

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 488

(By Senators Williams, Prezioso
and Stollings)

[Originating in the Committee on
Government Organization;
reported February 26, 2015.]

A BILL to repeal §31-15C-10, §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7 and §31-15C-9 of said code, all relating to modifying Broadband Deployment Council.

Be it enacted by the Legislature of West Virginia:

That §31-15C-10, §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended, be repealed; and that §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7 and

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§31-15C-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 15C. Broadband Deployment.

§31-15C-2. Definitions.

1 For the purposes of this article:

2 (1) "Broadband" or "broadband service" means any service
3 providing advanced telecommunications capability with the same
4 downstream data rate and upstream data rate as is specified by the
5 Federal Communications Commission and that does not require the
6 end-user to dial up a connection that has the capacity to always be
7 on, and for which the transmission speeds are based on regular
8 available bandwidth rates, not sporadic or burstable rates, with
9 latency suitable for real-time applications and services such as
10 voice-over Internet protocol and video conferencing, and with
11 monthly usage capacity reasonably comparable to that of residential
12 terrestrial fixed broadband offerings in urban areas: *Provided*, That
13 as the Federal Communications Commission updates the
14 downstream data rate and the upstream data rate the council will
15 publish the revised data rates in the State Register within sixty days

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1 of the federal update.

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

5 (3) "Broadband deployment project" means a project to
6 provide broadband services in ~~a type 2 or type 3 unserved area~~
7 areas as defined in section six of this article.

8 (4) "Council" means the Broadband Deployment Council.

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

11 (6) "Upstream data rate" means the transmission speed from
12 the end-user to the service provider source.

13 (7) "Unserved area" means a community that has no access
14 to broadband service.

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

18 (a) The Broadband Deployment Council is hereby
19 ~~established~~ reestablished. The council is a governmental

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1 instrumentality of the state. The exercise by the council of the
2 powers conferred by this article and the carrying out of its purpose
3 and duties are considered and held to be, and are hereby determined
4 to be, essential governmental functions and for a public purpose.
5 The council is created under the Department of Commerce for
6 administrative, personnel and technical support services only.

7 (b) The council shall consist of ~~fifteen~~ nine voting members,
8 designated as follows:

9 (1) The Secretary of Commerce or his or her designee, who
10 shall serve as the chair of the council;

11 (2) The Secretary of Administration or his or her designee;

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

14 ~~(5)~~ (3) The State Superintendent of Schools or his or her
15 designee; and

16 ~~(6)~~ (4) Four Six public members that serve at the will and
17 pleasure of the Governor and are appointed by the Governor with
18 the advice and consent of the Senate, as follows:

19 (i) One member representing ~~employees of communications~~

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1 ~~and cable providers who is a member or representative of a union~~
2 ~~representing communications workers~~ users of large amounts of
3 broadband services in this state;

4 (ii) One member representing ~~the interests of the business~~
5 ~~community in this state~~ rural business users in the state;

6 (iii) One member representing ~~incumbent local exchange~~
7 ~~carriers who provide broadband services in this state~~ rural
8 residential users in this state;

9 (iv) One member representing ~~cable operators who provide~~
10 ~~broadband services in this state~~ urban business users in this state;

11 (v) One member representing ~~competitive local exchange~~
12 ~~carriers who provide broadband services in this state~~ urban
13 residential users in this state; and

14 (vi) ~~One member representing broadband equipment or~~
15 ~~device manufacturers;~~ The Director of WVNET.

16 (vii) ~~One member representing higher education or~~
17 ~~secondary education; and~~

18 (viii) ~~Three members representing the general public who~~
19 ~~are residents of the state, one of whom shall represent rural~~

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1 ~~communities, and who may not reside in the same congressional~~
2 ~~district.~~

3 (7) (5) In addition to the ~~fifteen~~ nine voting members of the
4 council, the President of the Senate shall name two senators from
5 the West Virginia Senate, one from each party, and the Speaker of
6 the House shall name two delegates from the West Virginia House
7 of Delegates, one from each party, each to serve in the capacity of
8 an ex officio, nonvoting advisory member of the council.

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

16 (6) In addition, the council may appoint six members who
17 shall serve as nonvoting advisory members from incumbent local
18 exchange carriers who provide broadband services in this state,
19 cable operators who provide broadband services in this state,

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1 competitive local exchange carriers who provide broadband
2 services in this state and/or broadband equipment or device
3 manufacturers.

4 ~~_____ (d)~~ (c) The council may appoint committees or
5 subcommittees to investigate and make recommendations to the full
6 council. Members of these committees or subcommittees need not
7 be members of the council.

8 ~~(e)~~(d) Eight Five voting members of the council constitute
9 a quorum and the affirmative vote of at least the majority of those
10 members present is necessary for any action taken by vote of the
11 council.

12 ~~(f)~~ (e) The council is part time. Public members appointed
13 by the Governor may pursue and engage in another business or
14 occupation or gainful employment. Any person employed by,
15 owning an interest in or otherwise associated with a broadband
16 deployment project, project sponsor or project participant may
17 serve as a council member and is not disqualified from serving as
18 a council member because of a conflict of interest prohibited under
19 section five, article two, chapter six-b of this code and is not subject

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1 to prosecution for violation of said section when the violation is
2 created solely as a result of his or her relationship with the
3 broadband deployment project, project sponsor or project
4 participant so long as the member recuses himself or herself from
5 board participation regarding the conflicting issue in the manner set
6 forth in legislative rules promulgated by the West Virginia Ethics
7 Commission.

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

16 **§31-15C-4. Powers and duties of the council generally.**

17 (a) The council shall:

18 (1) Explore any and all ways to expand access to broadband
19 services, including, but not limited to, middle mile, last mile and

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1 wireless applications.

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

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

10 (3) ~~(4)~~ Cooperate and assist in the expansion of electronic
11 instruction and distance education services, ~~by July 2014.~~

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

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

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

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

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

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

19 (6) Receive and dispense funds appropriated for its use by

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1 the Legislature or other funding sources or solicit, apply for and
2 receive any funds, property or services from any person,
3 governmental agency or organization to carry out its statutory
4 duties; and

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

7 (c) The council shall exercise its powers and authority to
8 ~~bring~~ advise the Legislature on bringing broadband service to
9 unserved and underserved areas. ~~The council may not duplicate or~~
10 ~~displace broadband service in areas already served or where private~~
11 ~~industry feasibly can be expected to offer services in the reasonably~~
12 ~~foreseeable future. In providing governmental funding for~~
13 ~~broadband deployment projects, the council shall give priority to~~
14 ~~funding for projects in areas without access to broadband service of~~
15 ~~any type or any speed before providing governmental funding for~~
16 ~~projects in areas with existing broadband service below the~~
17 ~~minimum speeds specified in section two of this article.~~

18 (d) The council shall report to the Joint Committee on
19 Government and Finance on or before January 1 of each year. The

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1 report shall include the action that was taken by the council during
2 the previous year in carrying out the provisions of this article. The
3 council shall also make any other reports as may be required by the
4 Legislature or the Governor.

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

6 All moneys collected by the council, which may, in addition
7 to appropriations, include gifts, bequests or donations, shall be
8 deposited in a special revenue account in the State Treasury known
9 as the Broadband Deployment Fund. The fund shall be administered
10 by and under the control of the ~~council~~ Secretary of the Department
11 of Commerce. Expenditures from the fund shall be for the purposes
12 set forth in this article and are not authorized from collections but
13 are to be made only in accordance with appropriation by the
14 Legislature and in accordance with the provisions of article two,
15 chapter eleven-b of this code; Provided, That any funds remaining
16 in the fund of the former Broadband Development Council shall be
17 transferred to the Department of Commerce by June 30, 2015.

18 **§31-15C-7. Retention of outside expert consultant.**

19 In order to assist the council with the highly technical task

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1 of categorizing the areas of the state and evaluating and prioritizing
2 projects, the council may retain an outside expert consultant or
3 consultants qualified to map the state on the basis of broadband
4 availability, to evaluate, categorize and prioritize projects, to assist
5 in public outreach and education in order to stimulate demand, to
6 ~~advise the council on the granting or denying of funding to projects,~~
7 and to provide other support and assistance as necessary to
8 accomplish the purposes of this article. ~~The provisions of article~~
9 ~~three, chapter five-a of this code, shall not apply to the retention of~~
10 ~~an outside expert consultant pursuant to this section. *Provided*, that~~
11 ~~the council shall select the expert or experts by a competitive~~
12 ~~selection process.~~

13 **§31-15C-9. Development of guidelines and application for**
14 **funding assistance; emergency rule-making**
15 **authority.**

16 In order to implement and carry out the intent of this article,
17 the Secretary of the Department of Commerce, with the advice and
18 recommendation of the council, may propose rules for legislative
19 approval, pursuant to the provisions of article three, chapter

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1 twenty-nine-a of this code.