

COMMITTEE SUBSTITUTE

FOR

H. B. 4613

(BY DELEGATES BOGGS, T. CAMPBELL,
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(Originating in the Committee on Finance)
[February 24, 2012]

A BILL to amend and reenact §31-15A-2 of the Code of West Virginia, 1931, as amended; and to further amend said code by adding thereto sixteen new sections, designated §31-15A-9a, §31-15A-9b, § 31-15A-10a, §31-15A-11a, §31-15A-12a, §31-15A-13a, §31-15A-14a, §31-15A-15a, §31-15A-17c, §31-15A-18a, §31-15A-19a, §31-15A-20a, §31-15A-21a, §31-15A-22a, §31-15A-23a and §31-15A-24a, all relating generally to development of broadband middle mile infrastructure in this state; defining terms in West Virginia Infrastructure and Jobs Development Act; creating separate infrastructure fund for broadband middle mile infrastructure projects and providing for

deposits and expenditures from the fund; giving additional powers to Infrastructure and Jobs Development Council and Water Development Authority regarding broadband middle mile infrastructure projects; creating advisory committee to advise Infrastructure and Jobs Development Council on disposition of applications for grants and loans; providing process for review of applications by Development Office; requiring notice of public hearing on applications for grants and loans, providing for hearings and public comment period; creating Infrastructure Fund for Broadband Middle Mile Infrastructure Revenue Debt Service Fund; providing for disposition of funds on termination or dissolution of authority; providing that broadband middle mile projects funded by authority are public improvements under specified circumstances; authorizing authority to issue broadband middle mile revenue bonds; creating Broadband Middle Mile Infrastructure Debt Service Fund; providing for funding of debt service fund; specifying requirements for and manner of issuance of bonds; providing for contents of trust agreement and trustee for bonds; specifying legal remedies of bondholders, noteholders and trustee; making broadband middle mile infrastructure

revenue bonds lawful investments; providing for purchase, cancellation and refunding of bonds; specifying that bonds are not debt of state or any political subdivision thereof and are exempt from taxation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-2. Definitions.

- 1 For purposes of this article:
- 2 (a) General. -- When used in this article, words defined
- 3 in subsection (b) of this section have the meaning ascribed to
- 4 them in this section, except in those instances where a
- 5 different meaning is distinctly expressed or the context in

6 which the word is used clearly that a different meaning is
7 intended.

8 (b) Definitions. --

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

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

19 (3) “Broadband infrastructure project” means any middle
20 mile project that deploys equipment, fiber optic cables,
21 facilities, or other technologies necessary to provide
22 broadband transport services: *Provided, That nothing in this*
23 article may be construed to provide the Infrastructure and
24 Jobs Development Council jurisdiction or oversight over

25 broadband infrastructure projects for the sole use of
26 homeland security agencies in this state.

27 (4) “Broadband infrastructure revenue bond” means a
28 revenue bond, note, or other obligation issued by the West
29 Virginia Infrastructure and Jobs Development Council
30 pursuant to this article to fund one or more broadband middle
31 mile infrastructure projects, including bonds to refund such
32 bonds and notes to renew such notes, and notes in
33 anticipation of and payable from the proceeds of such bonds;

34 (5) “Broadband revenue” means all amounts deposited into
35 the Infrastructure Fund for Broadband Middle Mile
36 Development; any amounts received directly or indirectly from
37 any source for the use of all or any part of any broadband project
38 completed pursuant to this article and any other amounts
39 received by the Water Development Authority for the purpose
40 of broadband middle mile development, including the
41 repayments of any loans made for broadband projects.

42 (b) (6) “Code” means the Code of West Virginia, 1931,
43 as amended;

44 (c) (7) “Cost” means, as applied to any project to be
45 financed, in whole or in part, with infrastructure revenues or
46 funds otherwise provided pursuant to this article, the cost of
47 planning, acquisition, improvement and construction of the
48 project; the cost of preliminary design and analysis, surveys,
49 borings; the cost of environmental, financial, market and
50 engineering feasibility studies, assessments, applications,
51 approvals, submissions or clearances; the cost of preparation
52 of plans and specifications and other engineering services;
53 the cost of acquisition of all land, rights-of-way, property
54 rights, easements, franchise rights and any other interests
55 required for the acquisition, repair, improvement or
56 construction of the project; the cost of demolishing or
57 removing any buildings or structures on land so acquired,
58 including the cost of acquiring any lands to which buildings
59 or structures may be moved; the cost of excavation, grading,
60 shaping or treatment of earth, demolishing or removing any
61 buildings or structures; the cost of constructing any buildings
62 or other improvements; the cost of all pumps, tanks, vehicles,

63 apparatus and other machinery, furnishings and equipment;
64 loan or origination fees and all finance charges and interest
65 incurred prior to and during the construction and for no more
66 than six months after completion of construction; the cost of
67 all legal services and expenses; the cost of all plans,
68 specifications, surveys and estimates of cost; all working
69 capital and other expenses necessary or incident to
70 determining the feasibility or practicability of acquiring,
71 repairing, improving or constructing any project; the cost of
72 placing any project in operation; and all other costs and
73 expenses of any kind or nature incurred or to be incurred by
74 the project sponsor developing the project that are reasonable
75 and necessary for carrying out all works and undertakings
76 necessary or incident to the accomplishment of any project:
77 *Provided*, That costs shall not include any amounts related to
78 the ongoing operations of the owner or operator, depreciation
79 thereof or any other cost which the council, ~~or~~ the Water
80 Development Authority has not determined to be consistent
81 with the purposes and objectives of this article;

82 ~~(d)~~ (8) “Council” means the West Virginia infrastructure
83 and jobs development council created in section three of this
84 article;

85 (9) “Department of Administration” means the
86 Department of Administration established under article one,
87 chapter five-a of this code, or any successor to all or any
88 substantial part of its powers and duties;

89 ~~(e)~~ (10) “~~Division~~ Department of Environmental
90 Protection” means the ~~Division~~ Department of Environmental
91 Protection established under article one, chapter twenty-two
92 of this code, or any successor to all or any substantial part of
93 its powers and duties;

94 ~~(f)~~ (11) “Division of Health” means the Division of Health
95 created in article one, chapter sixteen of this code, or any
96 successor to all or any substantial part of its powers and duties;

97 ~~(g)~~ (12) “Economic development authority” means the
98 economic development authority established under article
99 fifteen, chapter thirty-one of the code, or any successor to all
100 or any substantial part of its powers and duties;

101 (h) (13) “Emergency project” means a project which the
102 council has determined: (1) Is essential to the immediate
103 economic development of an area of the state; and (2) will
104 not likely be developed in that area if construction of the
105 project is not commenced immediately;

106 (i) (14) “Governmental agency” means any county;
107 municipality; watershed improvement district; assessment
108 district; soil conservation district; sanitary district; public service
109 district; drainage district; regional governmental authority and
110 any other state governmental agency, entity, political subdivision
111 or public corporation or agency authorized to acquire, construct
112 or operate water or wastewater facilities or broadband middle
113 mile infrastructure projects;

114 (j) (15) “Housing Development Fund” means the West
115 Virginia Housing Development Fund established under
116 article eighteen of this chapter, or any successor to all or any
117 substantial part of its powers and duties;

118 (16) “Includes” and “including”, when used in this
119 article, do not exclude other things otherwise within the
120 definition or the sentence in which the term is used;

121 ~~(k)~~ (17) “Infrastructure Fund” means the West Virginia
122 Infrastructure Fund created and established in section nine of
123 this article;

124 ~~(k)~~ (18) “Infrastructure project” means a project in the
125 state which the council determines is likely to foster and
126 enhance economic growth and development in the area of the
127 state in which the project is developed, for commercial,
128 industrial, community improvement or preservation or other
129 proper purposes, including, without limitation, tourism and
130 recreational housing, land, air or water transportation
131 facilities and bridges, industrial or commercial projects and
132 facilities, mail order, warehouses, wholesale and retail sales
133 facilities, and other real and personal properties, including
134 facilities owned or leased by this state or any other project
135 sponsor, and includes, without limitation: (1) The process of
136 acquiring, holding, operating, planning, financing,
137 demolition, construction, improving, expanding, renovation,
138 leasing or otherwise disposing of the project or any part
139 thereof or interest therein; and (2) preparing land for

140 construction and making, installing or constructing
141 improvements on the land, including water or wastewater
142 facilities or any part thereof, steam, gas, telephone and
143 telecommunications and electric lines and installations, roads,
144 bridges, railroad spurs, buildings, docking and shipping
145 facilities, curbs, gutters, sidewalks, and drainage and flood
146 control facilities, whether on or off the site;

147 ~~(m)~~ (19) “Infrastructure revenue” means all amounts
148 appropriated by the Legislature; all amounts deposited into
149 the infrastructure fund; any amounts received, directly or
150 indirectly, from any source for the use of all or any part of
151 any project completed pursuant to this article; and any other
152 amounts received by the State Treasurer, council, or the
153 Water Development Authority for the purposes of this article:
154 Provided, That funds for water and sewer infrastructure
155 projects and funds for broadband middle mile infrastructure
156 projects shall be kept separate;

157 (20) “Middle mile” when used in the context of
158 broadband means any wired or wireless facilities, or portions

159 thereof, which facilitate transport service for service
160 providers or carriers, and provides connectivity between
161 communities, community access points, network access
162 points and carrier access points, but does not include any last
163 mile facilities (or portions thereof) that provide connectivity
164 to end-users;

165 (21) “Middle mile fiber threshold” means a fiber optic
166 cable containing no less than seventy-two individual strands
167 of fiber with minimum performance characteristics consistent
168 with nonzero dispersion shifted single mode optical fiber
169 cable as defined by the International Telecommunication
170 Union standard ITU-T G.655;

171 (n) (22) “Need of the project sponsors” means there is a
172 public need for a project. The council shall for water and
173 sewer projects construe a population increase evidenced by
174 the last two decennial censuses in a county in which a project
175 is proposed, as a factor supporting the conclusion that a need
176 exists for projects in that county;

177 (23) “Network access point” when used in the context of
178 broadband means a direct connection to carriers that provide
179 core interstate TCPIP backbone networks that comprise or
180 make up primary portions of the national Internet backbone
181 system and which provide direct connectivity on a national
182 scale throughout the United States in addition to direct or
183 indirect connectivity to international networks throughout the
184 world;

185 (24) “Open access” when used in the context of
186 broadband means the equitable and nondiscriminatory use of
187 the new lines by all broadband service providers including
188 the grant of indefeasible rights to use particular strands if
189 such rights can be granted on an equitable and
190 non-discriminatory manner, subject to such appropriate
191 limitations and restrictions as the council may determine.

192 (25) “Project” means any wastewater facility, water
193 facility project or any combination thereof, constructed or
194 operated or to be constructed or operated by a project
195 sponsor;

196 ~~(p)~~ (26) “Project sponsor” means any governmental
197 agency or person, or any combination thereof, including, but
198 not limited to, any public utility which intends to plan,
199 acquire, construct, improve or otherwise develop a project;

200 ~~(q)~~ (27) “Public Service Commission” means the Public
201 Service Commission of West Virginia created and
202 established under section three, article one, chapter twenty-
203 four of this code, or any successor to all or any substantial
204 part of its powers and duties;

205 ~~(r)~~ (28) “Person” means any individual, corporation,
206 partnership, association, limited liability company or any
207 other form of business organization;

208 ~~(s)~~ (29) “Public utility” means any person or persons, or
209 association of persons, however associated, whether
210 incorporated or not, including, without limitation, any
211 governmental agency, operating a wastewater facility or
212 water facility as a public service, which is regulated by the
213 Public Service Commission as a public utility under chapter
214 twenty-four of this code or which is required to file its tariff
215 with the Public Service Commission;

216 (30) “Service provider” when used in the context of
217 broadband means any service provider that provides
218 broadband service and is certified to provide services in
219 accordance with state and federal regulations;

220 (t) (31) “State Development Office” means the West
221 Virginia Development Office established under article two,
222 chapter five-b of this code, or any successor to all or any
223 substantial part of its powers and duties;

224 (tt) (32) “State infrastructure agency” means the division
225 of health, ~~Division~~ Department of Environmental Protection,
226 Housing Development Fund, Public Service Commission,
227 State Development Office, Water Development Authority,
228 Economic Development Authority, and any other state
229 agency, division, body, authority, commission,
230 instrumentality or entity which now or in the future receives
231 applications for the funding of, and provides funding or
232 technical assistance to, the planning, acquisition, construction
233 or improvement of a project;

234 (33) “Transport service” when used in the context of
235 broadband means any service that provides a service provider
236 or carrier with the ability to transport high-capacity voice,
237 data, graphics or video between communities, community
238 access points, network access points and carrier access
239 points. Transport services do not include any last mile
240 broadband services or other services provided directly to end-
241 users;

242 (v) (34) “Wastewater facility” means all facilities, land
243 and equipment used for or in connection with treating,
244 neutralizing, disposing of, stabilizing, cooling, segregating or
245 holding wastewater, including, without limitation, facilities
246 for the treatment and disposal of sewage, industrial wastes or
247 other wastes, wastewater, and the residue thereof; facilities
248 for the temporary or permanent impoundment of wastewater,
249 both surface and underground; and sanitary sewers or other
250 collection systems, whether on the surface or underground,
251 designed to transport wastewater together with the equipment
252 and furnishings therefor or thereof and their appurtenances

253 and systems, whether on the surface or underground
254 including force mains and pumping facilities therefor;

255 ~~(w)~~ (35) “Water development authority” means the West
256 Virginia water development authority continued pursuant to
257 the provisions of article one, chapter twenty-two-c of this
258 code, or any successor to all or any substantial part of its
259 powers and duties; ~~and~~

260 ~~(x)~~ (36) “Water facility” means all facilities, land and
261 equipment used for or in connection with the collection
262 and/or storage of water, both surface and underground,
263 transportation of water, storage of water, treatment of water
264 and distribution of water all for the purpose of providing
265 potable, sanitary water suitable for human consumption and
266 use; and

267 (37) “West Virginia Network for Educational
268 Telecomputing” means the network managed by the vice
269 chancellor for administration of the Higher Education Policy
270 Commission as provided in section two, article four, chapter
271 eighteen-b of this code.

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

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

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

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

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

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

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

29 (6) All proceeds derived from the sale of bonds issued
30 pursuant to this article for broadband middle mile
31 infrastructure development.

32 (b) Any money collected pursuant to this section shall be
33 paid into the West Virginia Infrastructure Fund for

34 Broadband Middle Mile Development by the state agent or
35 entity charged with the collection of the same, credited to that
36 fund, and used only for purposes set forth in this article for
37 broadband middle mile development.

38 (c) Amounts in the Infrastructure Fund for Broadband
39 Middle Mile Development shall be segregated and
40 administered by the Water Development Authority separate
41 and apart from its other assets and programs. Amounts in the
42 Infrastructure Fund for Broadband Middle Mile Development
43 may not be transferred to any other fund or account or used,
44 other than indirectly, for the purposes of any other program
45 of the Water Development Authority, except that the council
46 may use funds in the Infrastructure Fund for Broadband
47 Middle Mile Development to reimburse itself for any
48 administrative costs incurred by it and approved by the
49 Infrastructure and Jobs Development Council in connection
50 with any loan, loan guarantee, grant or other funding
51 assistance made by the Water Development Authority
52 pursuant to this article.

53 (d) Notwithstanding any provision of this code to the
54 contrary, amounts in the Infrastructure Fund for Broadband
55 Middle Mile Development shall be deposited by the Water
56 Development Authority in one or more banking institutions:
57 Provided, That any moneys so deposited shall be deposited
58 in a banking institution located in this state. The banking
59 institution shall be selected by the Water Development
60 Authority by competitive bid. Pending the disbursement of
61 any money from the Infrastructure Fund for Broadband
62 Middle Mile Development as authorized under this section,
63 the Water Development Authority shall invest and reinvest
64 the moneys subject to the limitations set forth in section
65 twelve, article six, chapter twelve of this code.

66 (e) To further accomplish the purposes and intent of this
67 article, the Water Development Authority may pledge
68 infrastructure revenues and from time-to-time establish one
69 or more restricted accounts within the Infrastructure Fund for
70 Broadband Middle Mile Development for the purpose of
71 providing funds to guarantee loans for broadband middle

72 mile infrastructure projects: *Provided*, That for any fiscal
73 year the Water Development Authority may not deposit into
74 the restricted accounts more than twenty percent of the
75 aggregate amount of revenues for broadband middle mile
76 development deposited into the Infrastructure Fund for
77 Broadband Middle Mile Development during the fiscal year.
78 No loan guarantee shall be made pursuant to this article
79 unless recourse under the loan guarantee is limited solely to
80 amounts in the restricted account or accounts. No person
81 shall have any recourse to any restricted accounts established
82 pursuant to this subsection other than those persons to whom
83 the loan guarantee or guarantees have been made.

84 (f) Each loan, loan guarantee, grant or other assistance
85 made or provided by the Water Development Authority at the
86 direction of the Infrastructure and Jobs Development Council
87 shall be evidenced by a loan, loan guarantee, grant or
88 assistance agreement between the Water Development
89 Authority and the project sponsor to which the loan, loan
90 guarantee, grant or assistance shall be made or provided,

91 which agreement shall include, without limitation and to the
92 extent applicable, the following provisions:

93 (1) The estimated cost of the broadband middle mile
94 infrastructure project, the amount of the loan, loan guarantee
95 or grant or the nature of the assistance, and in the case of a
96 loan or loan guarantee, the terms of repayment and the
97 security therefor, if any;

98 (2) The specific purposes for which the loan or grant
99 proceed shall be expended or the benefits to accrue from the
100 loan guarantee or other assistance, and the conditions and
101 procedure for disbursing loan or grant proceeds;

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

105 (4) The agreement of the governmental agency to comply
106 with all applicable federal and state laws, and all rules and
107 regulations issued or imposed by the Infrastructure and Jobs
108 Development Council or other state, federal or local bodies
109 regarding the acquisition, construction, improvement or

110 operation of the broadband middle mile infrastructure project
111 and granting the Water Development Authority the right to
112 appoint a receiver for the broadband middle mile
113 infrastructure project if the project sponsor should default on
114 any terms of the agreement.

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

119 (h) The Water Development Authority shall cause an
120 annual audit to be made by an independent certified public
121 accountant of its books, accounts and records, with respect to
122 the receipts, disbursements, contracts, leases, assignments,
123 loans, grants and all other matters relating to the financial
124 operation of the Infrastructure Fund for Broadband Middle
125 Mile Development, including the operating of any sub-
126 account within that infrastructure fund. The person
127 performing such audit shall furnish copies of the audit report

128 to the Secretary of the Department of Administration, where
129 they shall be placed on file and made available for inspection
130 by the general public. The person performing such audit shall
131 also furnish copies of the audit report to the Legislature's
132 Joint Committee on Government and Finance.

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

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

6 (b) This committee shall consist of:

7 (1) The Secretary of the Department of Administration,
8 or his or her designee;

9 (2) The Secretary of the Department of Commerce, or his
10 or her designee;

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

13 (4) The member of the Broadband Deployment Council
14 who represents rural communities; and

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

18 (c) Applications for a grant or loan for a broadband
19 middle mile infrastructure project pursuant to section nine-a
20 of this article shall be submitted to the Director of the
21 Development Office, Department of Commerce, for review
22 and to determine whether any additional information is
23 needed from the applicant. If the application is complete, the
24 Director of the Development Office shall forward the
25 application to the chairman of the Infrastructure and Jobs
26 Development Council along with the recommendation of that
27 office regarding disposition of the application.

28 (d) After receipt of the application from the Development
29 Office, the advisory committee shall publish in the state
30 register notice to the public that the application has been filed
31 by a project sponsor. This notice shall identify the project

32 sponsor, provide a meaningful description and the specific
33 location of the project, the amount of the loan or grant
34 requested, where the application may be viewed in person
35 and on the Internet by the public, and shall also include the
36 date, time and place where the committee will hold a public
37 hearing, and any other information the committee believes
38 necessary or desirable to advise the public of the application.
39 The advisory committee shall also respond to requests for
40 additional information from the public concerning the
41 application or the project sponsor in a timely manner within
42 the public comment period.

43 (e) This notice shall be published in the state register at
44 least sixty days prior to the date of the public hearing. The
45 purpose of the public hearing is to receive comments on the
46 application and on whether the application should be
47 approved or denied. The public may submit written
48 comments to the committee either prior to the hearing, during
49 the hearing, or within thirty days after the day of the hearing.

50 (f) Anytime after the thirty day public comment period
51 expires, the advisor committee may submit its
52 recommendation to the Infrastructure and Jobs Development
53 Council who shall make the final decision on whether to
54 approve or reject an application.

55 (g) The Infrastructure and Jobs Development Council
56 shall promulgate legislative rules in accordance with article
57 three, chapter twenty-nine-a of this code, it deems necessary
58 to implement the requirements of this section.

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

1 (a) To further accomplish the purpose and intent of this
2 article, the Water Development Authority may use the
3 moneys in the Infrastructure Fund for Broadband Middle
4 Mile Development created pursuant to section nine-a of this
5 article, at the direction of the Infrastructure and Jobs
6 Development Council, to make loans, with or without
7 interest, loan guarantees or grants and to provide other
8 assistance, financial, technical or otherwise, to finance all or

9 part of the costs of broadband middle mile infrastructure
10 projects to be undertaken by a project sponsor: *Provided,*
11 That any moneys disbursed from the Infrastructure Fund for
12 Broadband Middle Mile Development in the form of grants
13 shall not exceed twenty percent of the total funds available
14 for the funding of projects. No loan, loan guarantee, grant or
15 other assistance shall be made or provided except upon a
16 determination by the Infrastructure and Jobs Development
17 Council that the loan, loan guarantee, grant or other
18 assistance and the manner in which it will be provided are
19 necessary or appropriate to accomplish the purposes and
20 intent of this article, based upon an application submitted as
21 provided in section ten-b of this article.

22 (b) Applications for loans, loan guarantees, grants or
23 other assistance may be submitted by a project sponsor for
24 one or more broadband middle mile infrastructure projects on
25 preliminary application forms prepared by the Infrastructure
26 and Jobs Development Council pursuant to section four of
27 this article. Any recommendation of that council approving

28 a loan, loan guarantee, grant or other assistance shall include a
29 finding and determination by that council that the requirements
30 of this section have been met. The Infrastructure and Jobs
31 Development Council shall base any decisions to loan money for
32 projects to project sponsors pursuant to this article based on
33 criteria established by the council.

34 (c) The Infrastructure and Jobs Development Council
35 shall, in its sole discretion, decide whether to accept or reject
36 an application for a grant or loan to a project sponsor if it
37 finds that the broadband middle mile infrastructure project is
38 essential for economic development, the realization of
39 educational opportunities, modernization of government, or
40 facilitation of the ability of businesses and residents to use
41 the Internet employing state-of-the art technologies. No
42 project sponsor shall receive infrastructure grant money in an
43 amount in excess of fifty percent of the total cost of the
44 project. Therefore, the Infrastructure and Jobs Development
45 Council may consider the economic or financial conditions
46 of the area to be served.

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

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

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

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

58 (e) The Infrastructure and Jobs Development Council
59 shall develop criteria to be considered in making grants or
60 loans to project sponsors which shall require consideration of
61 the economic or financial conditions of the area to be served
62 and the availability of other funding sources. The
63 Infrastructure and Jobs Development Council shall adopt
64 procedural rules regarding the manner in which grants and
65 loans will be awarded in conformity with this section. The

66 procedural rules shall be adopted pursuant to article three,
67 chapter twenty-nine-a of this code.

68 (f) Notwithstanding any other provision of this article to
69 the contrary, engineering studies and requirements imposed
70 by the Infrastructure and Jobs Development Council for
71 preliminary applications shall not exceed those engineering
72 studies and requirements which are necessary for the council
73 to determine the economic feasibility of the project. If the
74 Infrastructure and Jobs Development Council determines that
75 the engineering studies and requirements for the
76 preapplication would impose an undue hardship on any
77 project sponsor, the council may provide funding assistance
78 to project sponsors to defray the expenses of the
79 preapplication process from moneys available in the
80 Broadband Middle Mile Infrastructure Fund for making
81 loans: *Provided*, That the Infrastructure and Jobs
82 Development Council may only provide funding assistance
83 in an amount equal to \$5,000 or fifty percent of the total
84 preapplication cost of the project, whichever amount is

85 greater. If the project is ultimately approved for a loan by the
86 Infrastructure and Jobs Development Council, the amount of
87 funding assistance provided to the project sponsor for the
88 preapplication process shall be included in the total amount
89 of the loan to be repaid by the project sponsor. If the project
90 is not ultimately approved by the Infrastructure and Jobs
91 Development Council, then the amount of funding assistance
92 provided to the project sponsor will be considered a grant by
93 the Infrastructure and Jobs Development Council and the
94 total amount of the assistance shall be forgiven. In no event
95 may the amount of funding assistance provided to all project
96 sponsors exceed, in the aggregate, \$100,000 annually.

97 (g) The Infrastructure and Jobs Development Council
98 shall report to the Governor, the Speaker of the House of
99 Delegates and the President of the Senate during each regular
100 and interim session of the Legislature, on its activities and
101 decisions relating to distribution or planned distribution of
102 grants and loans under the criteria to be developed pursuant
103 to this article. To the extent known, the economic activity

104 and jobs created as a result of the council funding a
105 broadband middle mile infrastructure project shall be include
106 in the report required by this subsection.

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

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

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

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

1 To accomplish the purpose and intent of this article, the
2 Water Development Authority, upon approval of the

3 Infrastructure and Jobs Development Council, is hereby
4 empowered, in addition to all other powers granted to it
5 under this code to:

6 (1) Enter into agreements or other transactions with any
7 federal or state agency in connection with any broadband
8 middle mile infrastructure project;

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

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

20 (4) Establish and amend the criteria and qualifications for
21 making loans, loan guarantees or grants, or providing any

22 other assistance, for any broadband middle mile
23 infrastructure project, and the terms of any loans, loan
24 guarantee, grant or assistance agreement for any broadband
25 middle mile infrastructure project; and

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

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

1 No part of the West Virginia Infrastructure Fund for
2 Broadband Middle Mile Development or the West Virginia
3 Broadband Middle Mile Infrastructure Revenue Debt Service
4 Fund shall inure to the benefit of or be distributable to the
5 water development board directors or officers of the Water
6 Development Authority except that the Water Development
7 Authority is authorized and empowered to pay reasonable
8 compensation, other than to members of the Water
9 Development Board, including the chairman, vice chairman,
10 secretary-treasurer for services rendered and to make loans

11 and exercise its other powers as previously specified in
12 furtherance of its corporate purpose: *Provided*, That no loans
13 shall be made, and no property shall be purchased or leased
14 from, or sold, leased or otherwise disposed of, to any water
15 development board member or officer of the Water
16 Development Authority.

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

1 Upon the termination or dissolution of the Water
2 Development Authority, all rights and properties of the
3 authority with respect to the Infrastructure Fund for
4 Broadband Middle Mile Development shall pass to and be
5 vested in the state, subject to the rights of lienholders and
6 other creditors.

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

1 (a) No broadband middle mile infrastructure project
2 acquired, constructed or maintained or financed, in whole or
3 in part, by the Water Development Authority shall be

4 considered to be a “public improvement” within the meaning
5 of the provisions of article five-a, chapter twenty-one of this
6 code for purposes of the financing of the project.

7 (b) The state and its subdivisions shall, except as
8 provided in subsection (c) of this section, solicit competitive
9 bids and require the payment of prevailing wage rates as
10 provided in article five-a, chapter twenty-one of this code for
11 the construction of every broadband middle mile
12 infrastructure project funded pursuant to this article
13 exceeding \$25,000 in total cost.

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

19 (c) This section does not:

20 (1) Apply to work performed on construction or repair
21 projects not exceeding a total cost of \$50,000 by regular full-
22 time employees of the state or its subdivisions: *Provided*,

23 That no more than \$50,000 shall be expended on an
24 individual project in a single location in a twelve-month
25 period;

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

29 (3) Apply to emergency repairs to building components
30 and systems: *Provided*, That the term "emergency repairs"
31 means repairs that, if not made immediately, will seriously
32 impair the use of the building components and systems or
33 cause danger to those persons using the building components
34 and systems; or

35 (4) Apply to any situation where the state or a
36 subdivision of the state comes to an agreement with
37 volunteers, or a volunteer group, by which the governmental
38 body will provide construction or repair materials,
39 architectural, engineering, technical or any other professional
40 services and the volunteers will provide the necessary labor
41 without charge to, or liability upon, the governmental body:

42 Provided, That the total cost of the construction or repair
43 projects does not exceed \$50,000.

44 (d) The provisions of subsection (b) of this section do not
45 apply to privately owned broadband middle mile
46 infrastructure projects.

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

1 (a) To accomplish the purpose and intent of this article,
2 the Water Development Authority upon direction of the
3 Infrastructure and Jobs Development Council is hereby
4 empowered to issue from time to time broadband middle mile
5 infrastructure revenue bonds of the state in such principal
6 amounts as the council deems necessary to make loans and
7 loan guarantees and other forms of financial assistance to
8 project sponsors for one or more broadband middle mile
9 infrastructure projects: *Provided, That the Water*

10 Development Authority may not issue any such bonds, other
11 than refunding bonds, unless the council by resolution
12 determines that the aggregate cost of the broadband middle
13 mile infrastructure projects expected to be constructed during
14 any annual period exceeds: (1) The projected annual
15 broadband infrastructure revenues for the same period; and
16 (2) the principal and interest payments not otherwise pledged
17 to the Broadband Middle Mile Infrastructure Revenue Debt
18 Service Fund that are due the Water Development Authority
19 on all outstanding loans previously made by the authority
20 pursuant to the provisions of this article.

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

28 broadband middle mile infrastructure projects in accordance
29 with this article.

30 (c) The Water Development Authority may not authorize
31 the disbursement of any proceeds of broadband middle mile
32 infrastructure revenue bonds unless it has received from the
33 Infrastructure Jobs Development Council the documentation
34 required by section ten-a of this article.

35 (d) There is hereby created in the Water Development
36 Authority a special fund which shall be designated and
37 known as the “West Virginia Broadband Middle Mile
38 Infrastructure Revenue Debt Service Fund,” into which shall
39 be transferred solely from the loan repayments deposited in
40 the Infrastructure Fund for Broadband Middle Mile
41 Development the amounts certified by the authority as
42 necessary to pay the principal, premium, if any, and interest
43 on broadband middle mile infrastructure revenue bonds and
44 any reserve requirements, subject to the terms of any
45 agreement with the holders of the broadband middle mile
46 infrastructure revenue bonds. All amounts deposited in the

47 West Virginia Broadband Middle Mile Infrastructure
48 Revenue Debt Service Fund shall be pledged to the
49 repayment of the principal, interest and redemption premium,
50 if any, on any broadband middle mile infrastructure revenue
51 bonds authorized by this article: *Provided*, That amounts on
52 deposit in the fund may be used to establish or maintain
53 reserves created for the purposes of securing the broadband
54 middle mile infrastructure revenue bonds. The pledge shall
55 be valid and binding from the time the pledge is made, and
56 the West Virginia Broadband Middle Mile Infrastructure
57 Revenue Debt Service Fund so pledged shall immediately be
58 subject to the lien of the pledge without any physical delivery
59 thereof or further act, and the lien of any such pledge shall be
60 valid and binding as against all parties having claims of any
61 kind in tort, contract or otherwise against the Water
62 Development Authority irrespective of whether the parties
63 have notice thereof.

64 (e) Except as may otherwise be expressly provided in this
65 article or by resolution of the Water Development Authority,

66 every issue of broadband middle mile infrastructure revenue
67 bonds shall be special obligations of the Water Development
68 Authority payable solely from amounts in the West Virginia
69 Broadband Middle Mile Infrastructure Revenue Debt Service
70 Fund, and the reserves created for this purpose by the Water
71 Development Authority, without preference or priority
72 among the bonds regardless of when issued, subject only to
73 any agreements with the holders of any bonds to the contrary.
74 All such bonds are hereby declared to be negotiable
75 instruments.

76 (f) Broadband middle mile infrastructure revenue bonds
77 shall be authorized by resolution of the Water Development
78 Authority. These bonds shall bear such dates and shall
79 mature at such times, in case of any note or renewal thereof
80 not exceeding five years from the date of issue of the original
81 note, and in the case of any bond not exceeding fifty years
82 from the date of issue, as the resolution may provide.
83 Broadband middle mile infrastructure revenue bonds shall
84 bear interest at a rate or rates, including variable rates, shall

85 be taxable or tax-exempt, shall be in the denominations, shall
86 be in registered form, shall carry the registration privileges,
87 shall be payable in the medium and place of payment, and
88 shall be subject to the terms of redemption as the Water
89 Development Authority may authorize. Broadband middle
90 mile infrastructure revenue bonds may be sold by Water
91 Development Authority at public or private sale at the price
92 the authority determines in consultation with the council.
93 Broadband middle mile infrastructure revenue bonds shall be
94 executed by the chairman and the vice chairman of the Water
95 Development Authority, either or both of whom may use a
96 facsimile signature. The official seal of the Water
97 Development Authority or a facsimile thereof shall be affixed
98 thereto or printed thereon and attested by manual or facsimile
99 signature by the secretary-treasurer of the Water
100 Development Authority. If any officer whose signature, or a
101 facsimile of whose signature appears on any broadband
102 infrastructure revenue bond ceases to be such officer before
103 delivery of such bond, such signature or facsimile is

104 nevertheless sufficient for all purposes to the same extent as
105 if he or she had remained in office until such delivery, and if
106 the seal of the Water Development Authority has been
107 changed after a facsimile has been imprinted on such bond,
108 the facsimile will continue to be sufficient for all purposes.

109 (g) Any resolution authorizing any broadband
110 infrastructure revenue bonds may contain provisions, subject
111 to any agreement with bondholders or noteholders which
112 may then exist, which agreements shall be part of the contract
113 with the holder thereof, with respect to the pledge of or other
114 use and disposition of amounts in the Broadband Middle
115 Mile Infrastructure Revenue Debt Service Fund; the setting
116 aside of reserve funds; the disposition of any assets of the
117 Water Development Authority; limitations on the purpose to
118 which the proceeds of sale of bonds may be applied; the
119 authorization of notes issued in anticipation of the issuance
120 of bonds; an agreement of the Water Development Authority
121 to do all things necessary for the authorization, issuance and
122 sale of such bonds in such amounts as may be necessary for

123 the timely retirement of such notes; limitations on the
124 issuance of additional bonds; the terms upon which
125 additional bonds may be issued and secured; the refunding of
126 outstanding bonds and the renewal of outstanding notes; the
127 procedures, if any, by which the terms of any contract with
128 bondholders or noteholders may be amended or abrogated;
129 the amount of bonds the holders of which must consent
130 thereto and the manner in which such consent may be given;
131 and any other matter which in any way affects the security
132 for or protection of the bonds.

133 (h) In the event that the sum of all reserves pledged to the
134 payment of the bonds is less than the minimum reserve
135 requirements established in any resolution or resolutions
136 authorizing the issuance of the bonds, the chairman of the
137 Water Development Authority shall certify, on or before
138 December 1 of each year, the amount of such deficiency to
139 the Governor of the state for inclusion, if the Governor shall
140 so elect, of the amount of such deficiency in the budget to be
141 submitted to the next session of the Legislature for

142 appropriation to the Infrastructure and Jobs Development
143 Council to be pledged for payment of such bonds: *Provided,*
144 That the Legislature shall not be required to make any
145 appropriations so requested, and the amount of such
146 deficiencies shall not constitute a debt or liability of the state.

147 (i) Neither the officers or board members of the Water
148 Development Authority or the Infrastructure and Jobs
149 Development Council, nor any person executing the
150 broadband middle mile infrastructure revenue bonds, shall be
151 liable personally on the bonds or be subject to any personal
152 liability or accountability by reason of the issuance thereof.

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

1 (a) Any broadband middle mile infrastructure revenue
2 bonds issued by the Water Development Authority under this
3 article shall be secured by a trust agreement between the
4 Water Development Authority and a corporate trustee, which
5 trustee may be any trust company or banking institution
6 having the powers of a trust company within this state.

7 (b) Any trust agreement may pledge or assign the
8 Broadband Middle Mile Infrastructure Revenue Debt Service
9 Fund. Any trust agreement or any resolution providing for
10 the issuance of such bonds may contain such provisions for
11 protecting and enforcing the rights and remedies of the
12 bondholders or noteholders as are reasonable and proper and
13 not in violation of law, including the provisions contained in
14 section seventeen-a of this article, and covenants setting forth
15 the duties of the Water Development Authority in respect to
16 the payment of the principal of and interest, charges and fees
17 on loans made to, or bond purchases from, governmental
18 agencies from the proceeds of the bonds, and the custody,
19 safeguarding and application of all moneys. Any banking
20 institution or trust company incorporated under the laws of
21 this state which may act as depository of the proceeds of
22 bonds or of the Broadband Middle Mile Infrastructure
23 Revenue Debt Service Fund shall furnish such indemnifying
24 bonds or pledge securities as are required by the Water
25 Development Authority. The trust agreement may set forth

26 the rights and remedies of the bondholders and noteholders
27 and of the trustee and may restrict individual rights of action
28 by bondholders and noteholders as customarily provided in
29 trust agreements or trust indentures securing similar bonds
30 and notes. The trust agreement may contain such other
31 provisions as the water development authority deems
32 reasonable and proper for the security of the bondholders or
33 noteholders. All expenses incurred in carrying out the
34 provisions of any such trust agreement may be treated as part
35 of the cost of the construction, renovation, repair,
36 improvement or acquisition of a project or infrastructure
37 project.

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

1 Any holder of broadband middle mile infrastructure
2 revenue bonds issued pursuant to this article and the trustee
3 under any trust agreement, except to the extent the rights
4 given by this article may be restricted by the applicable
5 resolution or trust agreement, may by civil action, mandamus

6 or other proceedings protect and enforce any rights granted
7 under the laws of this state or granted under this article, by
8 the trust agreement or by the resolution in the issuance of the
9 bonds, and may enforce and compel the performance of all
10 duties required by this article, pursuant to the trust agreement
11 or resolution, to be performed by the Water Development
12 Authority or any officer thereof.

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

1 All broadband middle mile infrastructure revenue bonds
2 issued pursuant to this article shall be lawful investments for
3 banking institutions, societies for savings, building and loan
4 associations, savings and loan associations, deposit guarantee
5 associations, trust companies, and insurance companies,
6 including domestic for life and domestic not for life
7 insurance companies.

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

1 (a) The Water Development Authority, subject to such
2 agreements with noteholders or bondholders as may then

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

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

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

1 Any broadband middle mile infrastructure revenue bonds
2 issued pursuant to the provisions of this article and at any
3 time outstanding may at any time and from time to time be
4 refunded by the Water Development Authority by the
5 issuance of its refunding revenue bonds in an amount it

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

25 section seventeen-c of this article, and shall be secured in
26 accordance with the provisions of sections seventeen-c and
27 eighteen-a of this article.

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

1 Broadband middle mile infrastructure revenue bonds
2 issued pursuant to the provisions of this article shall not
3 constitute a debt or a pledge of the faith and credit or taxing
4 power of this state or of any county, municipality or any
5 other political subdivision of this state. The holders or
6 owners thereof shall have no right to have taxes levied by the
7 Legislature or the taxing authority of any county,
8 municipality or any other political subdivision of this state
9 for the payment of the principal thereof or interest thereon.
10 The broadband middle mile revenue bonds shall be payable
11 solely from the revenues and funds pledged for their payment
12 as authorized by this article. All such bonds shall contain on
13 the face thereof a statement to the effect that the bonds, as to
14 both principal and interest, are not debts of the state or any

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

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

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

15 interest and income thereon shall be exempt from all taxation
16 by this state, or any county, municipality, political
17 subdivision or agency thereof, except estate taxes.