

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2979**

4 (By Delegates Boggs, Skaff, E. Nelson, White, Morgan, M. Poling
5 and Miley)

6 (Originating in the Committee on Finance)

7 [March 28, 2013]

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9
10 A BILL to amend and reenact §31-15C-2, §31-15C-4, §31-15C-8, §31-
11 15C-9 and §31-15C-10 of the Code of West Virginia, 1931, as
12 amended, all relating to the actions of the broadband
13 deployment council generally; modifying the minimum data rates
14 and other components of the definition of the terms
15 "broadband" and "broadband service"; modifying and adding
16 other definitions; requiring annual reports to the
17 Legislature; providing that the council's public outreach and
18 education efforts extend beyond unserved areas; revising the
19 council's guidelines on requests for funding assistance;
20 requiring projects for broadband service involving the
21 construction of a network to meet the revised definition of
22 "broadband service" and "broadband" before being approved;
23 revising the criteria for funding assistance applications;
24 modifying the application process for project assistance; and
25 revising notice and publication requirements.

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

1 That §31-15C-2, §31-15C-4, §31-15C-8, §31-15C-9 and §31-15C-10
2 of the Code of West Virginia, 1931, as amended, be amended and
3 reenacted, all to read as follows:

4 **ARTICLE 15C. BROADBAND DEPLOYMENT.**

5 **§31-15C-2. Definitions.**

6 (a) For the purposes of this article,

7 (1) "Broadband" or "broadband service" means any service
8 providing advanced telecommunications capability with ~~either~~ a
9 minimum downstream data rate of 6 Mbps and a minimum upstream
10 data rate of 1.5 Mbps, that does
11 not require the end-user to dial up a connection that has the
12 capacity to always be on, and for which the transmission speeds are
13 based on regular available bandwidth rates, not sporadic or
14 burstable rates, with ~~a minimum downstream-to-upstream data ratio~~
15 ~~of 10:1 for services with a downstream data rate of up to five~~
16 ~~megabits per second, and with a minimum upstream data rate of 500~~
17 ~~kilobits per second for services with a downstream data rate of~~
18 ~~five megabits per second or greater~~ latency suitable for real-time
19 applications and services such as VoIP and video conferencing, and
20 with monthly usage capacity reasonably comparable to that of
21 residential terrestrial fixed broadband offerings in urban areas.

22 (2) "Broadband deployment project" means ~~either: (A) A a~~
23 ~~project to provide broadband services to~~ in a type 2 and/or type 3
24 ~~unserved area, as defined in section six of this article, or (B) a~~
25 ~~project to undertake activities to promote demand for broadband~~
26 ~~services and broadband applications.~~

1 (3) "Broadband demand promotion project" means a statewide or
2 regional project to undertake activities to promote demand for
3 broadband services and broadband applications.

4 ~~(3)~~(4) "Downstream data rate" means the transmission speed
5 from the service provider source to the end-user.

6 ~~(4)~~(5) "Upstream data rate" means the transmission speed from
7 the end-user to the service provider source.

8 ~~(5)~~(6) "Unserved area" means a community that has no access to
9 broadband service.

10 (b) The definition of the term "broadband," the designation of
11 areas that are "unserved", and the level of service required to
12 qualify for funding of state programs and projects, are based on
13 the ~~Federal Communications Commission's current definition of~~
14 ~~broadband, which is stated in terms of the number of Kilobits~~
15 ~~(Kbps) per second, either upstream or downstream~~ National
16 Telecommunications and Information Administration's speed tiers.
17 It is the intention of the Legislature that the definition of
18 broadband in this article and the level of service requirements for
19 state funding be promptly updated by future Legislatures to conform
20 with any revisions enacted by Congress or any rule or regulation
21 promulgated by the Federal Communications Commission or other
22 federal agencies involved with deploying and enhancing broadband
23 services.

24 **§31-15C-4. Powers and duties of the council generally.**

25 (a) The council shall:

26 (1) Explore the potential for increased use of broadband

1 service for the purposes of education, career readiness, workforce
2 preparation and alternative career training;

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

8 (3) Cooperate and assist in the expansion of electronic
9 instruction and distance education services by July, 2014.

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

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

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

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

25 (4) To make and execute contracts, commitments and other
26 agreements necessary or convenient for the exercise of its powers,

1 including, but not limited to, the hiring of consultants to assist
2 in the mapping of the state, categorization of areas within the
3 state and evaluation of project applications: *Provided*, That the
4 provisions of article three, chapter five-a of this code do not
5 apply to the agreements and contracts executed under the provisions
6 of this article;

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

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

15 (7) Perform any and all other activities in furtherance of its
16 purpose.

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

22 (d) The council shall report to the Legislature on or before
23 January 1 of each year concerning the action taken by the council
24 during the previous year in carrying out the provisions of this
25 article and make such special reports as may be required by the
26 Legislature and Governor.

1 **§31-15C-8. Stimulation of demand through public outreach and**
2 **education.**

3 In order to implement and carry out the intent of this
4 article, the council may take such actions as it deems necessary or
5 advisable in order to stimulate demand through public outreach and
6 education. ~~in unserved areas.~~ The council shall consider the
7 views, if offered, of affected members of the public, including
8 private industry.

9 **§31-15C-9. Development of guidelines and application for funding**
10 **assistance; emergency rule-making authority.**

11 (a) In order to implement and carry out the intent of this
12 article in type 2 and type 3 unserved areas, the council shall
13 ~~promulgate emergency~~ propose for promulgation legislative rules
14 pursuant to the provisions of ~~section fifteen,~~ article three,
15 chapter twenty-nine-a of this code to develop comprehensive,
16 uniform guidelines for use by the council in evaluating any request
17 by a project sponsor for funding assistance to plan, acquire,
18 construct, improve or otherwise develop and execute a broadband
19 deployment project in a type 2 or type 3 unserved area, and may
20 promulgate emergency rules under section fifteen of said article
21 three pending authorization of the legislative rules. The
22 guidelines shall include the following factors: (1) The cost-
23 effectiveness of the project; (2) the economic development benefits
24 of the project; (3) the availability of alternative sources of
25 funding that could help finance the project, including, but not

1 limited to, private grants or federal funding and the efforts
2 undertaken to obtain such funding; (4) if the project requires the
3 construction of a network, the applicant's ability to operate and
4 maintain such network; (5) the degree to which the project advances
5 statewide broadband access and other state broadband planning
6 goals; (6) if the project involves the construction of a network,
7 the proposed technologies, bandwidths, upstream data rates and
8 downstream data rates; (7) the estimated date the project would
9 commence and be completed; (8) how the proposed project compares to
10 alternative proposals for the same unserved area with regard to the
11 number of people served, the amount of financial assistance sought,
12 and the long-term viability of the proposed project; and (9) any
13 other consideration the council deems pertinent in evaluating
14 requests for funding assistance.

15 (b) Under no circumstances may the council's guidelines allow
16 for the approval of any project for broadband service ~~that does not~~
17 ~~include a minimum downstream transmission rate of 600 kilobits per~~
18 ~~second (Kbps) and a minimum downstream-to-upstream ratio of 8.5:1~~
19 ~~for services with a downstream rate of up to five megabits per~~
20 ~~second (Mbps). In those cases where a project's broadband~~
21 ~~service's downstream rate is five Mbps or greater, the council's~~
22 ~~guidelines must require a minimum upstream data rate of 588 Kbps~~
23 ~~and allow information applications and market demands to dictate~~
24 ~~acceptable downstream-to-upstream data ratios involving the~~
25 construction of a network that does not meet the minimum
26 requirements for broadband service as that term and the term

1 broadband are defined in section two of this article.

2 (c) The council shall create an application form that shall
3 be used by all project sponsors requesting funding assistance from
4 the council to plan, acquire, construct, improve or otherwise
5 develop and execute broadband deployment projects in type 2 or type
6 3 unserved areas or broadband demand promotion projects. The
7 application form shall ~~contain all~~ advise applicants of information
8 required by ~~all~~ state agencies that will ~~be required to~~ issue
9 permits and certificates regarding the project. The application
10 form shall require the project sponsor to set forth the proposed
11 location of the project; if the project involves the construction
12 of a network, the type(s) of unserved area(s) the project proposes
13 to address~~;~~ the estimated total cost of the project~~;~~ the amount
14 of funding assistance required and the specific uses of the
15 funding; other sources of funding available or potentially
16 available for the project; information demonstrating the need for
17 the project; that the proposed funding of the project is the most
18 economically feasible and viable alternative to completing the
19 project; and such other information as the council considers
20 necessary.

21 **§31-15C-10. Requirements for project funding assistance; review**
22 **of project application by council; competitive**
23 **applications.**

24 (a) ~~Once the council has categorized unserved areas pursuant~~
25 ~~to section six of this article,~~ At a time and place determined by

1 ~~the council,~~ project sponsors may submit applications for funding
2 assistance. ~~for projects in those unserved areas. Upon receiving~~
3 ~~its first completed application for a categorized unserved area,~~
4 ~~the council shall post notice of such application with the~~
5 ~~Secretary of State~~ Broadband deployment projects, including
6 projects involving the construction of a network, may be submitted
7 for type 2 and/or type 3 unserved areas as those areas are
8 categorized pursuant to section six of this article. Broadband
9 demand promotion projects may be submitted on a statewide or
10 regional basis. When a completed application is received for a
11 project area, the council shall post notice with the Secretary of
12 State of the first completed application received for that project
13 area. The notice shall be published in the State Register for
14 sixty days ~~so as~~ to allow for competing applications to be
15 submitted to the council. Within thirty days of the close of the
16 aforementioned sixty-day notice period, the council shall review
17 all applications timely received during the sixty-day period and
18 either: (i) Approve funding for one or more projects after
19 determining that the funding would constitute an appropriate
20 investment of public funds; or (ii) if the council determines that
21 the application does not contain all of the required information or
22 otherwise is incomplete, or that a proposed project is not eligible
23 for funding assistance, or that the proposed project is otherwise
24 not an appropriate or prudent investment of state funds, the
25 council shall deny the project funding request. Prior to approving
26 or denying any funding request, the council may seek the advice of

1 any expert consultant retained pursuant to section seven of this
2 article, but the council is not bound by that advice. The council
3 shall also consider the views, if offered, of affected members of
4 the public, including private industry.

5 (b) To apply for or receive any funding assistance for a
6 broadband deployment project or a broadband demand promotion
7 project from the council pursuant to subsection (a) of this
8 section, the project sponsor seeking the funding assistance shall
9 submit a completed application to the council on the form prepared
10 for such purpose by the council pursuant to section nine of this
11 article.

12 (c) In reviewing each application, the council may use the
13 engineering, financial and technical expertise of outside
14 consultants in addition to the respective staffs of the government
15 agencies and private-sector entities represented on the council or
16 other government agencies.

17 (d) Notwithstanding any provision of article fifteen-a,
18 chapter thirty-one or any other provision of this code, broadband
19 deployment project proposals and broadband demand promotion project
20 proposals submitted to the council for its consideration pursuant
21 to this article and the council's decisions with regard to such
22 projects shall not be subject to review by the West Virginia
23 Infrastructure and Jobs Development Council.