

**H. B. 2922**

(By Delegates Miley, Miller, Ashley, Skinner, Hornbuckle, Williams,  
Sponaugle, R. Smith and A. Evans)

[Introduced February 24, 2015; referred to the  
Committee on Government Organization then Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §31-15A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31-15C-1, §31-15C-3, §31-15C-4, §31-15C-9 and §31-15C-14 of said code, all relating to the Broadband Deployment Council; reestablishing the council; making a member of council a member of infrastructure council; directing federal funds for broadband to council; revising council membership; and revising power and duties of council.

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

That §31-15A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §31-15C-1, §31-15C-3, §31-15C-4, §31-15C-9 and §31-15C-14 of said code be amended and reenacted, all to read as follows:

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

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

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

5 (b) The council shall consist of thirteen members, including:

6 (1) The Governor or designee;

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

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

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

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

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

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

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

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

18 (d) The Commissioner of the Division of Highways, the Executive Director of the State Rail  
19 Authority, the Chair of the Broadband Deployment Council, two members of the West Virginia  
20 Senate, two members of the West Virginia House of Delegates, the Chancellor of the Higher  
21 Education Policy Commission and the Chancellor of the West Virginia Council for Community and  
22 Technical College Education serve as advisory members of the council. The advisory members shall

1 be ex officio, nonvoting members of the council.

2 (e) The Governor shall appoint the legislative members of the council: *Provided*, That no  
3 more than three of the legislative members may be of the same political party.

4 (f) The Governor shall appoint the representatives of the governing boards from a list of three  
5 names submitted by each governing board.

6 (g) The Governor or designee shall serve as chairman and the council shall annually appoint  
7 a vice chairperson and shall appoint a secretary, who need not be a member of the council and who  
8 shall keep records of its proceedings. Seven members of the council shall constitute a quorum and  
9 the affirmative vote of at least the majority of those members present shall be necessary for any  
10 action taken by vote of the council. A vacancy in the membership of the council does not impair the  
11 rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

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

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

1 (j) The Water Development Authority shall provide office space for the council and each  
2 governmental agency represented on the council shall provide staff support for the council in the  
3 manner determined appropriate by the council.

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

8 **ARTICLE 15C. BROADBAND DEPLOYMENT.**

9 **§31-15C-1. Legislative findings and purpose.**

10 The Legislature finds as follows:

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

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

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

22 (4) That the unique topography and demography of this state that hinders the provision of

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

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

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

20 (7) In implementing this initiative, progress by market forces and industry is to be respected,  
21 and the Legislature intends that governmental assistance and funding is to be used only in those areas  
22 without broadband service and not to duplicate or displace broadband service in areas already served

1 or where industry feasibly can be expected to offer services in the reasonably foreseeable future.

2 (8) Since the implementation of this article in 2008, West Virginia has made limited progress  
3 in expanding broadband services, and is last in the United States in providing broadband services  
4 to its state residents. The amendments to this article during the 2015 regular session are intended  
5 to revitalize the council and refocus its directive towards increasing broadband availability within  
6 this state based on the perspective of the residents and businesses who need broadband services and  
7 how the council can facilitate the expansion of these services. This refocus of the council towards  
8 businesses and consumers of broadband services is intended to expand consideration of all facets of  
9 broadband deployment, and facilitate development of all points of service regardless of service  
10 provider or method.

11 **§31-15C-3. Broadband Deployment Council established; members of council; administrative**  
12 **support.**

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

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

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

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

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

1       (4) The state director of the state-owned West Virginia Network for Educational  
2 Telecomputing (WVNET);

3       (5) The State Superintendent of Schools or his or her designee; and

4       (6) Public members that serve at the will and pleasure of the Governor and are appointed by  
5 the Governor with the advice and consent of the Senate, as follows:

6       (A) One member representing higher education or secondary education; and

7       (B) Three members representing the general public who are residents of the state, and who  
8 may not reside in the same congressional district. These members shall reflect a variety of interests,  
9 including those who do not receive broadband services, those who receive broadband service from  
10 cable, from telephone service and satellite service.

11       (7) One member representing a large industry or business of this state which relies on  
12 broad-band as part of its business activities;

13       (8) One member representing rural businesses utilizing internet services in this state;

14       (9) One member representing rural residential customers of this state;

15       (10) One member representing the college or university system, who has knowledge and  
16 expertise in the needs and uses of broadband services in the higher education system.

17       (c) The governor shall appoint six members of the council who shall serve as nonvoting  
18 members, to represent the interests of the broadband industry:

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

21       (2) One member representing the interests of the business community in this state;

22       (3) One member representing incumbent local exchange carriers who provide broadband

1 services in this state;

2 (4) One member representing cable operators who provide broadband services in this state;

3 (5) One member representing competitive local exchange carriers who provide broadband  
4 services in this state; and

5 (6) One member representing broadband equipment or device manufacturers.

6 (7) In addition to the aforementioned members of the council, the President of the Senate  
7 shall name two senators from the West Virginia Senate and the Speaker of the House shall name two  
8 delegates from the West Virginia House of Delegates, each to serve in the capacity of an ex officio,  
9 nonvoting advisory member of the council.

10 (d) The director of the West Virginia Network for Educational Telecomputing (WVNET)  
11 shall chair the council and appoint one of the other council members to serve as vice chair. In the  
12 absence of the chair the vice chair shall serve as chair. The council shall appoint a  
13 secretary-treasurer who need not be a member of the council and who, among other tasks or  
14 functions designated by the council, shall keep records of its proceedings.

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

18 (f) Seven voting members of the council constitute a quorum and the affirmative vote of at  
19 least the majority of those members present is necessary for any action taken by vote of the council.

20 (g) The council is part time. Public members appointed by the Governor may pursue and  
21 engage in another business or occupation or gainful employment. Any person employed by, owning  
22 an interest in or otherwise associated with a broadband deployment project, project sponsor or



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

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

14 **§31-15C-4. Powers and duties of the council generally.**

15 (a) The council shall:

16 (1) Explore methods to expand access to all broadband services, including, but not limited  
17 to, middle mile and last mile development, and wireless applications.

18 ~~(1)~~ (2) Explore the potential for increased use of broadband service for the purposes of  
19 education, career readiness, workforce preparation and alternative career training;

20 ~~(2)~~ (3) Explore ways for encouraging state and municipal agencies to expand the  
21 development and use of broadband services for the purpose of better serving the public, including  
22 audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking;

1 and

2 ~~(3)~~ (4) Cooperate and assist in the expansion of electronic instruction and distance education  
3 services. ~~by July 2014~~

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

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

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

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

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

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

21 (6) Receive and dispense funds appropriated for its use by the Legislature or other funding  
22 sources including the receipt of any federal grants made to the state to expand broadband service,

1 or solicit, apply for and receive any funds, property or services from any person, governmental  
2 agency or organization to carry out its statutory duties; and

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

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

7 In providing governmental funding for broadband deployment projects, the council shall give  
8 priority to funding for projects in areas without access to broadband service of any type or any speed  
9 before providing governmental funding for projects in areas with existing broadband service below  
10 the minimum speeds specified in section two of this article.

11 (d) The council shall report to the Joint Committee on Government and Finance on or before  
12 January 1 of each year. The report shall include the action that was taken by the council during the  
13 previous year in carrying out the provisions of this article. The council shall also make any other  
14 reports as may be required by the Legislature or the Governor.

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

17 (a) In order to implement and carry out the intent of this article, ~~in type 2 and type 3 unserved~~  
18 ~~areas~~, the council shall propose rules for legislative approval, pursuant to the provisions of article  
19 three, chapter twenty-nine-a of this code. ~~to develop comprehensive, uniform guidelines for use by~~  
20 ~~the council in evaluating any request by a project sponsor for funding assistance to plan, acquire,~~  
21 ~~construct, improve or otherwise develop and execute a broadband deployment project in a type 2 or~~  
22 ~~type 3 unserved area. The council may promulgate emergency rules pending authorization of the~~

1 ~~legislative rules.~~

2 ~~(b) The guidelines shall include the following:~~

3 ~~(1) The cost-effectiveness of the project;~~

4 ~~(2) The economic development benefits of the project;~~

5 ~~(3) The availability of alternative sources of funding that could help finance the project,~~  
6 ~~including, but not limited to, private grants or federal funding and the efforts undertaken to obtain~~  
7 ~~such funding;~~

8 ~~(4) If the project requires the construction of a network, the applicant's ability to operate and~~  
9 ~~maintain such network;~~

10 ~~(5) The degree to which the project advances statewide broadband access and other state~~  
11 ~~broadband planning goals;~~

12 ~~(6) If the project involves the construction of a network, the proposed technologies,~~  
13 ~~bandwidths, upstream data rates and downstream data rates;~~

14 ~~(7) The estimated dates the project would commence and be completed;~~

15 ~~(8) How the proposed project compares to alternative proposals for the same unserved area~~  
16 ~~with regard to the number of people served, the amount of financial assistance sought, and the~~  
17 ~~long-term viability of the proposed project; and~~

18 ~~(9) Any other consideration the council deems pertinent in evaluating requests for funding~~  
19 ~~assistance.~~

20 ~~(c) Under no circumstances may the council's guidelines allow for the approval of any project~~  
21 ~~for broadband service involving the construction of a network that does not meet the minimum~~  
22 ~~specifications for broadband service as set by the Federal Communications Commission.~~

1           ~~(d) The council shall create an application form that shall be used by all project sponsors~~  
2 ~~requesting funding assistance from the council to plan, acquire, construct, improve or otherwise~~  
3 ~~develop and execute broadband deployment projects in type 2 or type 3 unserved areas or broadband~~  
4 ~~demand promotion projects. The application form shall advise applicants of information required~~  
5 ~~by state agencies that will issue permits and certificates regarding the project.~~

6           ~~(e) The application form shall require the project sponsor to set forth:~~

7           ~~(1) The proposed location of the project;~~

8           ~~(2) If the project involves the construction of a network, the type(s) of unserved area(s) the~~  
9 ~~project proposes to address;~~

10          ~~(3) The estimated total cost of the project;~~

11          ~~(4) The amount of funding assistance required and the specific uses of the funding;~~

12          ~~(5) Other sources of funding available or potentially available for the project;~~

13          ~~(6) Information demonstrating the need for the project;~~

14          ~~(7) That the proposed funding of the project is the most economically feasible and viable~~  
15 ~~alternative to completing the project; and~~

16          ~~(8) Such other information as the council considers necessary.~~

17 **§31-15C-14. Expiration of council.**

18          The council shall continue to exist until December 31, ~~2014~~ 2019, unless sooner terminated,  
19 continued or reestablished pursuant to an act of the Legislature.

NOTE: The purpose of this bill is to reestablish the Broadband Council and refocus its directive towards development of broadband services across the state in under-served areas; the council chairman is placed on the state Infrastructure Council; the membership of the council is revised to place more focus towards broadband user perspectives; and directing that any federal

funding that is provided to the state for broadband development is directed to administration by the Council.

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

§31-15C-3 has been largely rewritten; therefore, it has been completely underscored.