

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 556**

4 (By Senators Williams, Beach, Cann, Cole, Green, Jenkins,
5 Kirkendoll, Snyder, Sypolt and Stollings)

6 _____
7 [Originating in the Committee on Transportation and
8 Infrastructure; reported March 28, 2013.]
9 _____

10
11
12 A BILL to amend and reenact §31-15C-2, §31-15C-8, §31-15C-9 and
13 §31-15C-10 of the Code of West Virginia, 1931, as amended, all
14 relating to broadband deployment projects; clarifying that the
15 Broadband Deployment Council's public outreach and education
16 efforts extend beyond unserved areas; revising the council's
17 guidelines on requests for funding assistance; requiring the
18 council to give priority to funding type 3 unserved areas;
19 requiring projects for broadband service involving the
20 construction of a network to meet the revised definition of
21 "broadband" before being approved; revising the criteria for
22 funding assistance applications; providing that projects to
23 promote demand may be on a regional or statewide basis;
24 revising notice and posting requirements; and defining and
25 redefining certain terms.

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

1 That §31-15C-2, §31-15C-8, §31-15C-9 and §31-15C-10 of the
2 Code of West Virginia, 1931, as amended, be amended and reenacted,
3 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 ~~or~~ of 6 Mbps and a minimum upstream
10 data rate of ~~at least 200 kilobits per second~~ 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 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 (4) "Downstream data rate" means the transmission speed from
5 the service provider source to the end-user.

6 (5) "Network" means a collection of computers and network
7 hardware interconnected by communication channels that allow
8 sharing of resources and information and that has the following
9 characteristics: broadband, multi-media, multi-point, multi-rate
10 and economical implementation for a diversity of services.
11 "Network" does not include Local Area Networks, which are networks
12 that connect computers and network hardware inside a single
13 building, but "network" does include Wide Area Networks, which are
14 a collection of computers and network hardware that connect Local
15 Area Networks.

16 ~~(4)~~ (6) "Upstream data rate" means the transmission speed from
17 the end-user to the service provider source.

18 ~~(5)~~ (7) "Unserved area" means a community that has no access
19 to broadband service.

20 (b) The definition of the term "broadband," the designation of
21 areas that are "unserved", and the level of service required to
22 qualify for funding of state programs and projects, are based on
23 the ~~Federal Communications Commission's current definition of~~
24 ~~broadband, which is stated in terms of the number of Kilobits~~
25 ~~(Kbps) per second, either upstream or downstream~~ National
26 Telecommunications and Information Administration's speed tiers.

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

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

10 In order to implement and carry out the intent of this
11 article, the council may take such actions as it deems necessary or
12 advisable in order to stimulate demand through public outreach and
13 education. ~~in unserved areas.~~ The council shall consider the
14 views, if offered, of affected members of the public, including
15 private industry.

16 **§31-15C-9. Development of guidelines and application for funding**
17 **assistance; emergency rule-making authority.**

18 (a) In order to implement and carry out the intent of this
19 article in type 2 and type 3 unserved areas, the council shall
20 promulgate emergency rules pursuant to the provisions of section
21 fifteen, article three, chapter twenty-nine-a of this code to
22 develop comprehensive, uniform guidelines for use by the council in
23 evaluating any request by a project sponsor for funding assistance
24 to plan, acquire, construct, improve or otherwise develop and
25 execute a broadband deployment project in a type 2 or type 3

1 unserved area. The guidelines shall include the following factors:
2 (1) The cost-effectiveness of the project; (2) the economic
3 development benefits of the project; (3) the availability of
4 alternative sources of funding that could help finance the project,
5 including, but not limited to, private grants or federal funding
6 and the efforts undertaken to obtain such funding; (4) if the
7 project requires the construction of a network, the applicant's
8 ability to operate and maintain such network; (5) the degree to
9 which the project advances statewide broadband access and other
10 state broadband planning goals; (6) if the project involves the
11 construction of a network, the proposed technologies, bandwidths,
12 upstream data rates and downstream data rates; (7) the estimated
13 date the project would commence and be completed; (8) how the
14 proposed project compares to alternative proposals for the same
15 unserved area with regard to the number of people served, the
16 amount of financial assistance sought, and the long-term viability
17 of the proposed project; and (9) any other consideration the
18 council deems pertinent in evaluating requests for funding
19 assistance. The council shall give priority to funding type 3
20 unserved areas.

21 (b) Under no circumstances may the council's guidelines allow
22 for the approval of any project for broadband service ~~that does not~~
23 ~~include a minimum downstream transmission rate of 600 kilobits per~~
24 ~~second (Kbps) and a minimum downstream-to-upstream ratio of 8.5:1~~
25 ~~for services with a downstream rate of up to five megabits per~~
26 ~~second (Mbps).~~ In those cases where a project's broadband

1 ~~service's downstream rate is five Mbps or greater, the council's~~
2 ~~guidelines must require a minimum upstream data rate of 588 Kbps~~
3 ~~and allow information applications and market demands to dictate~~
4 ~~acceptable downstream-to-upstream data ratios~~ involving the
5 construction of a network that does not meet, at a minimum, the
6 current definition of broadband in section two of this article.

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

25 **§31-15C-10. Requirements for project funding assistance; review**
26 **of project application by council; competitive**

1 **applications.**

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

1 project funding request. Prior to approving or denying any funding
2 request, the council may seek the advice of any expert consultant
3 retained pursuant to section seven of this article, but the council
4 is not bound by that advice. The council shall also consider the
5 views, if offered, of affected members of the public, including
6 private industry.

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

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

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

NOTE: The purpose of this bill is to clarify that the
Broadband Deployment Council's public outreach and education

efforts extend beyond unserved areas. The bill revises the council's guidelines on requests for funding assistance. The bill requires projects for broadband service involving the construction of a network meet the revised definition of "broadband" before being approved. The bill revises the criteria for funding assistance applications. It provides that the council give priority to funding type 3 unserved areas. The bill provides that projects to promote demand may be on a regional or statewide basis. The bill revises notice and posting requirements. The bill defines and redefines certain terms.

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