 is limited solely to amounts in the restricted account or accounts.  
8 No person shall have any recourse to any restricted accounts  
9 established pursuant to this subsection other than those persons to  
10 whom the loan guarantee or guarantees have been made.

11 (f) Each loan, loan guarantee, grant or other assistance made  
12 or provided by the Water Development Authority at the direction of  
13 the Infrastructure and Jobs Development Council shall be evidenced  
14 by a loan, loan guarantee, grant or assistance agreement between  
15 the Water Development Authority and the project sponsor to which  
16 the loan, loan guarantee, grant or assistance shall be made or  
17 provided, which agreement shall include, without limitation and to  
18 the extent applicable, the following provisions:

19 (1) The estimated cost of the broadband middle mile  
20 infrastructure project, the amount of the loan, loan guarantee or  
21 grant or the nature of the assistance, and in the case of a loan or  
22 loan guarantee, the terms of repayment and the security therefor,  
23 if any;

24 (2) The specific purposes for which the loan or grant proceed  
25 shall be expended or the benefits to accrue from the loan guarantee  
26 or other assistance, and the conditions and procedure for



1 disbursing loan or grant proceeds;

2       (3) The duties and obligations imposed regarding the  
3 acquisition, construction, improvement or operation of the  
4 broadband middle mile infrastructure project; and

5       (4) The agreement of the governmental agency to comply with  
6 all applicable federal and state laws, and all rules and  
7 regulations issued or imposed by the Infrastructure and Jobs  
8 Development Council or other state, federal or local bodies  
9 regarding the acquisition, construction, improvement or operation  
10 of the broadband middle mile infrastructure project and granting  
11 the Water Development Authority the right to appoint a receiver for  
12 the broadband middle mile infrastructure project if the project  
13 sponsor should default on any terms of the agreement.

14       (g) Any resolution of the Infrastructure and Jobs Development  
15 Council approving loan, loan guarantee, grant or other assistance  
16 shall include a finding and determination that the requirements of  
17 this section have been met.

18       (h) The Water Development Authority shall cause an annual  
19 audit to be made by an independent certified public accountant of  
20 its books, accounts and records, with respect to the receipts,  
21 disbursements, contracts, leases, assignments, loans, grants and  
22 all other matters relating to the financial operation of the  
23 Infrastructure Fund for Broadband Middle Mile Development,  
24 including the operating of any sub-account within that  
25 infrastructure fund. The person performing such audit shall furnish  
26 copies of the audit report to the Secretary of the Department of

1 Administration, where they shall be placed on file and made  
2 available for inspection by the general public. The person  
3 performing such audit shall also furnish copies of the audit report  
4 to the Legislature's Joint Committee on Government and Finance.

5 **§31-15A-9b. Advisory committee on broadband middle mile matters.**

6 (a) There is hereby created a five member advisory committee  
7 to make recommendations to the Infrastructure and Jobs Development  
8 Council on whether to approve or disapprove an application for a  
9 grant or loan for a broadband middle mile infrastructure project.

10 (b) This committee shall consist of:

11 (1) This Secretary of the Department of Administration, or his  
12 or her designee;

13 (2) The Secretary of the Department of Commerce, or his or her  
14 designee;

15 (3) The Director of the West Virginia Network for Educational  
16 Telecomputing, or his or her designee;

17 (4) The member of the Broadband Deployment Council,  
18 established in section three, article fifteen-c of this chapter,  
19 who represents rural communities; and

20 (5) The chairman of the Infrastructure and Jobs Development  
21 Council, or his or her designee, who shall also serve as chairman  
22 of the committee.

23 (c) Applications for a grant or loan for a broadband middle  
24 mile infrastructure project pursuant to section nine-a of this  
25 article shall be submitted to the Director of the Development  
26 Office, Department of Commerce, for review and to determine whether

1 any additional information is needed from the applicant. If the  
2 application is complete, the Director of the Development Office  
3 forward the application to the chairman of the Infrastructure and  
4 Jobs Development Council along with the recommendation of that  
5 office regarding disposition of the application.

6 (d) After receipt of the application from the Development  
7 Office, the advisory committee shall publish in the state register  
8 notice to the public that the application has been filed by a  
9 project sponsor. This notice shall identify the project sponsor,  
10 provide a meaningful description and specific location of the  
11 project, the amount of the loan or grant requested, where the  
12 application may be viewed in person and on the Internet by the  
13 public, and shall also include the date, time and place where the  
14 committee will hold a public hearing, and any other information the  
15 committee believes necessary or desirable to advise the public of  
16 the application. The advisory committee shall also respond to  
17 requests for additional information from the public concerning the  
18 application or the project sponsor in a timely manner within the  
19 public comment period.

20 (e) This notice shall be published in the state register at  
21 least 60 days prior to the date of the public hearing. The purpose  
22 of the public hearing is to receive comments on the application and  
23 on whether the application should be approved or denied. The  
24 public may submit written comments to the committee either prior to  
25 the hearing, during the hearing, or within 30 days after the day of  
26 the hearing.

1 (f) Anytime after the 30-day public comment period expires,  
2 the advisory committee may submit its recommendation to the  
3 Infrastructure and Jobs Development who shall make the final  
4 decision on whether to approve or reject an application.

5 (g) The Infrastructure and Jobs Development council shall  
6 promulgate legislative rules in accordance with article three,  
7 chapter twenty-nine-a of this code, it deems necessary to implement  
8 the requirements of this section

9 **§31-15A-10a. Recommendations for expenditures of funds by loan,**  
10 **grant or for engineering assistance.**

11 (a) To further accomplish the purpose and intent of this  
12 article, the Water Development Authority may use the moneys in the  
13 Infrastructure Fund for Broadband Middle Mile Development created  
14 pursuant to section nine-a of this article, at the direction of the  
15 Infrastructure and Jobs Development Council, to make loans, with or  
16 without interest, loan guarantees or grants and to provide other  
17 assistance, financial, technical or otherwise, to finance all or  
18 part of the costs of broadband middle mile infrastructure projects  
19 to be undertaken by a project sponsor: *Provided*, That any moneys  
20 disbursed from the Infrastructure Fund for Broadband Middle Mile  
21 Development in the form of grants shall not exceed twenty percent  
22 of the total funds available for the funding of projects. No loan,  
23 loan guarantee, grant or other assistance shall be made or provided  
24 except upon a determination by the Infrastructure and Jobs  
25 Development Council that the loan, loan guarantee, grant or other  
26 assistance and the manner in which it will be provided are

1 necessary or appropriate to accomplish the purposes and intent of  
2 this article, based upon an application submitted as provided in  
3 section ten-b of this article.

4 (b) Applications for loans, loan guarantees, grants or other  
5 assistance may be submitted by a project sponsor for one or more  
6 broadband middle mile infrastructure projects on preliminary  
7 application forms prepared by the Infrastructure and Jobs  
8 Development Council pursuant to section four of this article. Any  
9 recommendation of that council approving a loan, loan guarantee,  
10 grant or other assistance shall include a finding and determination  
11 by that council that the requirements of this section have been  
12 met. The Infrastructure and Jobs Development Council shall base  
13 any decisions to loan money for projects to project sponsors  
14 pursuant to this article based on criteria established by the  
15 council.

16 (c) Prior to authorizing a grant or loan, the Infrastructure  
17 and Jobs Development Council may consult with the Broadband  
18 Deployment Council established in section three, article fifteen-c  
19 of this chapter. However, the Infrastructure and Jobs Development  
20 Council shall, in its sole discretion, decide whether to accept or  
21 reject an application for a grant or loan to a project sponsor if  
22 it finds that the broadband middle mile infrastructure project is  
23 essential for economic development, the realization of educational  
24 opportunities, modernization of government, or facilitation of the  
25 ability of businesses and residents to use the Internet employing  
26 state-of-the art technologies. No project sponsor shall receive

1 infrastructure grant money in an amount in excess of fifty percent  
2 of the total cost of the project. Therefore, the Infrastructure and  
3 Jobs Development Council may consider the economic or financial  
4 conditions of the area to be served.

5 (d) As a condition for receipt of a grant or loan under this  
6 section:

7 (1) The network provided or enhanced by the broadband middle  
8 mile infrastructure project shall be open access, subject to rules  
9 of the council;

10 (2) The council shall require the project sponsor to reserve  
11 at least twelve strands of fiber for use by the state, its  
12 instrumentalities and political subdivisions; and

13 (3) The council may require, in addition to any other  
14 conditions, that the applicant pursue other state or federal grant  
15 or loan programs.

16 (e) The Infrastructure and Jobs Development Council shall  
17 develop criteria to be considered in making grants or loans to  
18 project sponsors which shall require consideration of the economic  
19 or financial conditions of the area to be served and the  
20 availability of other funding sources. The Infrastructure and Jobs  
21 Development Council shall adopt procedural rules regarding the  
22 manner in which grants and loans will be awarded in conformity with  
23 this section. The procedural rules shall be adopted pursuant to  
24 article three, chapter twenty-nine-a of this code.

25 (f) Notwithstanding any other provision of this article to the  
26 contrary, engineering studies and requirements imposed by the

1 Infrastructure and Jobs Development Council for preliminary  
2 applications shall not exceed those engineering studies and  
3 requirements which are necessary for the council to determine the  
4 economic feasibility of the project. If the Infrastructure and Jobs  
5 Development Council determines that the engineering studies and  
6 requirements for the preapplication would impose an undue hardship  
7 on any project sponsor, the council may provide funding assistance  
8 to project sponsors to defray the expenses of the preapplication  
9 process from moneys available in the Broadband Middle Mile  
10 Infrastructure Fund for making loans: *Provided*, That the  
11 Infrastructure and Jobs Development Council may only provide  
12 funding assistance in an amount equal to \$5,000 or fifty percent of  
13 the total preapplication cost of the project, whichever amount is  
14 greater. If the project is ultimately approved for a loan by the  
15 Infrastructure and Jobs Development Council, the amount of funding  
16 assistance provided to the project sponsor for the preapplication  
17 process shall be included in the total amount of the loan to be  
18 repaid by the project sponsor. If the project is not ultimately  
19 approved by the Infrastructure and Jobs Development Council, then  
20 the amount of funding assistance provided to the project sponsor  
21 will be considered a grant by the Infrastructure and Jobs  
22 Development Council and the total amount of the assistance shall be  
23 forgiven. In no event may the amount of funding assistance provided  
24 to all project sponsors exceed, in the aggregate, \$100,000  
25 annually.

26 (g) On or before December 31, 2013, and December 31 of each

1 year thereafter, the Infrastructure and Jobs Development Council shall deliver to the Governor, the Speaker of the House of Delegates and the President of the Senate a written report on its activities and decisions relating to distribution or planned distribution of grants and loans under the criteria to be developed pursuant to this article. To the extent known, the economic activity and jobs created as a result of the council funding a broadband middle mile infrastructure project shall be included in the report required by this subsection.

10 **§31-15A-11a. Reservation of funds for broadband middle mile**  
11 **infrastructure projects.**

12 (a) Funds deposited in the West Virginia Infrastructure Fund  
13 for Broadband Middle Mile Development shall be dedicated for the  
14 purpose of providing funding for the cost of broadband middle mile  
15 infrastructure projects as defined in section two of this article.

16 (b) No bonds or grants may be issued under this article for  
17 broadband infrastructure projects until such time as the  
18 Legislature has appropriated sufficient funds to meet debt service  
19 on the bonds, unless the Infrastructure and Jobs Development  
20 Council is able to identify a repayment source for the bonds or a  
21 source to provide grant funding.

22 **§31-15A-12a. Additional powers of Water Development Authority -**  
23 **Broadband middle mile infrastructure projects.**

24 To accomplish the purpose and intent of this article, the  
25 Water Development Authority, upon approval of the Infrastructure



1 and Jobs Development Council, is hereby empowered, in addition to  
2 all other powers granted to it under this code to:

3 (1) Enter into agreements or other transactions with any  
4 federal or state agency in connection with any broadband middle  
5 mile infrastructure project;

6 (2) Receive or administer on behalf of any federal or state  
7 agency grants, subsidies or other payments to be applied to the  
8 costs of any broadband middle mile infrastructure project financed,  
9 in whole or in part, or otherwise assisted by the Infrastructure  
10 and Jobs Development Council, including, but not limited to,  
11 payments to be applied to operating costs and debt service or  
12 obligations of any project sponsor;

13 (3) Receive and accept aid or contributions from any source of  
14 money, property, labor or other things of value, to be held, used  
15 and applied only for the purposes for which such grants and  
16 contributions are made;

17 (4) Establish and amend the criteria and qualifications for  
18 making loans, loan guarantees or grants, or providing any other  
19 assistance, for any broadband middle mile infrastructure project,  
20 and the terms of any loans, loan guarantee, grant or assistance  
21 agreement for any broadband middle mile infrastructure project; and

22 (5) Do all things which are necessary to further the purposes  
23 and intent of this article.

24 **§31-15A-13a. Prohibition on funds inuring to the benefit of or**  
25 **being distributable to water development board; transactions**  
26 **between the water development board and officers having**

1           **certain interests in such transactions.**

2           No part of the West Virginia Infrastructure Fund for Broadband  
3 Middle Mile Development or the West Virginia Broadband Middle Mile  
4 Infrastructure Revenue Debt Service Fund shall inure to the benefit  
5 of or be distributable to the Water Development Board directors or  
6 officers of the Water Development Authority except that the Water  
7 Development Authority is authorized and empowered to pay reasonable  
8 compensation, other than to members of the Water Development Board,  
9 including the chairman, vice chairman, secretary-treasurer for  
10 services rendered and to make loans and exercise its other powers  
11 as previously specified in furtherance of its corporate purpose:  
12 *Provided*, That no loans shall be made, and no property shall be  
13 purchased or leased from, or sold, leased or otherwise disposed of,  
14 to any water development board member or officer of the Water  
15 Development Authority.

16 **§31-15A-14a.   Disposition of Infrastructure Fund for Broadband**  
17                           **Development upon termination or dissolution of**  
18                           **council.**

19           Upon the termination or dissolution of the Water Development  
20 Authority, all rights and properties of the authority with respect  
21 to the Infrastructure Fund for Broadband Middle Mile Development  
22 shall pass to and be vested in the state, subject to the rights of  
23 lienholders and other creditors.

24 **§31-15A-15a.   Broadband middle mile projects not to be considered**  
25                           **public improvements; competitive bid requirements.**

1 (a) No broadband middle mile infrastructure project acquired,  
2 constructed or maintained or financed, in whole or in part, by the  
3 Water Development Authority shall be considered to be a "public  
4 improvement" within the meaning of the provisions of article five-  
5 a, chapter twenty-one of this code for purposes of the financing of  
6 the project.

7 (b) The state and its subdivisions shall, except as provided  
8 in subsection (c) of this section, solicit competitive bids and  
9 require the payment of prevailing wage rates as provided in article  
10 five-a, chapter twenty-one of this code for the construction of  
11 every broadband middle mile infrastructure project funded pursuant  
12 to this article exceeding twenty-five thousand dollars in total  
13 cost.

14 Following the solicitation of the bids, the construction  
15 contract shall be awarded to the lowest qualified responsible  
16 bidder, who shall furnish a sufficient performance and payment  
17 bond: *Provided*, That the state and its subdivisions may reject all  
18 bids and solicit new bids on the project.

19 (c) This section does not:

20 (1) Apply to work performed on construction or repair projects  
21 not exceeding a total cost of fifty thousand dollars by regular  
22 full-time employees of the state or its subdivisions: *Provided*,  
23 That no more than fifty thousand dollars shall be expended on an  
24 individual project in a single location in a twelve-month period;

25 (2) Prevent students enrolled in vocational educational  
26 schools from being used in the construction or repair projects when

1 such use is a part of the students' training program;

2 (3) Apply to emergency repairs to building components and  
3 systems: *Provided*, That the term "emergency repairs" means repairs  
4 that, if not made immediately, will seriously impair the use of the  
5 building components and systems or cause danger to those persons  
6 using the building components and systems; or

7 (4) Apply to any situation where the state or a subdivision of  
8 the state comes to an agreement with volunteers, or a volunteer  
9 group, by which the governmental body will provide construction or  
10 repair materials, architectural, engineering, technical or any  
11 other professional services and the volunteers will provide the  
12 necessary labor without charge to, or liability upon, the  
13 governmental body: *Provided*, That the total cost of the  
14 construction or repair projects does not exceed fifty thousand  
15 dollars.

16 **§31-15A-17c. Water Development Authority empowered to issue**  
17 **broadband middle mile infrastructure revenue bonds**  
18 **and refunding bonds; creation of Broadband Middle**  
19 **Mile Infrastructure Revenue Debt Service Fund;**  
20 **funding of Broadband Middle Mile Infrastructure**  
21 **Revenue Debt Service Fund; requirements and manner**  
22 **of such issuance.**

23 (a) To accomplish the purpose and intent of this article, the  
24 Water Development Authority upon direction of the Infrastructure  
25 and Jobs Development Council is hereby empowered to issue from time

1 to time broadband middle mile infrastructure revenue bonds of the  
2 state in such principal amounts as the council deems necessary to  
3 make loans and loan guarantees and other forms of financial  
4 assistance to project sponsors for one or more broadband middle  
5 mile infrastructure projects: *Provided*, That the Water Development  
6 Authority may not issue any such bonds, other than refunding bonds,  
7 unless the council by resolution determines that the aggregate cost  
8 of the broadband middle mile infrastructure projects expected to be  
9 constructed during any annual period exceeds: (1) The projected  
10 annual broadband infrastructure revenues for the same period; and  
11 (2) the principal and interest payments not otherwise pledged to  
12 the Broadband Middle Mile Infrastructure Revenue Debt Service Fund  
13 that are due the Water Development Authority on all outstanding  
14 loans previously made by the authority pursuant to the provisions  
15 of this article.

16 (b) The proceeds of broadband middle mile infrastructure  
17 revenue bonds shall be used solely for the purpose of making loans  
18 and loan guarantees and other forms of financial assistance to  
19 sponsors of one or more broadband middle mile infrastructure  
20 projects, and shall be deposited in one or more special accounts  
21 with the trustee under the trust agreement securing such bonds and  
22 disbursed from time to time for broadband middle mile  
23 infrastructure projects in accordance with this article.

24 (c) The Water Development Authority may not authorize the  
25 disbursement of any proceeds of broadband middle mile  
26 infrastructure revenue bonds unless it has received from the

1 Infrastructure Jobs Development Council the documentation required  
2 by section ten-a of this article.

3 (d) There is hereby created in the Water Development Authority  
4 a special fund which shall be designated and known as the "West  
5 Virginia Broadband Middle Mile Infrastructure Revenue Debt Service  
6 Fund," into which shall be transferred solely from the loan  
7 repayments deposited in the Infrastructure Fund for Broadband  
8 Middle Mile Development the amounts certified by the authority as  
9 necessary to pay the principal, premium, if any, and interest on  
10 broadband middle mile infrastructure revenue bonds and any reserve  
11 requirements, subject to the terms of any agreement with the  
12 holders of the broadband middle mile infrastructure revenue bonds.  
13 All amounts deposited in the West Virginia Broadband Middle Mile  
14 Infrastructure Revenue Debt Service Fund shall be pledged to the  
15 repayment of the principal, interest and redemption premium, if  
16 any, on any broadband middle mile infrastructure revenue bonds  
17 authorized by this article: *Provided*, That amounts on deposit in  
18 the fund may be used to establish or maintain reserves created for  
19 the purposes of securing the broadband middle mile infrastructure  
20 revenue bonds. The pledge shall be valid and binding from the time  
21 the pledge is made, and the West Virginia Broadband Middle Mile  
22 Infrastructure Revenue Debt Service Fund so pledged shall  
23 immediately be subject to the lien of the pledge without any  
24 physical delivery thereof or further act, and the lien of any such  
25 pledge shall be valid and binding as against all parties having  
26 claims of any kind in tort, contract or otherwise against the Water

1 Development Authority irrespective of whether the parties have  
2 notice thereof.

3 (e) Except as may otherwise be expressly provided in this  
4 article or by resolution of the Water Development Authority, every  
5 issue of broadband middle mile infrastructure revenue bonds shall  
6 be special obligations of the Water Development Authority payable  
7 solely from amounts in the West Virginia Broadband Middle Mile  
8 Infrastructure Revenue Debt Service Fund, and the reserves created  
9 for this purpose by the Water Development Authority, without  
10 preference or priority among the bonds regardless of when issued,  
11 subject only to any agreements with the holders of any bonds to the  
12 contrary. All such bonds are hereby declared to be negotiable  
13 instruments.

14 (f) Broadband middle mile infrastructure revenue bonds shall  
15 be authorized by resolution of the Water Development Authority.  
16 These bonds shall bear such dates and shall mature at such times,  
17 in case of any note or renewal thereof not exceeding five years  
18 from the date of issue of the original note, and in the case of any  
19 bond not exceeding fifty years from the date of issue, as the  
20 resolution may provide. Broadband middle mile infrastructure  
21 revenue bonds shall bear interest at a rate or rates, including  
22 variable rates, shall be taxable or tax-exempt, shall be in the  
23 denominations, shall be in registered form, shall carry the  
24 registration privileges, shall be payable in the medium and place  
25 of payment, and shall be subject to the terms of redemption as the  
26 Water Development Authority may authorize. Broadband middle mile

1 infrastructure revenue bonds may be sold by Water Development  
2 Authority at public or private sale at the price the authority  
3 determines in consultation with the council. Broadband middle mile  
4 infrastructure revenue bonds shall be executed by the chairman and  
5 the vice chairman of the Water Development Authority, either or  
6 both of whom may use a facsimile signature. The official seal of  
7 the Water Development Authority or a facsimile thereof shall be  
8 affixed thereto or printed thereon and attested by manual or  
9 facsimile signature by the secretary-treasurer of the Water  
10 Development Authority. If any officer whose signature, or a  
11 facsimile of whose signature appears on any broadband  
12 infrastructure revenue bond ceases to be such officer before  
13 delivery of such bond, such signature or facsimile is nevertheless  
14 sufficient for all purposes to the same extent as if he or she had  
15 remained in office until such delivery, and if the seal of the  
16 Water Development Authority has been changed after a facsimile has  
17 been imprinted on such bond, the facsimile will continue to be  
18 sufficient for all purposes.

19 (g) Any resolution authorizing any broadband infrastructure  
20 revenue bonds may contain provisions, subject to any agreement with  
21 bondholders or noteholders which may then exist, which agreements  
22 shall be part of the contract with the holder thereof, with respect  
23 to the pledge of or other use and disposition of amounts in the  
24 Broadband Middle Mile Infrastructure Revenue Debt Service Fund; the  
25 setting aside of reserve funds; the disposition of any assets of  
26 the Water Development Authority; limitations on the purpose to



1 which the proceeds of sale of bonds may be applied; the  
2 authorization of notes issued in anticipation of the issuance of  
3 bonds; an agreement of the Water Development Authority to do all  
4 things necessary for the authorization, issuance and sale of such  
5 bonds in such amounts as may be necessary for the timely retirement  
6 of such notes; limitations on the issuance of additional bonds; the  
7 terms upon which additional bonds may be issued and secured; the  
8 refunding of outstanding bonds and the renewal of outstanding  
9 notes; the procedures, if any, by which the terms of any contract  
10 with bondholders or noteholders may be amended or abrogated; the  
11 amount of bonds the holders of which must consent thereto and the  
12 manner in which such consent may be given; and any other matter  
13 which in any way affects the security for or protection of the  
14 bonds.

15 (h) In the event that the sum of all reserves pledged to the  
16 payment of the bonds is less than the minimum reserve requirements  
17 established in any resolution or resolutions authorizing the  
18 issuance of the bonds, the chairman of the Water Development  
19 Authority shall certify, on or before the first day of December of  
20 each year, the amount of such deficiency to the Governor of the  
21 state for inclusion, if the Governor shall so elect, of the amount  
22 of such deficiency in the budget to be submitted to the next  
23 session of the Legislature for appropriation to the Infrastructure  
24 and Jobs Development Council to be pledged for payment of such  
25 bonds: *Provided*, That the Legislature shall not be required to make  
26 any appropriations so requested, and the amount of such

1 deficiencies shall not constitute a debt or liability of the state.

2 (i) Neither the officers or board members of the Water  
3 Development Authority or the Infrastructure and Jobs Development  
4 Council, nor any person executing the broadband middle mile  
5 infrastructure revenue bonds, shall be liable personally on the  
6 bonds or be subject to any personal liability or accountability by  
7 reason of the issuance thereof.

8 **§31-15A-18a. Trustee for holders of broadband middle mile**  
9 **infrastructure revenue bonds; contents of trust**  
10 **agreement.**

11 (a) Any broadband middle mile infrastructure revenue bonds  
12 issued by the Water Development Authority under this article shall  
13 be secured by a trust agreement between the Water Development  
14 Authority and a corporate trustee, which trustee may be any trust  
15 company or banking institution having the powers of a trust company  
16 within this state.

17 (b) Any trust agreement may pledge or assign the Broadband  
18 Middle Mile Infrastructure Revenue Debt Service Fund. Any trust  
19 agreement or any resolution providing for the issuance of such  
20 bonds may contain such provisions for protecting and enforcing the  
21 rights and remedies of the bondholders or noteholders as are  
22 reasonable and proper and not in violation of law, including the  
23 provisions contained in section seventeen-a of this article, and  
24 covenants setting forth the duties of the Water Development  
25 Authority in respect to the payment of the principal of and

1 interest, charges and fees on loans made to, or bond purchases  
2 from, governmental agencies from the proceeds of the bonds, and the  
3 custody, safeguarding and application of all moneys. Any banking  
4 institution or trust company incorporated under the laws of this  
5 state which may act as depository of the proceeds of bonds or of  
6 the Broadband Middle Mile Infrastructure Revenue Debt Service Fund  
7 shall furnish such indemnifying bonds or pledge securities as are  
8 required by the Water Development Authority. The trust agreement  
9 may set forth the rights and remedies of the bondholders and  
10 noteholders and of the trustee and may restrict individual rights  
11 of action by bondholders and noteholders as customarily provided in  
12 trust agreements or trust indentures securing similar bonds and  
13 notes. The trust agreement may contain such other provisions as the  
14 water development authority deems reasonable and proper for the  
15 security of the bondholders or noteholders. All expenses incurred  
16 in carrying out the provisions of any such trust agreement may be  
17 treated as part of the cost of the construction, renovation,  
18 repair, improvement or acquisition of a project or infrastructure  
19 project.

20 **§31-15A-19a. Legal remedies of broadband middle mile**  
21 **infrastructure revenue bondholders or**  
22 **noteholders and trustees.**

23 Any holder of broadband middle mile infrastructure revenue  
24 bonds issued pursuant to this article and the trustee under any  
25 trust agreement, except to the extent the rights given by this

1 article may be restricted by the applicable resolution or trust  
2 agreement, may by civil action, mandamus or other proceedings  
3 protect and enforce any rights granted under the laws of this state  
4 or granted under this article, by the trust agreement or by the  
5 resolution in the issuance of the bonds, and may enforce and compel  
6 the performance of all duties required by this article, pursuant to  
7 the trust agreement or resolution, to be performed by the Water  
8 Development Authority or any officer thereof.

9 **§31-15A-20a. Broadband middle mile infrastructure revenue bonds**  
10 **lawful investments.**

11 All broadband middle mile infrastructure revenue bonds issued  
12 pursuant to this article shall be lawful investments for banking  
13 institutions, societies for savings, building and loan  
14 associations, savings and loan associations, deposit guarantee  
15 associations, trust companies, and insurance companies, including  
16 domestic for life and domestic not for life insurance companies.

17 **§31-15A-21a. Purchase and cancellation of broadband middle mile**  
18 **infrastructure revenue bonds.**

19 (a) The Water Development Authority, subject to such  
20 agreements with noteholders or bondholders as may then exist, shall  
21 have the power, from any funds available therefor, to purchase or  
22 redeem broadband middle mile infrastructure revenue bonds of the  
23 council.

24 (b) If the broadband middle mile infrastructure revenue bonds  
25 are then redeemable, the price of the purchase shall not exceed the

1 redemption price then applicable, plus accrued interest to the next  
2 interest payment date thereon. If the broadband middle mile  
3 infrastructure revenue bonds are not then redeemable, the price of  
4 the purchase shall not exceed the redemption price applicable on  
5 the first date after the purchase upon which the bonds become  
6 subject to redemption, plus accrued interest to such date. Upon  
7 purchase or redemption, the bonds shall be canceled.

8 **§31-15A-22a. Refunding broadband middle mile revenue bonds.**

9 Any broadband middle mile infrastructure revenue bonds issued  
10 pursuant to the provisions of this article and at any time  
11 outstanding may at any time and from time to time be refunded by  
12 the Water Development Authority by the issuance of its refunding  
13 revenue bonds in an amount it deems necessary to refund the  
14 principal of the bonds to be refunded, together with any unpaid  
15 interest thereon, to provide additional funds for the Water  
16 Development Authority to, in its discretion, issue additional  
17 revenue bonds, and to pay any premiums and commissions necessary to  
18 be paid in connection therewith. Any refunding may be effected  
19 whether the broadband middle mile infrastructure revenue bonds to  
20 be refunded shall have then matured or shall thereafter mature:  
21 *Provided,* That the holders of any broadband middle mile  
22 infrastructure revenue bonds so to be refunded shall not be  
23 compelled without their consent to surrender their broadband middle  
24 mile infrastructure revenue bonds for payment or exchange prior to  
25 the date on which they are payable or, if they are called for  
26 redemption, prior to the date on which they are by their terms

1 subject to redemption. Any refunding revenue bonds issued pursuant  
2 to this article shall be payable from the West Virginia Broadband  
3 Middle Mile Infrastructure Revenue Debt Service Fund, and shall be  
4 subject to the provisions contained in section seventeen-a of this  
5 article, and shall be secured in accordance with the provisions of  
6 sections seventeen-a and eighteen-a of this article.

7 **§31-15A-23a. Broadband middle mile infrastructure revenue bonds**  
8 **not debt of state, county, municipality or any**  
9 **political subdivision.**

10 Broadband middle mile infrastructure revenue bonds issued  
11 pursuant to the provisions of this article shall not constitute a  
12 debt or a pledge of the faith and credit or taxing power of this  
13 state or of any county, municipality or any other political  
14 subdivision of this state. The holders or owners thereof shall have  
15 no right to have taxes levied by the Legislature or the taxing  
16 authority of any county, municipality or any other political  
17 subdivision of this state for the payment of the principal thereof  
18 or interest thereon. The broadband middle mile revenue bonds shall  
19 be payable solely from the revenues and funds pledged for their  
20 payment as authorized by this article. All such bonds shall contain  
21 on the face thereof a statement to the effect that the bonds, as to  
22 both principal and interest, are not debts of the state or any  
23 county, municipality or political subdivision thereof, but are  
24 payable solely from revenues and funds pledged for their payment.

25 **§31-15A-24a. Broadband middle mile infrastructure revenue bonds**

1                                   **exempt from taxation.**

2           The exercise of the powers granted to the Water Development  
3 Authority by this article will be in all respects for the benefit  
4 of the people of the state, for the improvement of their health,  
5 safety, convenience and welfare and for the enhancement of their  
6 residential, agricultural, recreational, economic, commercial and  
7 industrial opportunities and is for a public purpose. As the  
8 construction, acquisition, repair or renovation of broadband middle  
9 mile infrastructure projects will constitute the performance of  
10 essential governmental functions, the Water Development Authority  
11 shall not be required to pay any taxes or assessments upon any  
12 project or upon any property acquired or used by the Water  
13 Development Authority or upon the income therefrom. The broadband  
14 middle mile infrastructure revenue bonds and all interest and  
15 income thereon shall be exempt from all taxation by this state, or  
16 any county, municipality, political subdivision or agency thereof,  
17 except estate taxes.

NOTE: The purpose of this bill is to allow the Water Development Authority pursuant to authorization of the Infrastructure and Jobs Development Council to issue broadband middle mile revenue bonds when there are sufficient revenues for the issuance of those bonds. The Water Authority would be required to keep funds for water and sewer infrastructure projects separate and apart from funds for broadband middle mile infrastructure projects. Applications for grants and loans would be submitted first to the Development Office and then to a new advisory committee consisting of the Secretary of Administration, the Secretary of Commerce, the Director of WVNET, the member of the Broadband Deployment Council who represents rural communities, and the chairman of the Infrastructure and Jobs Development Council. The function of this new committee is to vet that applications by providing 60-day notice of public hearings on the applications at

which members of the public can speak for or against the application followed by a 30-day public comment. Recommendations of the advisory committee would then be forwarded to the Infrastructure and Jobs Development Council. Other new sections provided for the issuance and sale of broadband infrastructure revenue bonds and refunding bonds on terms like those presently in the Code for water and sewer infrastructure bonds.

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

Sections §31-15A-9a, §31-15A-9b, §31-15A-10a, §31-15A-11a, §31-15A-12a, §31-15A-13a, §31-15A-14a, §31-15A-15a, §31-15A-17c, §31-15A-18a, §31-15A-19a, §31-15A-20a, §31-15A-21a, §31-15A-22a, §31-15A-23a and §31-15A-24a are new; therefore, strike-throughs and underscoring have been omitted.