

H. B. 4613

(By Delegates Boggs, T. Campbell, Varner, Cann and D. Campbell)

[Introduced February 17, 2012; referred to the
Committee on Finance.]

A BILL to amend and reenact §31-15A-2, §31-15A-3 and §31-15A-7 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto fourteen new sections, designated §31-15A-9a, §31-15A-10a, §31-15A-11a, §31-15A-12a, §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; and to amend and reenact §31-15C-1, §31-15C-2, §31-15C-3 §31-15C-4, §31-15C-5 and §31-15C-14 of said code, all relating generally to development of broadband infrastructure and broadband deployment in this state; defining terms in West Virginia Infrastructure and Jobs Development Act; expanding number of council members under certain circumstances; requiring that broadband be considered in current and prospective planning for roads and highways; creating Infrastructure Fund for broadband middle mile infrastructure

1 projects and providing for deposits and expenditures from the
2 fund; giving additional powers to Infrastructure and Jobs
3 Development Council regarding broadband middle mile
4 infrastructure project; creating Infrastructure Fund for
5 Broadband Middle Mile Development; providing for disposition
6 of fund on termination or dissolution of council; providing
7 that broadband middle mile projects funded by council to not
8 be considered public improvements or subject to competitive
9 bid requirements; authorizing council to issue broadband
10 middle mile revenue bonds; creating Broadband Middle Mile
11 Infrastructure Debt Service Fund; providing for funding of
12 debt service fund; specifying requirements for and manner of
13 issuance of bonds; providing for contents of trust agreement
14 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 specifying that bonds are not debt of state or any political
19 subdivision thereof and are exempt from taxation; adding
20 additional findings regarding broadband deployment; defining
21 certain terms used in Broadband Deployment Act; adding two
22 members to Broadband Deployment Council; expanding powers and
23 duties of council; extending date for expiration of council;
24 deleting obsolete language and making technical corrections.

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

2 That §31-15A-2, §31-15A-3 and §31-15A-7 of the Code of West
3 Virginia, 1931, as amended, be amended and reenacted; that said
4 code be amended by adding thereto fourteen new sections, designated
5 §31-15A-9a, §31-15A-10a, §31-15A-11a, §31-15A-12a, §31-15A-14a,
6 §31-15A-15a, §31-15A-17c, §31-15A-18a, §31-15A-19a, §31-15A-20a,
7 §31-15A-21a, §31-15A-22a, §31-15A-23a and §31-15A-24a; and that
8 §31-15C-1, §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5 and §31-15C-
9 14 of said code, be amended and reenacted, all to read as follows:

10 **ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT**

11 **COUNCIL.**

12 **§31-15A-2. Definitions.**

13 ~~For purposes of this article:~~

14 (a) General. -- When used in this article, words defined in
15 subsection (b) of this section have the meaning ascribed to them in
16 this section, except in those instances where a different meaning
17 is distinctly expressed or the context in which the word is used
18 clearly that a different meaning is intended.

19 (b) Definitions. --

20 (1) "Bond" or "infrastructure revenue bond" means a revenue
21 bond, note, or other obligation issued by the water development
22 authority pursuant to this article, including bonds to refund such
23 bonds and notes to renew such notes, and notes in anticipation of
24 and payable from the proceeds of such bonds;

1 (2) "Broadband Deployment Council" means the Broadband
2 Deployment Council established in section three, article fifteen-c
3 of this chapter, or any successor to all or any substantial part of
4 its powers and duties;

5 (3) "Broadband infrastructure" means all facilities, hardware
6 and software and other intellectual property necessary to provide
7 broadband services in this state, including, but not limited to,
8 voice, video and data services;

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

16 (5) "Broadband" or "Broadband service" means any advanced
17 telecommunications service that provides the end-user with the
18 capability to originate and receive high-quality voice, data,
19 graphics or video services using any technology that provides the
20 end-user with a minimum download rate of four megabits per second
21 and a minimum upload rate of one megabit per second from the
22 service provider's network to the end-user;

23 (6) "Broadband transmission lines" means equipment lines,
24 regardless of the technology or medium, including, but not limited

1 to, copper wire, fiber-optic cable or coaxial cable, capable of
2 transmitting broadband service;

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

5 ~~(c)~~ (8) "Cost" means, as applied to any project to be
6 financed, in whole or in part, with infrastructure revenues or
7 funds otherwise provided pursuant to this article, the cost of
8 planning, acquisition, improvement and construction of the project;
9 the cost of preliminary design and analysis, surveys, borings; the
10 cost of environmental, financial, market and engineering
11 feasibility studies, assessments, applications, approvals,
12 submissions or clearances; the cost of preparation of plans and
13 specifications and other engineering services; the cost of
14 acquisition of all land, rights-of-way, property rights, easements,
15 franchise rights and any other interests required for the
16 acquisition, repair, improvement or construction of the project;
17 the cost of demolishing or removing any buildings or structures on
18 land so acquired, including the cost of acquiring any lands to
19 which buildings or structures may be moved; the cost of excavation,
20 grading, shaping or treatment of earth, demolishing or removing any
21 buildings or structures; the cost of constructing any buildings or
22 other improvements; the cost of all pumps, tanks, vehicles,
23 apparatus and other machinery, furnishings and equipment; loan or
24 origination fees and all finance charges and interest incurred

1 prior to and during the construction and for no more than six
2 months after completion of construction; the cost of all legal
3 services and expenses; the cost of all plans, specifications,
4 surveys and estimates of cost; all working capital and other
5 expenses necessary or incident to determining the feasibility or
6 practicability of acquiring, repairing, improving or constructing
7 any project; the cost of placing any project in operation; and all
8 other costs and expenses of any kind or nature incurred or to be
9 incurred by the project sponsor developing the project that are
10 reasonable and necessary for carrying out all works and
11 undertakings necessary or incident to the accomplishment of any
12 project: *Provided*, That costs shall not include any amounts
13 related to the ongoing operations of the owner or operator,
14 depreciation thereof or any other cost which the council, ~~or~~ the
15 Water Development Authority or the Broadband Deployment Council has
16 not determined to be consistent with the purposes and objectives of
17 this article;

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

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

24 ~~(e)~~ (11) "Division Department of Environmental Protection"

1 means the ~~Division~~ Department of Environmental Protection
2 established under article one, chapter twenty-two of this code, or
3 any successor to all or any substantial part of its powers and
4 duties;

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

8 (13) "Download rate" when used in the context of broadband
9 means the total sustainable transmission speed from the service
10 provider's network to the end-user;

11 ~~(g)~~ (14) "Economic development authority" means the economic
12 development authority established under article fifteen, chapter
13 thirty-one of the code, or any successor to all or any substantial
14 part of its powers and duties;

15 ~~(h)~~ (15) "Emergency project" means a project which the council
16 has determined: (1) Is essential to the immediate economic
17 development of an area of the state; and (2) will not likely be
18 developed in that area if construction of the project is not
19 commenced immediately;

20 (16) "End-user" when used in the context of broadband means
21 any individual, business, agency, institution, entity or household
22 that subscribers to broadband service provided by a service
23 provider;

24 ~~(i)~~ (17) "Governmental agency" means any county; municipality;

1 watershed improvement district; assessment district; soil
2 conservation district; sanitary district; public service district;
3 drainage district; regional governmental authority and any other
4 state governmental agency, entity, political subdivision or public
5 corporation or agency authorized to acquire, construct or operate
6 water or wastewater facilities or other infrastructure projects;

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

11 (19) "Includes" and "including", when used in this article, do
12 not exclude other things otherwise within the definition or the
13 sentence in which the term is used;

14 ~~(k)~~ (20) "Infrastructure Fund" means the West Virginia
15 Infrastructure Fund created and established in section nine of this
16 article;

17 ~~(l)~~ (21) "Infrastructure project" means a project in the state
18 which the council determines is likely to foster and enhance
19 economic growth and development in the area of the state in which
20 the project is developed, for commercial, industrial, community
21 improvement or preservation or other proper purposes, including,
22 without limitation, tourism and recreational housing, land, air or
23 water transportation facilities and bridges, industrial or
24 commercial projects and facilities, mail order, warehouses,

1 wholesale and retail sales facilities, middle mile broadband
2 projects, and other real and personal properties, including
3 facilities owned or leased by this state or any other project
4 sponsor, and includes, without limitation: (1) The process of
5 acquiring, holding, operating, planning, financing, demolition,
6 construction, improving, expanding, renovation, leasing or
7 otherwise disposing of the project or any part thereof or interest
8 therein; and (2) preparing land for construction and making,
9 installing or constructing improvements on the land, including
10 water or wastewater facilities or any part thereof, steam, gas,
11 telephone and telecommunications and electric lines and
12 installations, broadband transmission lines, roads, bridges,
13 railroad spurs, buildings, docking and shipping facilities, curbs,
14 gutters, sidewalks, and drainage and flood control facilities,
15 whether on or off the site;

16 ~~(m)~~ (22) "Infrastructure revenue" means all amounts
17 appropriated by the Legislature; all amounts deposited into the
18 infrastructure fund; any amounts received, directly or indirectly,
19 from any source for the use of all or any part of any project
20 completed pursuant to this article; and any other amounts received
21 by the State Treasurer, council, ~~or~~ the Water Development Authority
22 or the Broadband Deployment Council for the purposes of this
23 article: Provided, That funds for water and sewer infrastructure
24 projects and funds for broadband middle mile infrastructure

1 projects shall be kept separate;

2 (23) "Last mile" when used in the context of broadband means
3 any wired or wireless facilities, or portions thereof, which
4 facilitate the extension of broadband service from a community
5 access point to the end-user, and expressly excludes any middle
6 mile facilities;

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

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

19 ~~(n)~~ (26) "Need of the project sponsors" means there is a
20 public need for a project. The council shall construe a population
21 increase evidenced by the last two decennial censuses in a county
22 in which a project is proposed, as a factor supporting the
23 conclusion that a need exists for projects in that county;

24 (27) "Network access point" when used in the context of

1 broadband means the collection of national carriers that provide
2 core interstate TCPIP backbone networks that comprise or make up
3 primary portions of the national Internet backbone system and which
4 provide direct connectivity on a national scale throughout the
5 United States in addition to direct or indirect connectivity to
6 international networks throughout the world;

7 ~~(o)~~ (28) "Project" means any wastewater facility, water
8 facility project or any combination thereof, or a broadband middle
9 mile project, when the facility or project will be constructed or
10 operated or to be constructed or operated by a project sponsor;

11 ~~(p)~~ (29) "Project sponsor" means any governmental agency or
12 person, or any combination thereof, including, but not limited to,
13 any public utility or broadband service provider, which intends to
14 plan, acquire, construct, improve or otherwise develop a project;

15 ~~(q)~~ (30) "Public Service Commission" means the Public Service
16 Commission of West Virginia created and established under section
17 three, article one, chapter twenty-four of this code, or any
18 successor to all or any substantial part of its powers and duties;

19 ~~(r)~~ (31) "Person" means any individual, corporation,
20 partnership, association, limited liability company or any other
21 form of business organization;

22 ~~(s)~~ (32) "Public utility" means any person or persons, or
23 association of persons, however associated, whether incorporated or
24 not, including, without limitation, any governmental agency,

1 operating a wastewater facility or water facility as a public
2 service, which is regulated by the Public Service Commission as a
3 public utility under chapter twenty-four of this code or which is
4 required to file its tariff with the Public Service Commission;

5 (33) "Service provider" when used in the context of broadband
6 means any service provider that provides broadband service to end-
7 users and is certified to provide services in accordance with state
8 and federal regulations;

9 ~~(t)~~ (34) "State Development Office" means the West Virginia
10 Development Office established under article two, chapter five-b of
11 this code, or any successor to all or any substantial part of its
12 powers and duties;

13 ~~(u)~~ (35) "State infrastructure agency" means the division of
14 health, ~~Division~~ Department of Environmental Protection, Housing
15 Development Fund, Public Service Commission, State Development
16 Office, Water Development Authority, Economic Development
17 Authority, Broadband Deployment Council and any other state agency,
18 division, body, authority, commission, instrumentality or entity
19 which now or in the future receives applications for the funding
20 of, and provides funding or technical assistance to, the planning,
21 acquisition, construction or improvement of a project;

22 (36) "Transport service" when used in the context of broadband
23 means any service that provides a service provider or carrier with
24 the ability to transport high-capacity voice, data, graphics or

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

5 (37) "Upload rate" when used in the context of broadband means
6 the total sustainable transmission speed from the end-user to the
7 service provider's network;

8 ~~(v)~~ (38) "Wastewater facility" means all facilities, land and
9 equipment used for or in connection with treating, neutralizing,
10 disposing of, stabilizing, cooling, segregating or holding
11 wastewater, including, without limitation, facilities for the
12 treatment and disposal of sewage, industrial wastes or other
13 wastes, wastewater, and the residue thereof; facilities for the
14 temporary or permanent impoundment of wastewater, both surface and
15 underground; and sanitary sewers or other collection systems,
16 whether on the surface or underground, designed to transport
17 wastewater together with the equipment and furnishings therefor or
18 thereof and their appurtenances and systems, whether on the surface
19 or underground including force mains and pumping facilities
20 therefor;

21 ~~(w)~~ (39) "Water development authority" means the West Virginia
22 water development authority continued pursuant to the provisions of
23 article one, chapter twenty-two-c of this code, or any successor to
24 all or any substantial part of its powers and duties; and

1 ~~(x)~~ (40) "Water facility" means all facilities, land and
2 equipment used for or in connection with the collection and/or
3 storage of water, both surface and underground, transportation of
4 water, storage of water, treatment of water and distribution of
5 water all for the purpose of providing potable, sanitary water
6 suitable for human consumption and use;

7 (41) "West Virginia Infrastructure and Jobs Development
8 Council" means the council established in section three, article
9 fifteen-a of this chapter;

10 (42) "West Virginia Network for Educational Telecomputing"
11 means the network managed by the vice chancellor for administration
12 of the Higher Education Policy Commission as provided in section
13 two, article four, chapter eighteen-b of this code.

14 **§31-15A-3. West Virginia Infrastructure and Jobs Development**
15 **Council continued; members of council; staff of**
16 **council.**

17 (a) The West Virginia Infrastructure and Jobs Development
18 Council is continued. The council is a governmental
19 instrumentality of the state. The exercise by the council of the
20 powers conferred by this article and the carrying out of its
21 purpose and duties shall be considered and held to be, and are
22 determined to be, essential governmental functions and for a public
23 purpose.

24 (b) ~~The~~ Except as provided in subsection (d) of this section,

1 the council shall consist of thirteen members, including:

2 (1) The Governor or designee;

3 (2) The Executive Director of the Housing Development Fund or
4 his or her designee;

5 (3) The ~~Director~~ Secretary of the ~~Division~~ Department of
6 Environmental Protection or his or her designee;

7 (4) The Director of the Economic Development Authority or his
8 or her designee;

9 (5) The Director of the Water Development Authority or his or
10 her designee;

11 (6) The Director of the Division of Health or his or her
12 designee;

13 (7) The Chairman of the Public Service Commission or his or
14 her designee; and

15 (8) Six members representing the general public: *Provided,*
16 That there shall be at least one member representing the general
17 public from each congressional district. No more than one member
18 representing the general public may be a resident of the same
19 county.

20 (c) The Governor shall appoint the public members of the
21 Council who shall serve three-year staggered terms.

22 (d) Whenever the council discusses or votes upon a broadband
23 infrastructure project or a broadband matter, the council shall, in
24 addition to the members listed in subsection (b) of this section,

1 include as voting members the Secretary of the Department of
2 Administration, or his or her designee, and the Director of the
3 West Virginia Network for Educational Telecomputing, or his or her
4 designee.

5 (e) The Commissioner of the Division of Highways, the
6 Executive Director of the state rail authority, two members of the
7 West Virginia Senate, two members of the West Virginia House of
8 Delegates, the Chancellor of the Higher Education Policy commission
9 and the Chancellor of the West Virginia Council for Community and
10 Technical College Education serve as advisory members of the
11 council. The advisory members shall be ex officio, nonvoting
12 members of the Council.

13 ~~(e)~~ (f) The Governor shall appoint the legislative members of
14 the council: *Provided*, That no more than three of the legislative
15 members may be of the same political party.

16 ~~(f)~~ (g) The Governor shall appoint the representatives of the
17 governing boards from a list of three names submitted by each
18 governing board.

19 ~~(g)~~ (h) The Governor or his or her designee shall serve as
20 chairman and the council shall annually appoint a vice chairperson
21 and shall appoint a secretary, who need not be a member of the
22 Council and who shall keep records of its proceedings. Seven
23 voting members of the Council shall constitute a quorum and the
24 affirmative vote of at least the majority of those members present

1 shall be necessary for any action taken by vote of the council. A
2 vacancy in the membership of the council does not impair the rights
3 of a quorum by such vote to exercise all the rights and perform all
4 the duties of the council.

5 ~~(h)~~ (i) A member of the council who serves by virtue of his or
6 her office does not receive compensation or reimbursement of
7 expenses for serving as a member. The public members are
8 reimbursed for actual expenses incurred in the service of the
9 council in a manner consistent with guidelines of the travel
10 management office of the Department of Administration.

11 ~~(i)~~ (j) The council meets at least monthly to review projects
12 and infrastructure projects requesting funding assistance and
13 otherwise to conduct its business and may meet more frequently if
14 necessary. Notwithstanding any other provision of this article to
15 the contrary, the Economic Development Authority is not subject to
16 council review with regard to any action taken pursuant to the
17 authority established in article fifteen, chapter thirty-one of
18 this code. The Governor's civil contingent fund is not subject to
19 council review with regard to projects or infrastructure projects
20 funded through the Governor's Civil Contingent Fund.

21 ~~(j)~~ (k) The Water Development Authority shall provide office
22 space for the council and each governmental agency represented on
23 the council shall provide staff support for the council in the
24 manner determined appropriate by the council.

1 ~~(k)~~ (l) The council shall invite to each meeting one or more
2 representatives of the United States Department of Agriculture,
3 Rural Economic Community Development, the United States Economic
4 Development Agency and the United States Army Corps of Engineers or
5 any successors thereto. The council shall invite other appropriate
6 parties as is necessary to effectuate the purposes of this article.

7 **§31-15A-7. Current and prospective planning; roads and highways;**
8 **report to Division of Highways.**

9 (a) The council shall take into account the current and
10 prospective infrastructure needs in relation to plans of the
11 Division of Highways for the development and building of new roads.
12 Upon completion of an environmental impact study, the commissioner
13 of highways shall provide the council with plans for any and all
14 new roads. In a timely manner, the council shall advise the
15 commissioner of the Division of Highways on the feasibility of the
16 expansion of new or existing water and sewer lines and broadband
17 transmission lines concomitant to the construction of the new
18 roads.

19 (b) The council has the authority to appoint local
20 infrastructure planning teams. The local infrastructure planning
21 teams may consist of the following: A designee of the Division of
22 Highways from the region where the new road is being built; a
23 designee of the Division of Highways from the central state office;
24 a designee from the environmental engineers division of the

1 Department of Health and Human Resources; a designee from the local
2 developmental authority where the new road is being built; a
3 designee from the regional developmental authority in the area
4 where the new road is being built; a designee from the Public
5 Service Commission; a designee from the ~~Division~~ Department of
6 Environmental Protection; a designee from the county commission
7 where the new road is being built who shall serve as chairperson of
8 the planning team; a citizen of the county where the new road is
9 being built to be chosen by the county commission; and the elected
10 state delegates and senators from the area where the new road is
11 being built. In order to avoid delay of any highway project,
12 immediately upon appointment of a local infrastructure planning
13 team, the director of the Division of Highways shall submit to the
14 council a time frame within which the planning team must act and
15 within which the planning team must submit any plans, maps,
16 recommendations or reports developed pursuant to this subsection.
17 The local infrastructure planning team shall meet prior to the
18 development and building of a new road. Members of the local
19 infrastructure planning team shall only receive payment for actual
20 expenses incurred. The local infrastructure planning team shall
21 advise the commissioner of the Division of Highways on the
22 feasibility of an infrastructure plan. The local infrastructure
23 planning team shall meet to develop an infrastructure plan that
24 includes an assessment study of existing water and sewer lines and

1 a feasibility study on future development and laying of water and
2 sewer lines and broadband transmission lines. After these studies
3 are completed, a developmental map shall be drawn of the proposed
4 road route with overlays of the proposed water and sewer lines and
5 any proposed broadband transmission lines. These studies and the
6 map shall be presented to the commissioner of the Division of
7 Highways and shall be used by the commissioner in the planning,
8 developing and building of the road.

9 (c) The water development authority shall establish a
10 restricted account within the infrastructure fund to be expended
11 for the construction of water and sewage lines and broadband
12 transmission lines as may be recommended by the council in
13 accordance with this article and specifically, in accordance with
14 the plan developed under subsection (b) of this section. The
15 reserve account shall be known as the "infrastructure road
16 improvement reserve account". The council and the Division of
17 Highways may enter into agreements to share the cost of financing
18 projects approved in accordance with this section from moneys
19 available in the infrastructure road reserve account and moneys
20 available from the state road fund. Annually, the council may
21 direct the water development authority to transfer funds from the
22 infrastructure fund in an amount not to exceed ~~\$1~~ \$2 million to the
23 restricted account: *Provided*, That at no time may the balance of
24 the restricted account exceed ~~\$1~~ \$2 million.

1 (d) For the purposes of this section the term "new" means a
2 road right-of-way being built for the first time.

3 (e) After the construction of water and sewer lines adjacent
4 to the new road, these new lines shall be turned over to existing
5 utilities by expansion of boundaries of public service districts or
6 shall be main extensions from the municipality.

7 (f) After the construction of any new broadband transmission
8 lines in the new road right-of-way, the lines may be transferred to
9 broadband service providers. The council shall propose rules for
10 legislative approval in accordance with article three, chapter
11 twenty-nine-a of this code to provide for the transfer of ownership
12 of the new lines to broadband service providers and for the
13 equitable nondiscriminatory right to the use of the new lines by
14 all broadband service providers, subject to such appropriate
15 limitations and restrictions as the council may determine.

16 **§31-15A-9a. Infrastructure Fund for broadband middle mile**
17 **infrastructure projects; deposits in fund;**
18 **disbursements to provide loans, loan guarantees,**
19 **grants and other assistance; loans, loan**
20 **guarantees, grants and other assistance shall be**
21 **subject to assistance agreements; use of funds**
22 **for projects.**

23 (a) The council shall create and establish a special revolving
24 fund of moneys made available by appropriation, grant, contribution

1 or loan to be known as the "West Virginia Infrastructure Fund for
2 Broadband Middle Mile Development". This fund shall be governed,
3 administered and accounted for by the Infrastructure and Jobs
4 Development Council as a special purpose account separate and
5 distinct from any other moneys, funds or funds owned and managed by
6 the Council for Broadband Deployment. The Infrastructure Fund for
7 Broadband Middle Mile Development shall consist of subaccounts, as
8 deemed necessary by the council, for the deposit of:

9 (1) Infrastructure revenues for broadband middle mile
10 deployment;

11 (2) Any appropriations, grants, gifts, contributions, loan
12 proceeds or other revenues received by the Infrastructure Fund for
13 Broadband Middle Mile Development from any source, public or
14 private;

15 (3) Amounts received as payments on any loans made by the
16 Infrastructure and Jobs Development Council to pay for the cost of
17 a broadband middle mile infrastructure project;

18 (4) Insurance proceeds payable to Infrastructure and Jobs
19 Development Council or the Infrastructure Fund For Broadband Middle
20 Mile Development in connection with any broadband middle mile
21 infrastructure project;

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

24 (6) All proceeds derived from the sale of bonds issued

1 pursuant to this article for broadband middle mile infrastructure
2 development.

3 (b) Any money collected pursuant to this section shall be paid
4 into the West Virginia Infrastructure Fund for Broadband Middle
5 Mile Development by the state agent or entity charged with the
6 collection of the same, credited to that infrastructure fund, and
7 used only for purposes set forth in this article or article
8 fifteen-c of this chapter.

9 (c) Amounts in the Infrastructure Fund for Broadband Middle
10 Mile Development shall be segregated and administered by the
11 Infrastructure and Jobs Development council separate and apart from
12 its other assets and programs. Amounts in the Infrastructure Fund
13 for Broadband Middle Mile Development may not be transferred to any
14 other fund or account or used, other than indirectly, for the
15 purposes of any other program of the council, except that the
16 council may use funds in the Infrastructure Fund for Broadband
17 Middle Mile Development to reimburse itself for any administrative
18 costs incurred by it and approved by the Infrastructure and Jobs
19 Development Council in connection with any loan, loan guarantee,
20 grant or other funding assistance made by the council pursuant to
21 this article.

22 (d) Notwithstanding any provision of this code to the
23 contrary, amounts in the Infrastructure Fund for Broadband Middle
24 Mile Development shall be deposited by the Infrastructure and Jobs

1 Development Council in one or more banking institutions: *Provided,*
2 That any moneys so deposited shall be deposited in a banking
3 institution located in this state. The banking institution shall
4 be selected by the Infrastructure and Jobs Development Council by
5 competitive bid. Pending the disbursement of any money from the
6 Infrastructure Fund for Broadband Middle Mile Development as
7 authorized under this section, the Infrastructure and Jobs
8 Development Council shall invest and reinvest the moneys subject to
9 the limitations set forth in article eighteen, chapter thirty-one
10 of this code.

11 (e) To further accomplish the purposes and intent of this
12 article and article fifteen-c of this chapter, the Infrastructure
13 and Jobs Development Council may pledge infrastructure revenues and
14 from time-to-time establish one or more restricted accounts within
15 the Infrastructure Fund For Broadband Middle Mile Development for
16 the purpose of providing funds to guarantee loans for broadband
17 middle mile infrastructure projects: *Provided, That for any fiscal*
18 year the Infrastructure and Jobs Development Council may not
19 deposit into the restricted accounts more than twenty percent of
20 the aggregate amount of revenues for broadband middle mile
21 development deposited into the Infrastructure Fund for Broadband
22 Middle Mile Development during the fiscal year. No loan guarantee
23 shall be made pursuant to this article unless recourse under the
24 loan guarantee is limited solely to amounts in the restricted

1 account or accounts. No person shall have any recourse to any
2 restricted accounts established pursuant to this subsection other
3 than those persons to whom the loan guarantee or guarantees have
4 been made.

5 (f) Each loan, loan guarantee, grant or other assistance made
6 or provided by the Infrastructure and Jobs Development Council or
7 the Broad Band Deployment Council shall be evidenced by a loan,
8 loan guarantee, grant or assistance agreement between the
9 Infrastructure and Jobs Development Council and the project sponsor
10 to which the loan, loan guarantee, grant or assistance shall be
11 made or provided, which agreement shall include, without limitation
12 and to the extent applicable, the following provisions:

13 (1) The estimated cost of the broadband middle mile
14 infrastructure project, the amount of the loan, loan guarantee or
15 grant or the nature of the assistance, and in the case of a loan or
16 loan guarantee, the terms of repayment and the security therefor,
17 if any;

18 (2) The specific purposes for which the loan or grant proceed
19 shall be expended or the benefits to accrue from the loan guarantee
20 or other assistance, and the conditions and procedure for
21 disbursing loan or grant proceeds;

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

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

11 (g) Any resolution of the Infrastructure and Jobs Development
12 Council approving loan, loan guarantee, grant or other assistance
13 shall include a finding and determination that the requirements of
14 this section have been met and of article fifteen-c of this chapter
15 have been met.

16 (h) The Infrastructure and Jobs Development Council shall
17 cause an annual audit to be made by an independent certified public
18 accountant of its books, accounts and records, with respect to the
19 receipts, disbursements, contracts, leases, assignments, loans,
20 grants and all other matters relating to the financial operation of
21 the Infrastructure Fund for Broadband middle Mile Development,
22 including the operating of any sub-account within that
23 infrastructure fund. The person performing such audit shall furnish
24 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-10a. Recommendations for expenditures of funds by loan,**
6 **grant or for engineering assistance.**

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

1 grants or other assistance may be submitted by a project sponsor
2 for one or more broadband middle mile infrastructure projects on
3 preliminary application forms prepared by the Infrastructure and
4 Jobs Development Council pursuant to section four of this article.
5 Any recommendation of that council approving a loan, loan
6 guarantee, grant or other assistance shall include a finding and
7 determination by that council that the requirements of this section
8 have been met. The Infrastructure and Jobs Development Council
9 shall base any decisions to loan money for projects to project
10 sponsors pursuant to this article solely on the need of the project
11 sponsors.

12 (b) The Infrastructure and Jobs Development Council has the
13 authority in its sole discretion to make grants to project sponsors
14 if it finds after discussion with the Broadband Deployment Council
15 that the broadband middle mile infrastructure project is essential
16 for economic development, the realization of educational
17 opportunities, modernization of government, or facilitation of the
18 ability of businesses and residents to use the Internet employing
19 state-of-the art technologies. No project sponsor shall receive
20 infrastructure grant money in an amount in excess of fifty percent
21 of the total cost of the project. Therefore, the Infrastructure and
22 Jobs Development Council may consider the economic or financial
23 conditions of the area to be served.

24 (c) As a condition for receipt of a grant or loan under this

1 section:

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

5 (2) The council shall reserve twelve strands of fiber for use
6 by the state, its instrumentalities and political subdivisions; and

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

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

19 (e) Notwithstanding any other provision of this article to the
20 contrary, engineering studies and requirements imposed by the
21 Infrastructure and Jobs Development Council for preliminary
22 applications shall not exceed those engineering studies and
23 requirements which are necessary for the council to determine the
24 economic feasibility of the project. If the Infrastructure and Jobs

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

22 (f) The Infrastructure and Jobs Development Council shall
23 report to the Governor, the Speaker of the House of Delegates and
24 the President of the Senate during each regular and interim session

1 of the Legislature, on its activities and decisions relating to
2 distribution or planned distribution of grants and loans under the
3 criteria to be developed pursuant to this article.

4 **§31-15A-11a. Reservation of funds for broadband middle mile**
5 **infrastructure projects.**

6 Funds deposited in the West Virginia Infrastructure Fund for
7 Broadband Middle Mile Development shall be dedicated for the
8 purpose of providing funding for the cost of broadband middle mile
9 infrastructure projects as defined in section two of this article.

10 **§31-15A-12a. Additional powers of Infrastructure and Jobs**
11 **Development Council - Broadband middle mile**
12 **infrastructure projects.**

13 To accomplish the purpose and intent of this article, the
14 Infrastructure and Jobs Development Council is hereby empowered, in
15 addition to all other powers granted to it under this code, after
16 consultation with the Broadband Deployment Council, to:

17 (1) Enter into agreements or other transactions with any
18 federal or state agency in connection with any broadband middle
19 mile infrastructure project;

20 (2) Receive or administer on behalf of any federal or state
21 agency grants, subsidies or other payments to be applied to the
22 costs of any broadband middle mile infrastructure project financed,
23 in whole or in part, or otherwise assisted by the Infrastructure
24 and Jobs Development Council or the Broadband Deployment Council,

1 including, but not limited to, payments to be applied to operating
2 costs and debt service or obligations of any project sponsor;

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

7 (4) Establish and amend the criteria and qualifications for
8 making loans, loan guarantees or grants, or providing any other
9 assistance, for any broadband middle mile infrastructure project,
10 and the terms of any loans, loan guarantee, grant or assistance
11 agreement for any broadband middle mile infrastructure project; and

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

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

17 Upon the termination or dissolution of the Infrastructure and
18 Jobs Development Council, all rights and properties of the council
19 with respect to the Infrastructure Fund for Broadband Middle Mile
20 Development shall pass to and be vested in the state, subject to
21 the rights of lienholders and other creditors.

22 **§31-15A-15a. Broadband middle mile projects not to be considered**
23 **public improvements; competitive bid requirements.**

24 (a) No broadband middle mile infrastructure project acquired,

1 constructed or maintained or financed, in whole or in part, by the
2 Infrastructure and Jobs Development Council shall be considered to
3 be a "public improvement" within the meaning of the provisions of
4 article five-a, chapter twenty-one of this code for purposes of the
5 financing of the project.

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

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

18 (c) This section does not:

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

24 (2) Prevent students enrolled in vocational educational

1 schools from being used in the construction or repair projects when
2 such use is a part of the students' training program;

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

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

17 (d) The provisions of subsection (b) of this section do not
18 apply to privately owned broadband middle mile infrastructure
19 projects.

20 **§31-15A-17c. Infrastructure and Jobs Development Council empowered**
21 **to issue broadband middle mile infrastructure**
22 **revenue bonds and refunding bonds; creation of**
23 **Broadband Middle Mile Infrastructure Revenue Debt**
24 **Service Fund; funding of Broadband Middle Mile**

1 Infrastructure Revenue Debt Service Fund;
2 requirements and manner of such issuance.

3 (a) To accomplish the purpose and intent of this article, the
4 Infrastructure and Jobs Development Council is hereby empowered to
5 issue from time to time broadband middle mile infrastructure
6 revenue bonds of the state in such principal amounts as the council
7 deems necessary to make loans and loan guarantees and other forms
8 of financial assistance to project sponsors for one or more
9 broadband middle mile infrastructure projects: *Provided*, That the
10 Infrastructure and Jobs Development Council may not issue any such
11 bonds, other than refunding bonds, unless the council by resolution
12 determines that the aggregate cost of the broadband middle mile
13 infrastructure projects expected to be constructed during any
14 annual period exceeds: (1) The projected annual infrastructure
15 revenues for the same period; and (2) the principal and interest
16 payments not otherwise pledged to the broadband middle mile
17 infrastructure revenue debt service fund that are due the council
18 on all outstanding loans previously made by the council pursuant to
19 the provisions of this article.

20 (b) The proceeds of broadband middle mile infrastructure
21 revenue bonds shall be used solely for the purpose of making loans
22 and loan guarantees and other forms of financial assistance to
23 sponsors of one or more broadband middle mile infrastructure
24 projects, and shall be deposited in one or more special accounts

1 with the trustee under the trust agreement securing such bonds and
2 disbursed from time to time for broadband middle mile
3 infrastructure projects in accordance with this article: *Provided,*
4 That notwithstanding any provision of this code to the contrary,
5 twenty percent of the funds deposited in the special account shall
6 be dedicated for the purpose of providing funding for costs of
7 broadband middle mile infrastructure projects as defined in section
8 two of this article.

9 (c) The Infrastructure and Jobs Development Council may not
10 authorize the disbursement of any proceeds of broadband middle mile
11 infrastructure revenue bonds unless it has received documentation
12 required by section ten-a of this article.

13 (d) There is hereby created in the Infrastructure and Jobs
14 Development Council a special fund which shall be designated and
15 known as the "West Virginia Broadband Middle Mile Infrastructure
16 Revenue Debt Service Fund," into which shall be transferred solely
17 from the loan repayments deposited in the Infrastructure Fund for
18 Broadband Middle Mile Development the amounts certified by the
19 council as necessary to pay the principal, premium, if any, and
20 interest on broadband middle mile infrastructure revenue bonds and
21 any reserve requirements, subject to the terms of any agreement
22 with the holders of the broadband middle mile infrastructure
23 revenue bonds. All amounts deposited in the West Virginia Broadband
24 Middle Mile Infrastructure Revenue Debt Service Fund shall be

1 pledged to the repayment of the principal, interest and redemption
2 premium, if any, on any broadband middle mile infrastructure
3 revenue bonds authorized by this article: *Provided*, That amounts on
4 deposit in the fund may be used to establish or maintain reserves
5 created for the purposes of securing the broadband middle mile
6 infrastructure revenue bonds. The pledge shall be valid and binding
7 from the time the pledge is made, and the West Virginia Broadband
8 Middle Mile Infrastructure Revenue Debt Service Fund so pledged
9 shall immediately be subject to the lien of the pledge without any
10 physical delivery thereof or further act, and the lien of any such
11 pledge shall be valid and binding as against all parties having
12 claims of any kind in tort, contract or otherwise against the
13 Infrastructure and Jobs Development Council irrespective of whether
14 the parties have notice thereof.

15 (e) Except as may otherwise be expressly provided in this
16 article or by resolution of the Infrastructure and Jobs Development
17 Council, every issue of broadband middle mile infrastructure
18 revenue bonds shall be special obligations of the Infrastructure
19 and Jobs Development Council payable solely from amounts in the
20 West Virginia Broadband Middle Mile Infrastructure Revenue Debt
21 Service Fund, and the reserves created for this purpose by the
22 council, without preference or priority among the bonds regardless
23 of when issued, subject only to any agreements with the holders of
24 any bonds to the contrary. All such bonds are hereby declared to be

1 negotiable instruments.

2 (f) Broadband middle mile infrastructure revenue bonds shall
3 be authorized by resolution of the Infrastructure and Jobs
4 Development Council. These bonds shall bear such dates and shall
5 mature at such times, in case of any note or renewal thereof not
6 exceeding five years from the date of issue of the original note,
7 and in the case of any bond not exceeding fifty years from the date
8 of issue, as the resolution may provide. Broadband middle mile
9 infrastructure revenue bonds shall bear interest at a rate or
10 rates, including variable rates, shall be taxable or tax-exempt,
11 shall be in the denominations, shall be in registered form, shall
12 carry the registration privileges, shall be payable in the medium
13 and place of payment, and shall be subject to the terms of
14 redemption as the Infrastructure and Jobs Development Council may
15 authorize. Broadband middle mile infrastructure revenue bonds may
16 be sold by the Infrastructure and Jobs Development Council at
17 public or private sale at the price the council determines in
18 consultation with the council. Broadband middle mile infrastructure
19 revenue bonds shall be executed by the chairman and the vice
20 chairman of the Infrastructure and Jobs Development Council, either
21 or both of whom may use a facsimile signature. The official seal of
22 the Infrastructure and Jobs Development Council or a facsimile
23 thereof shall be affixed thereto or printed thereon and attested by
24 manual or facsimile signature by the secretary-treasurer of the

1 Infrastructure and Jobs Development Council. If any officer whose
2 signature, or a facsimile of whose signature appears on any
3 infrastructure revenue bond ceases to be such officer before
4 delivery of such bond, such signature or facsimile is nevertheless
5 sufficient for all purposes to the same extent as if he or she had
6 remained in office until such delivery, and if the seal of the
7 Infrastructure and Jobs Development Council has been changed after
8 a facsimile has been imprinted on such bond, the facsimile will
9 continue to be sufficient for all purposes.

10 (g) Any resolution authorizing any infrastructure revenue
11 bonds may contain provisions, subject to any agreement with
12 bondholders or noteholders which may then exist, which agreements
13 shall be part of the contract with the holder thereof, with respect
14 to the pledge of or other use and disposition of amounts in the
15 Broadband Middle Mile Infrastructure Revenue Debt Service Fund; the
16 setting aside of reserve funds; the disposition of any assets of
17 the Infrastructure and Jobs Development Council; limitations on the
18 purpose to which the proceeds of sale of bonds may be applied; the
19 authorization of notes issued in anticipation of the issuance of
20 bonds; an agreement of the Infrastructure and Jobs Development
21 Council to do all things necessary for the authorization, issuance
22 and sale of such bonds in such amounts as may be necessary for the
23 timely retirement of such notes; limitations on the issuance of
24 additional bonds; the terms upon which additional bonds may be

1 issued and secured; the refunding of outstanding bonds and the
2 renewal of outstanding notes; the procedures, if any, by which the
3 terms of any contract with bondholders or noteholders may be
4 amended or abrogated; the amount of bonds the holders of which must
5 consent thereto and the manner in which such consent may be given;
6 and any other matter which in any way affects the security for or
7 protection of the bonds.

8 (h) In the event that the sum of all reserves pledged to the
9 payment of the bonds is less than the minimum reserve requirements
10 established in any resolution or resolutions authorizing the
11 issuance of the bonds, the chairman of the Infrastructure and Jobs
12 Development Council shall certify, on or before the first day of
13 December of each year, the amount of such deficiency to the
14 Governor of the state for inclusion, if the Governor shall so
15 elect, of the amount of such deficiency in the budget to be
16 submitted to the next session of the Legislature for appropriation
17 to the Infrastructure and Jobs Development Council to be pledged
18 for payment of such bonds: *Provided*, That the Legislature shall not
19 be required to make any appropriations so requested, and the amount
20 of such deficiencies shall not constitute a debt or liability of
21 the state.

22 (i) Neither the officers or board members of the
23 Infrastructure and Jobs Development Council, nor any person
24 executing the broadband middle mile infrastructure revenue bonds,

1 shall be liable personally on the bonds or be subject to any
2 personal liability or accountability by reason of the issuance
3 thereof.

4 **§31-15A-18a. Trustee for holders of broadband middle mile**
5 **infrastructure revenue bonds; contents of trust**
6 **agreement.**

7 (a) Any broadband middle mile infrastructure revenue bonds
8 issued by the Infrastructure and Jobs Development Council under
9 this article shall be secured by a trust agreement between the
10 Infrastructure and Jobs Development Council and a corporate
11 trustee, which trustee may be any trust company or banking
12 institution having the powers of a trust company within this state.

13 (b) Any trust agreement may pledge or assign the Broadband
14 Middle Mile Infrastructure Revenue Debt Service Fund. Any trust
15 agreement or any resolution providing for the issuance of such
16 bonds may contain such provisions for protecting and enforcing the
17 rights and remedies of the bondholders or noteholders as are
18 reasonable and proper and not in violation of law, including the
19 provisions contained in section seventeen-a of this article, and
20 covenants setting forth the duties of the Infrastructure and Jobs
21 Development Council in respect to the payment of the principal of
22 and interest, charges and fees on loans made to, or bond purchases
23 from, governmental agencies from the proceeds of the bonds, and the
24 custody, safeguarding and application of all moneys. Any banking

1 institution or trust company incorporated under the laws of this
2 state which may act as depository of the proceeds of bonds or of
3 the Infrastructure Debt Service Fund shall furnish such
4 indemnifying bonds or pledge securities as are required by the
5 Infrastructure and Jobs Development Council. The trust agreement
6 may set forth the rights and remedies of the bondholders and
7 noteholders and of the trustee and may restrict individual rights
8 of action by bondholders and noteholders as customarily provided in
9 trust agreements or trust indentures securing similar bonds and
10 notes. The trust agreement may contain such other provisions as the
11 water development authority deems reasonable and proper for the
12 security of the bondholders or noteholders. All expenses incurred
13 in carrying out the provisions of any such trust agreement may be
14 treated as part of the cost of the construction, renovation,
15 repair, improvement or acquisition of a project or infrastructure
16 project.

17 **§31-15A-19a. Legal remedies of broadband middle mile**
18 **infrastructure revenue bondholders or**
19 **noteholders and trustees.**

20 Any holder of broadband middle mile infrastructure revenue
21 bonds issued pursuant to this article and the trustee under any
22 trust agreement, except to the extent the rights given by this
23 article may be restricted by the applicable resolution or trust
24 agreement, may by civil action, mandamus or other proceedings

1 protect and enforce any rights granted under the laws of this state
2 or granted under this article, by the trust agreement or by the
3 resolution in the issuance of the bonds, and may enforce and compel
4 the performance of all duties required by this article, pursuant to
5 the trust agreement or resolution, to be performed by the
6 Infrastructure and Jobs Development Council or any officer thereof.

7 **§31-15A-20a. Broadband middle mile infrastructure revenue bonds**
8 **lawful investments.**

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

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

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

22 (b) If the broadband middle mile infrastructure revenue bonds
23 are then redeemable, the price of the purchase shall not exceed the
24 redemption price then applicable, plus accrued interest to the next

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

7 **§31-15A-22a. Refunding broadband middle mile revenue bonds.**

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

1 if they are called for redemption, prior to the date on which they
2 are by their terms subject to redemption. Any refunding revenue
3 bonds issued pursuant to this article shall be payable from the
4 West Virginia Broadband Middle Mile Infrastructure Revenue Debt
5 Service Fund, and shall be subject to the provisions contained in
6 section seventeen-a of this article, and shall be secured in
7 accordance with the provisions of sections seventeen-a and
8 eighteen-a of this article.

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

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

1 county, municipality or political subdivision thereof, but are
2 payable solely from revenues and funds pledged for their payment.

3 **§31-15A-24a. Broadband middle mile infrastructure revenue bonds**
4 **exempt from taxation.**

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

22 **ARTICLE 15C. Broadband Deployment.**

23 **§31-15C-1. Legislative findings and purpose.**

24 The Legislature finds as follows:

1 (1) That it is a primary goal of the Governor, the Legislature
2 and the citizens of this state, by the year 2010 to make every
3 municipality, community, and rural area in this state, border to
4 border, accessible to Internet communications through the
5 expansion, extension and general availability of broadband services
6 and technology.

7 (2) That although market-driven deployment has extended last
8 generation broadband access to most of West Virginia's cities,
9 towns, and other concentrated population areas, some areas of the
10 state, mostly rural, remain unserved.

11 (3) That based upon the same network principles that providers
12 of telephony services have faced since the inception of the
13 telecommunications industry, rising fixed costs and technological
14 limitations prohibit broadband networks from being extended into
15 rural areas where the level of demand in sparsely populated areas
16 may not justify the required costs of construction.

17 (4) That the unique topography and demography of this state
18 that hinders the provision of broadband access to rural areas of
19 the state specifically disadvantages the elderly and low-income
20 households that are the least likely to own computers or subscribe
21 to Internet service. In light of these topographical and
22 demographic challenges, any attempt to fill the gaps in West
23 Virginia's broadband availability must be organized according to
24 the levels of demand in the various unserved areas to which service

1 is sought to be extended.

2 (5) That, in particular, fair and equitable access to twenty-
3 first century technology that will maximize the functionality of
4 educational resources and educational facilities that are conducive
5 to enabling our children to be exposed to and to receive the best
6 of future teaching and learning is absolutely essential to this
7 state. A quality educational system of the twenty-first century
8 should have access to the best technology tools and processes.
9 Administrators should have, among other things, the electronic
10 resources to monitor student performance, to manage data, and to
11 communicate effectively. In the classroom, every teacher in every
12 school should be provided with online access to educational
13 technology resources and the ability to deliver content standard
14 and objectives to the students of West Virginia. Schools of the
15 twenty-first century require facilities that accommodate changing
16 technologies and twenty-first century instructional processes.

17 (6) Accordingly, it is the purpose of the Legislature to
18 provide for the development of plans, processes and procedures to
19 be employed and dedicated to extending broadband access to West
20 Virginians, and to their families, by stimulating demand for those
21 services and for encouraging and facilitating the construction of
22 the necessary infrastructure to meet their needs and demands.

23 (7) In implementing this initiative, progress by market forces
24 and industry is to be respected, and the Legislature intends that

1 governmental assistance and funding is to be used only in those
2 areas without broadband service and not to duplicate or displace
3 broadband service in areas already served or where industry
4 feasibly can be expected to offer services in the reasonably
5 foreseeable future.

6 **§31-15C-2. Definitions.**

7 (a) For the purposes of this article:

8 (1) "Broadband" or "broadband service" means any ~~service~~
9 ~~providing advanced telecommunications capability with either a~~
10 ~~downstream data rate or upstream data rate of at least 200 kilobits~~
11 ~~per second, that does not require the end-user to dial up a~~
12 ~~connection that has the capacity to always be on, and for which the~~
13 ~~transmission speeds are based on regular available bandwidth rates,~~
14 ~~not sporadic or burstable rates, with a minimum downstream-to-~~
15 ~~upstream data ratio of 10:1 for services with a downstream data~~
16 ~~rate of up to five megabits per second, and with a minimum upstream~~
17 ~~data rate of 500 kilobits per second for services with a downstream~~
18 ~~data rate of five megabits per second or greater. advanced service~~
19 ~~that provides the end-user with the capability to originate and~~
20 ~~receive high-quality voice, data, graphics or video~~
21 ~~telecommunications using any technology that provides the end-user~~
22 ~~with a minimum download rate of four megabits per second and a~~
23 ~~minimum upload rate of one megabit per second from the service~~
24 ~~provider's network to the end-user;~~

1 (2) "Broadband deployment project" means either: (a) a project
2 to provide broadband services to a type 2 and/or type 3 unserved
3 area, as defined in section six of this article; or (b) a project
4 to undertake activities to promote demand for broadband services
5 and broadband applications;

6 (3) "Broadband Deployment Council" means the Broadband
7 Deployment Council established under this article, or any successor
8 to all or any substantial part of its powers and duties;

9 (4) "Broadband infrastructure" means all facilities, hardware
10 and software and other intellectual property necessary to provide
11 broadband services in this state, including, but not limited to,
12 voice, video and data;

13 (5) "Broadband" or "broadband service" means any advanced
14 telecommunications service that provides the end-user with the
15 capability to originate and receive high-quality voice, data,
16 graphics or video telecommunications using any technology that
17 provides the end-user with a minimum download rate of four megabits
18 per second and a minimum upload rate of one megabit per second from
19 the service provider's network to the end-user;

20 (6) "Broadband transmission lines" means telecommunication
21 equipment lines, regardless of the technology or medium, including,
22 but not limited to, copper wire, fiber-optic cable or coaxial
23 cable, capable of transmitting broadband service;

24 (7) "Carrier" means any telecommunications service provider

1 that provides transport services or other wholesale services to
2 service providers and is duly certified to provide such services
3 under state and federal regulations;

4 (8) "Carrier access point" means any physical location whereby
5 a carrier interconnects, or may interconnect, to one or more other
6 carriers or service providers for the purpose of facilitating
7 transport services;

8 (9) "Community" means a city, town, incorporated or
9 unincorporated area or portions thereof located in the State of
10 West Virginia that is reasonably considered to be a populated area,
11 as determined by the council;

12 (10) "Community access point" when used in the context of
13 broadband means a primary telecommunications facility, central
14 office or serving wire center whereby a service provider aggregates
15 and distributes broadband services to end users in a community over
16 last mile facilities;

17 (11) "Code" means the Code of West Virginia, 1931, as amended;

18 (12) "Council" means the Broadband Development Council created
19 in section three of this article;

20 (13) "Download rate" means the total sustainable transmission
21 speed from the service provider's network to the end-user;

22 ~~(3)~~ (14) "Downstream data rate" means the transmission speed
23 from the service provider source to the end-user;

24 (15) "End-user" means any individual, business, agency,

1 institution, entity or household that subscribes to broadband
2 service provided by a service provider;

3 (16) "Includes" and "including", when used in this article, do
4 not exclude other things otherwise within the definition or the
5 sentence in which the term is used;

6 (17) "Last mile" means any wired or wireless facilities, or
7 portions thereof, which facilitate the extension of broadband
8 service from a community access point to the end-user, and
9 expressly excludes any middle mile facilities;

10 (18) "Middle mile" means any wired or wireless facilities, or
11 portions thereof, which facilitate transport service for service
12 providers or carriers, and provides connectivity between
13 communities, community access points, network access points and
14 carrier access points, but does not include any last mile
15 facilities or portions thereof;

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

21 (20) Network access point" means the collection of national
22 carriers that provide core interstate TCPIP backbone networks that
23 comprise or make up primary portions of the national Internet
24 backbone system and which provide direct connectivity on a national

1 scale throughout the United States in addition to direct or
2 indirect connectivity to international networks throughout the
3 world;

4 (21) "Service provider" means any telecommunications service
5 provider that provides broadband service to end-users and is
6 certified to provide services in accordance with state and federal
7 regulations;

8 (22) "Transport service" means any service that provides a
9 service provider or carrier with the ability to transport high-
10 capacity voice, data, graphics or video between communities,
11 community access points, network access points and carrier access
12 points. Transport services do not include any last mile
13 facilities;

14 (23) "Upload rate" means the total sustainable transmission
15 speed from the end-user to the service provider's network;

16 ~~(4)~~ (24) "Upstream data rate" means the transmission speed
17 from the end-user to the service provider source; and

18 ~~(5)~~ (25) "Unserved area" means a community that has no access
19 to broadband service.

20 (b) The definition of the term "broadband," the designation of
21 areas that are "unserved", and the level of service required to
22 qualify for funding of state programs and projects, are based on
23 the Federal Communications Commission's current definition of
24 broadband, which is stated in terms of the number of Kilobits

1 (Kbps) per second, either upstream or downstream. It is the
2 intention of the Legislature that the definition of broadband in
3 this article and the level of service requirements for state
4 funding be promptly updated by future Legislatures to conform with
5 any revisions enacted by Congress or any rule or regulation
6 promulgated by the Federal Communications Commission or other
7 federal agencies involved with deploying and enhancing broadband
8 services.

9 **§31-15C-3. Broadband Deployment Council established; members of**
10 **council; administrative support.**

11 (a) The Broadband Deployment Council is continued. The
12 council is a governmental instrumentality of the state. The
13 exercise by the council of the powers conferred by this article and
14 the carrying out of its purpose and duties are considered and held
15 to be, and are hereby determined to be, essential governmental
16 functions and for a public purpose. The council is created under
17 the Department of Commerce for administrative, personnel and
18 technical support services only.

19 (b) The council shall consist of ~~eleven~~ thirteen voting
20 members, designated as follows:

- 21 (1) The Governor or his or her designee;
- 22 (2) The Secretary of Commerce or his or her designee;
- 23 (3) The Secretary of Administration or his or her designee;
- 24 (4) The Director of Homeland Security and Emergency Management

1 or his or her designee; ~~and~~

2 (5) A voting member of the West Virginia Infrastructure and
3 Development Council who is not already a member of the Broadband
4 Deployment Council or his or her designee;

5 (6) The Director of the West Virginia network for educational
6 telecomputing or his or her designee;

7 ~~(5)~~ (7) Seven public members that serve at the will and
8 pleasure of the Governor and are appointed by the Governor with the
9 advice and consent of the Senate, as follows:

10 (i) One member representing employees of communications and
11 cable providers who is a member or representative of a union
12 representing communications workers;

13 (ii) One member representing telecommunications providers who
14 provide broadband services in this state;

15 (iii) One member representing cable operators who provide
16 broadband services in this state;

17 (iv) One member representing broadband equipment or device
18 manufacturers;

19 (v) One member representing higher education or secondary
20 education; and

21 (vi) Two members representing the general public who are
22 residents of the state, one of whom shall represent rural
23 communities, and who may not reside in the same congressional
24 district.

1 ~~(6)~~ (8) In addition to the ~~eleven~~ thirteen voting members of
2 the council, the President of the Senate shall name two senators
3 from the West Virginia Senate and the Speaker of the House shall
4 name two delegates from the West Virginia House of Delegates, each
5 to serve in the capacity of an ex officio, nonvoting advisory
6 member of the council.

7 (c) The Secretary of Commerce or his or her designee shall
8 chair the council and appoint one of the other council members to
9 serve as vice chair. In the absence of the Secretary of Commerce
10 or his or her designee, the vice chair shall serve as chair. The
11 council shall appoint a secretary-treasurer who need not be a
12 member of the council and who, among other tasks or functions
13 designated by the council, shall keep records of its proceedings.

14 (d) The council may appoint committees or subcommittees to
15 investigate and make recommendations to the full council. Members
16 of these committees or subcommittees need not be members of the
17 council.

18 (e) ~~Six~~ Seven voting members of the council constitutes a
19 quorum and the affirmative vote of at least the majority of those
20 members present is necessary for any action taken by vote of the
21 council.

22 (f) The council is part-time. Public members appointed by the
23 Governor may pursue and engage in another business or occupation or
24 gainful employment. Any person employed by, owning an interest in

1 or otherwise associated with a broadband deployment project,
2 project sponsor or project participant may serve as a council
3 member and is not disqualified from serving as a council member
4 because of a conflict of interest prohibited under section five,
5 article two, chapter six-b of this code and is not subject to
6 prosecution for violation of said section when the violation is
7 created solely as a result of his or her relationship with the
8 broadband deployment project, project sponsor or project
9 participant so long as the member recuses himself or herself from
10 board participation regarding the conflicting issue in the manner
11 set forth in legislative rules promulgated by the West Virginia
12 Ethics Commission.

13 (g) No member of the council who serves by virtue of his or
14 her office receives any compensation or reimbursement of expenses
15 for serving as a member. The public members and members of any
16 committees or subcommittees are entitled to be reimbursed for
17 actual and necessary expenses incurred for each day or portion
18 thereof engaged in the discharge of his or her official duties in
19 a manner consistent with the guidelines of the Travel Management
20 Office of the Department of Administration.

21 **§31-15C-4. Powers and duties of the council generally.**

22 (a) The council shall:

23 (1) Explore the potential for increased use of broadband
24 service for the purposes of education, career readiness, workforce

1 preparation, and alternative career training;

2 (2) Explore ways for encouraging state and municipal agencies
3 to expand the development and use of broadband services, including
4 audio and video streaming, voice-over Internet protocol,
5 teleconferencing, and wireless networking;

6 (3) Implement electronic instruction and distance education
7 services by July, 2014; and

8 (4) Make an ongoing study of the development broadband last
9 mile infrastructure in this state and future needs.

10 ~~(a)~~(b) In addition to the powers set forth elsewhere in this
11 article, the council is hereby granted, has and may exercise all
12 powers necessary or appropriate to carry out and effectuate the
13 purpose and intent of this article. The council shall have the
14 power and capacity to:

15 (1) Provide consultation services to project sponsors in
16 connection with the planning, acquisition, improvement,
17 construction or development of any broadband deployment project;

18 (2) Promote awareness of public facilities that have community
19 broadband access that can be used for distance education and
20 workforce development;

21 (3) Advise on deployment of e-government portals such that all
22 public bodies and political subdivisions have homepages, encourage
23 one-stop government access, and that all public entities stream
24 audio and video of all public meetings;

1 ~~(2)~~(4) To make and execute contracts, commitments and other
2 agreements necessary or convenient for the exercise of its powers,
3 including, but not limited to, the hiring of consultants to assist
4 in the mapping of the state, categorization of areas within the
5 state, and evaluation of project applications: *Provided*, That the
6 provisions of article three, chapter five-a of this code do not
7 apply to the agreements and contracts executed under the provisions
8 of this article;

9 ~~(3)~~ (5) Acquire by gift or purchase, hold or dispose of real
10 property and personal property in the exercise of its powers and
11 performance of its duties as set forth in this article;

12 ~~(4)~~ (6) Receive and dispense funds appropriated for its use by
13 the Legislature or other funding sources or solicit, apply for and
14 receive any funds, property or services from any person,
15 governmental agency or organization to carry out its statutory
16 duties; and

17 ~~(5)~~ (7) Perform any and all other activities in furtherance of
18 its purpose.

19 ~~(b)~~ (c) The council shall exercise its powers and authority to
20 bring broadband service to unserved areas. The council may not
21 duplicate or displace broadband service in areas already served or
22 where private industry feasibly can be expected to offer services
23 in the reasonably foreseeable future.

24 **§31-15C-5. Creation of the Broadband Deployment Fund.**

1 All moneys collected by the council, which may, in addition to
2 appropriations, include gifts, bequests or donations, shall be
3 deposited in a special revenue account in the State Treasury known
4 as the Broadband Deployment Fund. The fund shall be administered
5 by and under the control of the council. Expenditures from the
6 fund shall be for the purposes set forth in this article and are
7 not authorized from collections but are to be made only in
8 accordance with appropriation by the Legislature and in accordance
9 with the provisions of article two, chapter eleven-b of this code:
10 ~~Provided, That for the fiscal year ending June 30, 2009,~~
11 ~~expenditures are authorized from collections rather than pursuant~~
12 ~~to appropriations by the Legislature.~~

13 **§31-15C-14. Expiration of council.**

14 The council shall continue to exist until December 31, 2014
15 2017, unless sooner terminated, continued or reestablished pursuant
16 to an act of the Legislature.

NOTE: The purpose of this bill is to allow 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 council would be required to keep funds for water and sewer infrastructure projects separate and apart from funds for broadband middle mile infrastructure projects. For purposes of taking action on broadband middle mile infrastructure projects or matters, the council would be increased by two members, the Secretary of Administration, or his or her designee, and the director of WVNET. Additional legislative finding are made regarding broadband deployment. Two members would be added to the Broadband Deployment Council - a member of the Infrastructure and Jobs Development Council not already a member of the Broadband Development Council and the director of WVNET. The powers and

duties of the Broadband Deployment Council would be expanded. Lastly, the expiration date of the Broadband Deployment Council would be extended from December 31, 2014 to December 31, 2017.

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-10a, §31-15A-11a, §31-15A-12a, §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, they have been completely underscored.