

Senate Bill No. 635

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

[Introduced February 17, 2012; referred to the Committee on
Economic Development; and then 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

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

1 deleting obsolete language; and making technical corrections.

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

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

11 **ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT**
12 **COUNCIL.**

13 **§31-15A-2. Definitions.**

14 ~~For purposes of this article:~~

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

20 (b) Definitions. --

21 (1) "Bond" or "infrastructure revenue bond" means a revenue
22 bond, note, or other obligation issued by the water development
23 authority pursuant to this article, including bonds to refund such

1 bonds and notes to renew such notes, and notes in anticipation of
2 and payable from the proceeds of such bonds;

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

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

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

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

1 (6) "Broadband transmission lines" means equipment lines,
2 regardless of the technology or medium, including, but not limited
3 to, copper wire, fiber-optic cable or coaxial cable, capable of
4 transmitting broadband service;

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

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

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

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

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

1 powers and duties;

2 ~~(e)~~ (11) "Division Department of Environmental Protection"
3 means the ~~Division~~ Department of Environmental Protection
4 established under article one, chapter twenty-two of this code, or
5 any successor to all or any substantial part of its powers and
6 duties;

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

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

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

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

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

1 provider;

2 ~~(i)~~ (17) "Governmental agency" means any county; municipality;
3 watershed improvement district; assessment district; soil
4 conservation district; sanitary district; public service district;
5 drainage district; regional governmental authority and any other
6 state governmental agency, entity, political subdivision or public
7 corporation or agency authorized to acquire, construct or operate
8 water or wastewater facilities or other infrastructure projects;

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

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

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

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

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

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

1 article: Provided, That funds for water and sewer infrastructure
2 projects and funds for broadband middle mile infrastructure
3 projects shall be kept separate;

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

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

16 (25) "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 ~~(n)~~ (26) "Need of the project sponsors" means there is a
22 public need for a project. The council shall construe a population
23 increase evidenced by the last two decennial censuses in a county
24 in which a project is proposed, as a factor supporting the

1 conclusion that a need exists for projects in that county;

2 (27) "Network access point" when used in the context of
3 broadband means the collection of national carriers that provide
4 core interstate TCPIP backbone networks that comprise or make up
5 primary portions of the national Internet backbone system and which
6 provide direct connectivity on a national scale throughout the
7 United States in addition to direct or indirect connectivity to
8 international networks throughout the world;

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

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

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

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

24 ~~(s)~~ (32) "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 (33) "Service provider" when used in the context of broadband
8 means any service provider that provides broadband service to end-
9 users and is certified to provide services in accordance with state
10 and federal regulations;

11 ~~(t)~~ (34) "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)~~ (35) "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, Broadband Deployment Council and any other state agency,
20 division, body, authority, commission, instrumentality or entity
21 which now or in the future receives applications for the funding
22 of, and provides funding or technical assistance to, the planning,
23 acquisition, construction or improvement of a project;

24 (36) "Transport service" when used in the context of broadband

1 means any service that provides a service provider or carrier with
2 the ability to transport high-capacity voice, data, graphics or
3 video between communities, community access points, network access
4 points and carrier access points. Transport services do not
5 include any last mile broadband services or other services provided
6 directly to end-users;

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

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

23 ~~(w)~~ (39) "Water development authority" means the West Virginia
24 water development authority continued pursuant to the provisions of

1 article one, chapter twenty-two-c of this code, or any successor to
2 all or any substantial part of its powers and duties; and

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

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

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

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

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

1 purpose.

2 (b) ~~The~~ Except as provided in subsection (d) of this section,
3 the council shall consist of thirteen members, including:

4 (1) The Governor or designee;

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

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

9 (4) The Director of the Economic Development Authority or his
10 or her designee;

11 (5) The Director of the Water Development Authority or his or
12 her designee;

13 (6) The Director of the Division of Health or his or her
14 designee;

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

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

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

24 (d) Whenever the council discusses or votes upon a broadband

1 infrastructure project or a broadband matter, the council shall, in
2 addition to the members listed in subsection (b) of this section,
3 include as voting members the Secretary of the Department of
4 Administration, or his or her designee, and the Director of the
5 West Virginia Network for Educational Telecomputing, or his or her
6 designee.

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

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

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

21 ~~(g)~~ (h) The Governor or his or her designee shall serve as
22 chairman and the council shall annually appoint a vice chairperson
23 and shall appoint a secretary, who need not be a member of the
24 Council and who shall keep records of its proceedings. Seven

1 voting members of the Council shall constitute a quorum and the
2 affirmative vote of at least the majority of those members present
3 shall be necessary for any action taken by vote of the council. A
4 vacancy in the membership of the council does not impair the rights
5 of a quorum by such vote to exercise all the rights and perform all
6 the duties of the council.

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

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

23 ~~(j)~~ (k) The Water Development Authority shall provide office
24 space for the council and each governmental agency represented on

1 the council shall provide staff support for the council in the
2 manner determined appropriate by the council.

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

9 **§31-15A-7. Current and prospective planning; roads and highways;**
10 **report to Division of Highways.**

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

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

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

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

11 (c) The water development authority shall establish a
12 restricted account within the infrastructure fund to be expended
13 for the construction of water and sewage lines and broadband
14 transmission lines as may be recommended by the council in
15 accordance with this article and specifically, in accordance with
16 the plan developed under subsection (b) of this section. The
17 reserve account shall be known as the "infrastructure road
18 improvement reserve account". The council and the Division of
19 Highways may enter into agreements to share the cost of financing
20 projects approved in accordance with this section from moneys
21 available in the infrastructure road reserve account and moneys
22 available from the state road fund. Annually, the council may
23 direct the water development authority to transfer funds from the
24 infrastructure fund in an amount not to exceed ~~\$1~~ \$2 million to the

1 restricted account: *Provided*, That at no time may the balance of
2 the restricted account exceed ~~\$1~~ \$2 million.

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

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

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

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

1 **for projects.**

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

12 (1) Infrastructure revenues for broadband middle mile
13 deployment;

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

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

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

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

3 (6) All proceeds derived from the sale of bonds issued
4 pursuant to this article for broadband middle mile infrastructure
5 development.

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

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

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

14 (e) To further accomplish the purposes and intent of this
15 article and article fifteen-c of this chapter, the Infrastructure
16 and Jobs Development Council may pledge infrastructure revenues and
17 from time-to-time establish one or more restricted accounts within
18 the Infrastructure Fund For Broadband Middle Mile Development for
19 the purpose of providing funds to guarantee loans for broadband
20 middle mile infrastructure projects: *Provided,* That for any fiscal
21 year the Infrastructure and Jobs Development Council may not
22 deposit into the restricted accounts more than twenty percent of
23 the aggregate amount of revenues for broadband middle mile
24 development deposited into the Infrastructure Fund for Broadband

1 Middle Mile Development during the fiscal year. No loan guarantee
2 shall be made pursuant to this article unless recourse under the
3 loan guarantee is limited solely to amounts in the restricted
4 account or accounts. No person shall have any recourse to any
5 restricted accounts established pursuant to this subsection other
6 than those persons to whom the loan guarantee or guarantees have
7 been made.

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

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

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

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

4 (4) The agreement of the governmental agency to comply with
5 all applicable federal and state laws, and all rules and
6 regulations issued or imposed by the Infrastructure and Jobs
7 Development Council or the Broad Band Deployment Council or other
8 state, federal or local bodies regarding the acquisition,
9 construction, improvement or operation of the broadband middle mile
10 infrastructure project and granting the Infrastructure and Jobs
11 Development Council the right to appoint a receiver for the
12 broadband middle mile infrastructure project if the project sponsor
13 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 and of article fifteen-c of this chapter
18 have been met.

19 (h) The Infrastructure and Jobs Development Council shall
20 cause an annual audit to be made by an independent certified public
21 accountant of its books, accounts and records, with respect to the
22 receipts, disbursements, contracts, leases, assignments, loans,
23 grants and all other matters relating to the financial operation of
24 the Infrastructure Fund for Broadband middle Mile Development,

1 including the operating of any sub-account within that
2 infrastructure fund. The person performing such audit shall furnish
3 copies of the audit report to the Secretary of the Department of
4 Administration, where they shall be placed on file and made
5 available for inspection by the general public. The person
6 performing such audit shall also furnish copies of the audit report
7 to the Legislature's Joint Committee on Government and Finance.

8 **§31-15A-10a. Recommendations for expenditures of funds by loan,**
9 **grant or for engineering assistance.**

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

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

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

1 Jobs Development Council may consider the economic or financial
2 conditions of the area to be served.

3 (c) As a condition for receipt of a grant or loan under this
4 section:

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

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

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

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

22 (e) Notwithstanding any other provision of this article to the
23 contrary, engineering studies and requirements imposed by the
24 Infrastructure and Jobs Development Council for preliminary

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

1 (f) The Infrastructure and Jobs Development Council shall
2 report to the Governor, the Speaker of the House of Delegates and
3 the President of the Senate during each regular and interim session
4 of the Legislature, on its activities and decisions relating to
5 distribution or planned distribution of grants and loans under the
6 criteria to be developed pursuant to this article.

7 **§31-15A-11a. Reservation of funds for broadband middle mile**
8 **infrastructure projects.**

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

13 **§31-15A-12a. Additional powers of Infrastructure and Jobs**
14 **Development Council - Broadband middle mile**
15 **infrastructure projects.**

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

20 (1) Enter into agreements or other transactions with any
21 federal or state agency in connection with any broadband middle
22 mile infrastructure project;

23 (2) Receive or administer on behalf of any federal or state

1 agency grants, subsidies or other payments to be applied to the
2 costs of any broadband middle mile infrastructure project financed,
3 in whole or in part, or otherwise assisted by the Infrastructure
4 and Jobs Development Council or the Broadband Deployment Council,
5 including, but not limited to, payments to be applied to operating
6 costs and debt service or obligations of any project sponsor;

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

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

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

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

21 Upon the termination or dissolution of the Infrastructure and
22 Jobs Development Council, all rights and properties of the council
23 with respect to the Infrastructure Fund for Broadband Middle Mile
24 Development shall pass to and be vested in the state, subject to

1 the rights of lienholders and other creditors.

2 **§31-15A-15a. Broadband middle mile projects not to be considered**
3 **public improvements; competitive bid requirements.**

4 (a) No broadband middle mile infrastructure project acquired,
5 constructed or maintained or financed, in whole or in part, by the
6 Infrastructure and Jobs Development Council shall be considered to
7 be a "public improvement" within the meaning of the provisions of
8 article five-a, chapter twenty-one of this code for purposes of the
9 financing of the project.

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

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

22 (c) This section does not:

23 (1) Apply to work performed on construction or repair projects
24 not exceeding a total cost of fifty thousand dollars by regular

1 full-time employees of the state or its subdivisions: *Provided,*
2 That no more than fifty thousand dollars shall be expended on an
3 individual project in a single location in a twelve-month period;

4 (2) Prevent students enrolled in vocational educational
5 schools from being used in the construction or repair projects when
6 such use is a part of the students' training program;

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

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

21 (d) The provisions of subsection (b) of this section do not
22 apply to privately owned broadband middle mile infrastructure
23 projects.

24 **§31-15A-17c. Infrastructure and Jobs Development Council empowered**

1 **to issue broadband middle mile infrastructure**
2 **revenue bonds and refunding bonds; creation of**
3 **Broadband Middle Mile Infrastructure Revenue Debt**
4 **Service Fund; funding of Broadband Middle Mile**
5 **Infrastructure Revenue Debt Service Fund;**
6 **requirements and manner of such issuance.**

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

1 (b) The proceeds of broadband middle mile infrastructure
2 revenue bonds shall be used solely for the purpose of making loans
3 and loan guarantees and other forms of financial assistance to
4 sponsors of one or more broadband middle mile infrastructure
5 projects, and shall be deposited in one or more special accounts
6 with the trustee under the trust agreement securing such bonds and
7 disbursed from time to time for broadband middle mile
8 infrastructure projects in accordance with this article: *Provided,*
9 That notwithstanding any provision of this code to the contrary,
10 twenty percent of the funds deposited in the special account shall
11 be dedicated for the purpose of providing funding for costs of
12 broadband middle mile infrastructure projects as defined in section
13 two of this article.

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

18 (d) There is hereby created in the Infrastructure and Jobs
19 Development Council a special fund which shall be designated and
20 known as the "West Virginia Broadband Middle Mile Infrastructure
21 Revenue Debt Service Fund," into which shall be transferred solely
22 from the loan repayments deposited in the Infrastructure Fund for
23 Broadband Middle Mile Development the amounts certified by the
24 council as necessary to pay the principal, premium, if any, and

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

20 (e) Except as may otherwise be expressly provided in this
21 article or by resolution of the Infrastructure and Jobs Development
22 Council, every issue of broadband middle mile infrastructure
23 revenue bonds shall be special obligations of the Infrastructure
24 and Jobs Development Council payable solely from amounts in the

1 West Virginia Broadband Middle Mile Infrastructure Revenue Debt
2 Service Fund, and the reserves created for this purpose by the
3 council, without preference or priority among the bonds regardless
4 of when issued, subject only to any agreements with the holders of
5 any bonds to the contrary. All such bonds are hereby declared to be
6 negotiable instruments.

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

1 chairman of the Infrastructure and Jobs Development Council, either
2 or both of whom may use a facsimile signature. The official seal of
3 the Infrastructure and Jobs Development Council or a facsimile
4 thereof shall be affixed thereto or printed thereon and attested by
5 manual or facsimile signature by the secretary-treasurer of the
6 Infrastructure and Jobs Development Council. If any officer whose
7 signature, or a facsimile of whose signature appears on any
8 infrastructure revenue bond ceases to be such officer before
9 delivery of such bond, such signature or facsimile is nevertheless
10 sufficient for all purposes to the same extent as if he or she had
11 remained in office until such delivery, and if the seal of the
12 Infrastructure and Jobs Development Council has been changed after
13 a facsimile has been imprinted on such bond, the facsimile will
14 continue to be sufficient for all purposes.

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

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

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

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

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

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

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

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

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

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

1 Any holder of broadband middle mile infrastructure revenue
2 bonds issued pursuant to this article and the trustee under any
3 trust agreement, except to the extent the rights given by this
4 article may be restricted by the applicable resolution or trust
5 agreement, may by civil action, mandamus or other proceedings
6 protect and enforce any rights granted under the laws of this state
7 or granted under this article, by the trust agreement or by the
8 resolution in the issuance of the bonds, and may enforce and compel
9 the performance of all duties required by this article, pursuant to
10 the trust agreement or resolution, to be performed by the
11 Infrastructure and Jobs Development Council or any officer thereof.

12 **§31-15A-20a. Broadband middle mile infrastructure revenue bonds**
13 **lawful investments.**

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

20 **§31-15A-21a. Purchase and cancellation of broadband middle mile**
21 **infrastructure revenue bonds.**

22 (a) The Infrastructure and Jobs Development Council, subject
23 to such agreements with noteholders or bondholders as may then

1 exist, shall have the power, from any funds available therefor, to
2 purchase or redeem broadband middle mile infrastructure revenue
3 bonds of the council.

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

13 **§31-15A-22a. Refunding broadband middle mile revenue bonds.**

14 Any broadband middle mile infrastructure revenue bonds issued
15 pursuant to the provisions of this article and at any time
16 outstanding may at any time and from time to time be refunded by
17 the Infrastructure and Jobs Development Council by the issuance of
18 its refunding revenue bonds in an amount it deems necessary to
19 refund the principal of the bonds to be refunded, together with any
20 unpaid interest thereon, to provide additional funds for the
21 Infrastructure and Jobs Development Council to, in its discretion,
22 issue additional revenue bonds, and to pay any premiums and
23 commissions necessary to be paid in connection therewith. Any
24 refunding may be effected whether the broadband middle mile

1 infrastructure revenue bonds to be refunded shall have then matured
2 or shall thereafter mature: *Provided*, That the holders of any
3 broadband middle mile infrastructure revenue bonds so to be
4 refunded shall not be compelled without their consent to surrender
5 their broadband middle mile infrastructure revenue bonds for
6 payment or exchange prior to the date on which they are payable or,
7 if they are called for redemption, prior to the date on which they
8 are by their terms subject to redemption. Any refunding revenue
9 bonds issued pursuant to this article shall be payable from the
10 West Virginia Broadband Middle Mile Infrastructure Revenue Debt
11 Service Fund, and shall be subject to the provisions contained in
12 section seventeen-a of this article, and shall be secured in
13 accordance with the provisions of sections seventeen-a and
14 eighteen-a of this article.

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

18 Broadband middle mile infrastructure revenue bonds issued
19 pursuant to the provisions of this article shall not constitute a
20 debt or a pledge of the faith and credit or taxing power of this
21 state or of any county, municipality or any other political
22 subdivision of this state. The holders or owners thereof shall have
23 no right to have taxes levied by the Legislature or the taxing

1 authority of any county, municipality or any other political
2 subdivision of this state for the payment of the principal thereof
3 or interest thereon. The broadband middle mile revenue bonds shall
4 be payable solely from the revenues and funds pledged for their
5 payment as authorized by this article. All such bonds shall contain
6 on the face thereof a statement to the effect that the bonds, as to
7 both principal and interest, are not debts of the state or any
8 county, municipality or political subdivision thereof, but are
9 payable solely from revenues and funds pledged for their payment.

10 **§31-15A-24a. Broadband middle mile infrastructure revenue bonds**
11 **exempt from taxation.**

12 The exercise of the powers granted to the Infrastructure and
13 Jobs Development Council authority by this article will be in all
14 respects for the benefit of the people of the state, for the
15 improvement of their health, safety, convenience and welfare and
16 for the enhancement of their residential, agricultural,
17 recreational, economic, commercial and industrial opportunities and
18 is for a public purpose. As the construction, acquisition, repair
19 or renovation of broadband middle mile infrastructure projects will
20 constitute the performance of essential governmental functions, the
21 Infrastructure and Jobs Development Council shall not be required
22 to pay any taxes or assessments upon any project or upon any
23 property acquired or used by the Infrastructure and Jobs
24 Development Council or upon the income therefrom. The broadband

1 middle mile infrastructure revenue bonds and all interest and
2 income thereon shall be exempt from all taxation by this state, or
3 any county, municipality, political subdivision or agency thereof,
4 except estate taxes.

5 **ARTICLE 15C. Broadband Deployment.**

6 **§31-15C-1. Legislative findings and purpose.**

7 The Legislature finds as follows:

8 (1) That it is a primary goal of the Governor, the Legislature
9 and the citizens of this state, by the year 2010 to make every
10 municipality, community, and rural area in this state, border to
11 border, accessible to Internet communications through the
12 expansion, extension and general availability of broadband services
13 and technology.

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

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

24 (4) That the unique topography and demography of this state

1 that hinders the provision of broadband access to rural areas of
2 the state specifically disadvantages the elderly and low-income
3 households that are the least likely to own computers or subscribe
4 to Internet service. In light of these topographical and
5 demographic challenges, any attempt to fill the gaps in West
6 Virginia's broadband availability must be organized according to
7 the levels of demand in the various unserved areas to which service
8 is sought to be extended.

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

24 (6) Accordingly, it is the purpose of the Legislature to

1 provide for the development of plans, processes and procedures to
2 be employed and dedicated to extending broadband access to West
3 Virginians, and to their families, by stimulating demand for those
4 services and for encouraging and facilitating the construction of
5 the necessary infrastructure to meet their needs and demands.

6 (7) In implementing this initiative, progress by market forces
7 and industry is to be respected, and the Legislature intends that
8 governmental assistance and funding is to be used only in those
9 areas without broadband service and not to duplicate or displace
10 broadband service in areas already served or where industry
11 feasibly can be expected to offer services in the reasonably
12 foreseeable future.

13 **§31-15C-2. Definitions.**

14 (a) For the purposes of this article:

15 (1) "Broadband" or "broadband service" means any ~~service~~
16 ~~providing advanced telecommunications capability with either a~~
17 ~~downstream data rate or upstream data rate of at least 200 kilobits~~
18 ~~per second, that does not require the end-user to dial up a~~
19 ~~connection that has the capacity to always be on, and for which the~~
20 ~~transmission speeds are based on regular available bandwidth rates,~~
21 ~~not sporadic or burstable rates, with a minimum downstream-to-~~
22 ~~upstream data ratio of 10:1 for services with a downstream data~~
23 ~~rate of up to five megabits per second, and with a minimum upstream~~
24 ~~data rate of 500 kilobits per second for services with a downstream~~

1 ~~data rate of five megabits per second or greater.~~ advanced service
2 that provides the end-user with the capability to originate and
3 receive high-quality voice, data, graphics or video
4 telecommunications using any technology that provides the end-user
5 with a minimum download rate of four megabits per second and a
6 minimum upload rate of one megabit per second from the service
7 provider's network to the end-user;

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

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

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

20 (5) "Broadband" or "broadband service" means any advanced
21 telecommunications service that provides the end-user with the
22 capability to originate and receive high-quality voice, data,
23 graphics or video telecommunications using any technology that
24 provides the end-user with a minimum download rate of four megabits

1 per second and a minimum upload rate of one megabit per second from
2 the service provider's network to the end-user;

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

7 (7) "Carrier" means any telecommunications service provider
8 that provides transport services or other wholesale services to
9 service providers and is duly certified to provide such services
10 under state and federal regulations;

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

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

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

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

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

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

5 ~~(3)~~ (14) "Downstream data rate" means the transmission speed
6 from the service provider source to the end-user;

7 (15) "End-user" means any individual, business, agency,
8 institution, entity or household that subscribes to broadband
9 service provided by a service provider;

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

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

17 (18) "Middle mile" means any wired or wireless facilities, or
18 portions thereof, which facilitate transport service for service
19 providers or carriers, and provides connectivity between
20 communities, community access points, network access points and
21 carrier access points, but does not include any last mile
22 facilities or portions thereof;

23 (19) "Middle mile fiber threshold" means a fiber optic cable
24 containing no less than seventy-two individual strands of fiber

1 with minimum performance characteristics consistent with nonzero
2 dispersion shifted single mode optical fiber cable as defined by
3 the International Telecommunication Union standard ITU-T G.655;

4 (20) Network access point" means the collection of national
5 carriers that provide core interstate TCPIP backbone networks that
6 comprise or make up primary portions of the national Internet
7 backbone system and which provide direct connectivity on a national
8 scale throughout the United States in addition to direct or
9 indirect connectivity to international networks throughout the
10 world;

11 (21) "Service provider" means any telecommunications service
12 provider that provides broadband service to end-users and is
13 certified to provide services in accordance with state and federal
14 regulations;

15 (22) "Transport service" means any service that provides a
16 service provider or carrier with the ability to transport high-
17 capacity voice, data, graphics or video between communities,
18 community access points, network access points and carrier access
19 points. Transport services do not include any last mile
20 facilities;

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

23 ~~(4)~~ (24) "Upstream data rate" means the transmission speed
24 from the end-user to the service provider source; and

1 ~~(5)~~ (25) "Unserved area" means a community that has no access
2 to broadband service.

3 (b) The definition of the term "broadband," the designation of
4 areas that are "unserved", and the level of service required to
5 qualify for funding of state programs and projects, are based on
6 the Federal Communications Commission's current definition of
7 broadband, which is stated in terms of the number of Kilobits
8 (Kbps) per second, either upstream or downstream. It is the
9 intention of the Legislature that the definition of broadband in
10 this article and the level of service requirements for state
11 funding be promptly updated by future Legislatures to conform with
12 any revisions enacted by Congress or any rule or regulation
13 promulgated by the Federal Communications Commission or other
14 federal agencies involved with deploying and enhancing broadband
15 services.

16 **§31-15C-3. Broadband Deployment Council established; members of**
17 **council; administrative support.**

18 (a) The Broadband Deployment Council is continued. The
19 council is a governmental instrumentality of the state. The
20 exercise by the council of the powers conferred by this article and
21 the carrying out of its purpose and duties are considered and held
22 to be, and are hereby determined to be, essential governmental
23 functions and for a public purpose. The council is created under
24 the Department of Commerce for administrative, personnel and

1 technical support services only.

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

4 (1) The Governor or his or her designee;

5 (2) The Secretary of Commerce or his or her designee;

6 (3) The Secretary of Administration or his or her designee;

7 (4) The Director of Homeland Security and Emergency Management
8 or his or her designee; ~~and~~

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

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

14 ~~(5)~~ (7) Seven public members that serve at the will and
15 pleasure of the Governor and are appointed by the Governor with the
16 advice and consent of the Senate, as follows:

17 (i) One member representing employees of communications and
18 cable providers who is a member or representative of a union
19 representing communications workers;

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

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

24 (iv) One member representing broadband equipment or device

1 manufacturers;

2 (v) One member representing higher education or secondary
3 education; and

4 (vi) Two members representing the general public who are
5 residents of the state, one of whom shall represent rural
6 communities, and who may not reside in the same congressional
7 district.

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

14 (c) The Secretary of Commerce or his or her designee shall
15 chair the council and appoint one of the other council members to
16 serve as vice chair. In the absence of the Secretary of Commerce
17 or his or her designee, the vice chair shall serve as chair. The
18 council shall appoint a secretary-treasurer who need not be a
19 member of the council and who, among other tasks or functions
20 designated by the council, shall keep records of its proceedings.

21 (d) The council may appoint committees or subcommittees to
22 investigate and make recommendations to the full council. Members
23 of these committees or subcommittees need not be members of the
24 council.

1 (e) ~~Six~~ Seven voting members of the council constitutes a
2 quorum and the affirmative vote of at least the majority of those
3 members present is necessary for any action taken by vote of the
4 council.

5 (f) The council is part-time. Public members appointed by the
6 Governor may pursue and engage in another business or occupation or
7 gainful employment. Any person employed by, owning an interest in
8 or otherwise associated with a broadband deployment project,
9 project sponsor or project participant may serve as a council
10 member and is not disqualified from serving as a council member
11 because of a conflict of interest prohibited under section five,
12 article two, chapter six-b of this code and is not subject to
13 prosecution for violation of said section when the violation is
14 created solely as a result of his or her relationship with the
15 broadband deployment project, project sponsor or project
16 participant so long as the member recuses himself or herself from
17 board participation regarding the conflicting issue in the manner
18 set forth in legislative rules promulgated by the West Virginia
19 Ethics Commission.

20 (g) No member of the council who serves by virtue of his or
21 her office receives any compensation or reimbursement of expenses
22 for serving as a member. The public members and members of any
23 committees or subcommittees are entitled to be reimbursed for
24 actual and necessary expenses incurred for each day or portion

1 thereof engaged in the discharge of his or her official duties in
2 a manner consistent with the guidelines of the Travel Management
3 Office of the Department of Administration.

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

5 (a) The council shall:

6 (1) Explore the potential for increased use of broadband
7 service for the purposes of education, career readiness, workforce
8 preparation, and alternative career training;

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

13 (3) Implement electronic instruction and distance education
14 services by July, 2014; and

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

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

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

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

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

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

16 ~~(3)~~ (5) Acquire by gift or purchase, hold or dispose of real
17 property and personal property in the exercise of its powers and
18 performance of its duties as set forth in this article;

19 ~~(4)~~ (6) Receive and dispense funds appropriated for its use by
20 the Legislature or other funding sources or solicit, apply for and
21 receive any funds, property or services from any person,
22 governmental agency or organization to carry out its statutory
23 duties; and

24 ~~(5)~~ (7) Perform any and all other activities in furtherance of

1 its purpose.

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

7 **§31-15C-5. Creation of the Broadband Deployment Fund.**

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

20 **§31-15C-14. Expiration of council.**

21 The council shall continue to exist until December 31, ~~2014~~
22 2017, unless sooner terminated, continued or reestablished pursuant
23 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, strike-throughs and underscoring have been omitted.