

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 485

FISCAL
NOTE

BY SENATORS CLINE, FERNS, MANN, MAYNARD, OJEDA,
RUCKER, SYPOLT, MULLINS, GAUNCH, MARONEY AND
PLYMALE

[Introduced March 1, 2017; Referred
to the Committee on Economic Development; and then to
the Committee on Finance]

1 A BILL to amend and reenact §12-6C-11 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §31-15-8 of said code, all relating to the expansion of broadband
 3 service to unserved areas of West Virginia by providing loan insurance for commercial
 4 loans used for the expansion of broadband service to unserved or underserved areas;
 5 establishing limits and conditions on the insuring of loans; establishing interest rates;
 6 establishing amortization periods; providing for security interests; setting forth the
 7 responsibilities of the West Virginia Economic Development Authority, the West Virginia
 8 Board of Treasury Investments and the Broadband Enhancement Council; providing that
 9 the members of the West Virginia Board of Treasury Investments do not have a fiduciary
 10 responsibility with regard to the loans; providing for notice for loan insurance; providing for
 11 hearings and appeal; and making technical changes.

Be it enacted by the Legislature of West Virginia:

1 That §12-6C-11 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §31-15-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.

1 (a) The Legislature finds and declares that the citizens of the state benefit from the creation
 2 of jobs and businesses within the state; that business and industrial development loan programs
 3 provide for economic growth and stimulation within the state; that loans from pools established in
 4 the Consolidated Fund will assist in providing the needed capital to assist business and industrial
 5 development; and that time constraints relating to business and industrial development projects
 6 prohibit duplicative review by both the board and West Virginia Economic Development Authority
 7 Board. The Legislature further finds and declares that an investment in the West Virginia

8 Enterprise Capital Fund, LLC, of moneys in the Consolidated Fund as hereinafter provided will
9 assist in creating jobs and businesses within the state and provide the needed risk capital to assist
10 business and industrial development. This section is enacted in view of these findings.

11 (b) The West Virginia Board of Treasury Investments shall make available, subject to a
12 liquidity determination, in the form of a revolving loan, up to \$175 million from the Consolidated
13 Fund to loan the West Virginia Economic Development Authority for business or industrial
14 development projects authorized by section seven, article fifteen, chapter thirty-one of this code
15 and to consolidate existing loans authorized to be made to the West Virginia Economic
16 Development Authority pursuant to this section and pursuant to section twenty, article fifteen,
17 chapter thirty-one of this code which authorizes a \$175 million revolving loan and article eighteen-
18 b, chapter thirty-one of this code which authorizes a \$50 million investment pool: *Provided*, That
19 the West Virginia Economic Development Authority may not loan more than \$15 million for any
20 one business or industrial development project. The revolving loan authorized by this subsection
21 shall be secured by one note at a variable interest rate equal to the twelve-month average of the
22 board's yield on its cash liquidity pool. The rate shall be set on the first day of July and adjusted
23 annually on the same date. The maximum annual adjustment may not exceed one percent.
24 Monthly payments made by the West Virginia Economic Development Authority to the board shall
25 be calculated on a one hundred twenty-month amortization. The revolving loan is secured by a
26 security interest that pledges and assigns the cash proceeds of collateral from all loans under this
27 revolving loan pool. The West Virginia Economic Development Authority may also pledge as
28 collateral certain revenue streams from other revolving loan pools which source of funds does not
29 originate from federal sources or from the board.

30 (c) The outstanding principal balance of the revolving loan from the board to the West
31 Virginia Economic Development Authority may at no time exceed one hundred three percent of
32 the aggregate outstanding principal balance of the business and industrial loans from the West
33 Virginia Economic Development Authority to economic development projects funded from this

34 revolving loan pool. The independent audit of the West Virginia Economic Development Authority
35 financial records shall annually certify that one hundred three percent requirement.

36 (d) The interest rates and maturity dates on the loans made by the West Virginia Economic
37 Development Authority for business and industrial development projects authorized by section
38 seven, article fifteen, chapter thirty-one of this code shall be at competitive rates and maturities
39 as determined by the West Virginia Economic Development Authority Board.

40 (e) Any and all outstanding loans made by the West Virginia Board of Treasury
41 Investments, or any predecessor entity, to the West Virginia Economic Development Authority
42 are refundable by proceeds of the revolving loan contained in this section and the board shall
43 make no loans to the West Virginia Economic Development Authority pursuant to section twenty,
44 article fifteen, chapter thirty-one of this code or article eighteen-b of said chapter.

45 (f) The Directors of the board shall bear no fiduciary responsibility with regard to any of
46 the loans contemplated in this section.

47 (g) Subject to cash availability, the board shall make available to the West Virginia
48 Economic Development Authority, from the Consolidated Fund, a ~~nonresource~~ nonrecourse loan
49 in an amount up to \$25,000,000, for the purpose of the West Virginia Economic Development
50 Authority making a loan or loans from time to time to the West Virginia Enterprise Advancement
51 Corporation, an affiliated nonprofit corporation of the West Virginia Economic Development
52 Authority. The respective loans authorized by this ~~subsection~~ subsection by the board to the West
53 Virginia Economic Development Authority to the West Virginia Enterprise Advancement
54 Corporation shall each be evidenced by one note and shall each bear interest at the rate of three
55 percent per annum. The proceeds of any and all loans made by the West Virginia Economic
56 Development Authority to the West Virginia Enterprise Advancement Corporation pursuant to this
57 subsection shall be invested by the West Virginia Enterprise Corporation in the West Virginia
58 Enterprise Capital Fund, LLC, the manager of which is the West Virginia Enterprise Advancement
59 Corporation. The loan to West Virginia Economic Development Authority authorized by this

60 subsection shall be nonrevolving, and advances under the loan shall be made at times and in
61 amounts requested or directed by the West Virginia Economic Development Authority, upon
62 reasonable notice to the board. The loan authorized by this subsection is not subject to or included
63 in the limitations set forth in subsection (b) of this section with respect to the \$15 million limitation
64 for any one business or industrial development project and limitation of one hundred three percent
65 of outstanding loans, and may not be included in the revolving fund loan principal balance for
66 purposes of calculating the loan amortization in subsection (b) of this section. The loan authorized
67 by this subsection to the West Virginia Economic Development Authority shall be classified by the
68 board as a long-term fixed income investment, shall bear interest on the outstanding principal
69 balance of the loan at the rate of three percent per annum payable annually on or before the
70 thirtieth day of June of each year, and the principal of which shall be repaid no later than June 30,
71 2022, in annual installments due on or before June 30 of each year. The annual installments,
72 which need not be equal shall commence no later than June 30, 2005, in annual principal amounts
73 agreed upon between the board and the West Virginia Economic Development Authority. The
74 loan authorized by this subsection shall be nonrecourse and shall be payable by the West Virginia
75 Economic Development Authority solely from amounts or returns received by the West Virginia
76 Economic Development Authority in respect of the loan authorized by this subsection to the West
77 Virginia Enterprise Advancement Corporation, whether in the form of interest, dividends, realized
78 capital gains, return of capital or otherwise, in all of which the board shall have a security interest
79 to secure repayment of the loan to the West Virginia Economic Development Authority authorized
80 by this subsection. Any and all loans from the West Virginia Enterprise Advancement Corporation
81 made pursuant to this subsection shall also bear interest on the outstanding principal balance of
82 the loan at the rate of three percent per annum payable annually on or before the thirtieth day of
83 June of each year, shall be nonrecourse and shall be payable by the West Virginia Enterprise
84 Advancement Corporation solely from amounts of returns received by the West Virginia
85 Enterprise Advancement Corporation in respect to its investment in the West Virginia Enterprise

86 Capital Fund, LLC, whether in the form of interest, dividends, realized capital gains, return of
87 capital or otherwise, in all of which that Board shall have a security interest to secure repayment
88 of the loan to the West Virginia Economic Development Authority authorized by this subsection.
89 In the event the amounts or returns received by the West Virginia Enterprise Corporation in
90 respect to its investment in the West Virginia Enterprise Capital Fund, LLC, are not adequate to
91 pay when due the principal or interest installments, or both, with respect to the loan authorized by
92 this subsection by the board to the West Virginia Economic Development Authority, the principal
93 or interest, or both, as the case may be, due on the loan made to the West Virginia Economic
94 Development Authority pursuant to this subsection shall be deferred and any and all past-due
95 principal and interest payments shall promptly be paid to the fullest extent possible upon receipt
96 by the West Virginia Enterprise Advancement Corporation of moneys in respect to its investments
97 in the West Virginia Enterprise Capital Fund, LLC. The Directors or the board shall bear no
98 fiduciary responsibility as provided in section thirteen of this article with regard to the loan
99 authorized by this subsection

100 (h) Notwithstanding any provision in this code to the contrary, subject to a liquidity
101 determination and cash availability, the board shall make available to the West Virginia Economic
102 Development Authority, from the Consolidated Fund, in the form of a nonrecourse revolving loan,
103 \$50 million, for the purpose of insuring the payment or repayment of all or any part of the principal,
104 the redemption or prepayment premiums or penalties on, and interest on any form of debt
105 instrument entered into by an enterprise, public body or authority of the state with a financial
106 institution, including, but not limited to, banks, insurance companies and other institutions in the
107 business of lending money, as authorized and as set forth in section eight, article fifteen, chapter
108 thirty-one of this code, but only for the purpose of providing insurance on such debt instruments
109 relating solely to the deployment of broadband under that section eight: *Provided, That the West*
110 Virginia Economic Development Authority may not insure more than \$10 million for any one
111 enterprise, public body or authority of the state in any single calendar year. The loan authorized

112 by this subsection may not be included in the revolving fund loan principal balance for purposes
113 of calculating the loan amortization in subsection (b) of this section. The loan authorized by this
114 subsection shall be classified by the board as a long-term fixed income investment, shall bear
115 interest on the outstanding principal balance of the loan at a variable interest rate equal to the
116 twelve-month average of the board's yield on its cash liquidity pool. The rate shall be set on July
117 1, 2017, and adjusted on July 1 of each year thereafter. The maximum annual adjustment may
118 not exceed one percent. Monthly payments made by the West Virginia Economic Development
119 Authority shall be calculated on a one hundred eighty month amortization for any moneys
120 borrowed by the authority under this subsection to insure any debt instrument relating to providing
121 broadband service to a household or business located in an unserved or underserved area and
122 a four hundred eight month amortization for any moneys borrowed by the authority under this
123 subsection to insure any debt instrument relating to building a segment of a
124 telecommunications network that links a network operator's core network to a local network plant
125 that serves an unserved or underserved area. The loan authorized by this subsection is
126 nonrecourse and is payable by the West Virginia Economic Development Authority solely from
127 premiums and fees received by the authority in respect of insuring debt instruments relating solely
128 to the deployment of broadband under section eight, article fifteen, chapter thirty-one of this code,
129 in all of which the board has a security interest to secure repayment of the loan to the authority
130 authorized by this subsection. The loan is hereby secured by a security interest that pledges and
131 assigns the cash proceeds of all collateral securing all insurance agreements entered into by the
132 authority respecting debt instruments relating to the deployment broadband under section eight,
133 article fifteen, chapter thirty-one of this code. In the event the premiums and fees received by the
134 West Virginia Economic Development Authority in respect to insuring the debt instruments relating
135 solely to the deployment of broadband under section eight, article fifteen, chapter thirty-one of
136 this code, are not adequate to pay when due the principal or interest installments, or both, with
137 respect to the loan authorized by this subsection by the board to the authority, the principal or

138 interest, or both, as the case may be, due on the loan made to the authority pursuant to this
 139 subsection shall be deferred and any and all past-due principal and interest payments shall
 140 promptly be paid to the fullest extent possible upon receipt by the authority of premiums and fees
 141 respecting said debt instruments. The directors of the board bear no fiduciary responsibility as
 142 provided in section thirteen of this article with regard to the loan authorized by this subsection.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-8. Insurance fund.

1 (a) There is hereby created an insurance fund which shall be a continuing, nonlapsing,
 2 revolving fund that consists of:

3 (1) Moneys appropriated by the state to the insurance fund;

4 (2) Premiums, fees, and any other amounts received by the authority with respect to
 5 financial assistance provided by the authority from the insurance fund;

6 (3) Upon the satisfaction of any indebtedness or other obligation owed on any property
 7 held or acquired by the authority, such proceeds as designated by the authority from the sale,
 8 lease, or other disposition of such property;

9 (4) Income from investments made from moneys in the insurance fund; and

10 (5) Any other moneys transferred to the insurance fund or made available to it for the
 11 purposes described under this section, under this article or pursuant to any other provisions of
 12 this code.

13 Subject to the provisions of any outstanding insurance agreements entered into by the
 14 authority under this section, the authority may enter into covenants or agreements with respect to
 15 the insurance fund, and establish accounts within the insurance fund which may be used to
 16 implement the purposes of this article. If the authority elects to establish separate accounts within
 17 the insurance fund, the authority may allocate its revenues and receipts among the respective

18 accounts in any manner the authority considers appropriate.

19 If the authority at any time finds that more money is needed to keep the reserves of the
20 insurance fund at an adequate level, the authority, with the consent of the chairman, shall send a
21 written request to the Legislature for additional funds.

22 (b) The insurance fund shall be used for the following purposes by the authority to
23 financially assist projects so long as such financial assistance will, as determined by the authority,
24 fulfill the public purposes of this article:

25 (1) To insure the payment or repayment of all or any part of the principal of, redemption
26 or prepayment premiums or penalties on, and interest on bonds or notes whether issued under
27 ~~the provisions of this article~~ or under the Industrial Development and Commercial Development
28 Bond Act, the West Virginia Hospital Finance Authority Act or, with respect to health care facilities
29 only, article thirty-three, chapter eight of this code;

30 (2) To insure the payment or repayment of all or any part of the principal of, redemption
31 or prepayment premiums or penalties on, and interest on any instrument executed, obtained, or
32 delivered in connection with the issuance and sale of bonds or notes whether under ~~the provisions~~
33 ~~of this article~~ or under the Industrial Development and Commercial Development Bond Act, the
34 West Virginia Hospital Finance Authority Act or, with respect to health care facilities only, article
35 thirty-three, chapter eight of this code;

36 (3) To insure the payment or repayment of all or any part of the principal of, prepayment
37 premiums or penalties on, and interest on any form of debt instrument entered into by an
38 enterprise, public body or authority of the state with a financial institution, including, but not limited
39 to, banks, insurance companies and other institutions in the business of lending money, which
40 debt instruments shall include, but not be limited to, instruments relating to loans for working
41 capital and to the refinancing of existing debt: *Provided*, That nothing contained in this subsection
42 or any other provision of this article shall be construed as permitting the authority to insure the
43 refinancing of existing debt except when such insurance will result in the expansion of the

44 enterprise whose debt is to be refinanced or in the creation of new jobs;

45 (4) To pay or insure the payment of any fees or premiums necessary to obtain insurance,
46 guarantees, letters of credit or other credit support from any person or financial institution in
47 connection with financial assistance provided by the authority under this section; ~~and~~

48 (5) To pay any and all expenses of the authority, including, but not limited to:

49 (i) Any and all expenses for administrative, legal, actuarial, and other services related to
50 the operation of the insurance fund; and

51 (ii) All costs, charges, fees, and expenses of the authority related to the authorizing,
52 preparing, printing, selling, issuing, and insuring of bonds or notes (including, by way of example,
53 bonds or notes, the proceeds of which are used to refund outstanding bonds or notes) and the
54 funding of reserves; and

55 (6) To insure, for up to fifteen years for projects under paragraph (i) of this subdivision and
56 up to forty years for projects under subdivision (ii) of this subdivision, the payment or repayment
57 of all or any part of the principal of and interest on any form of debt instrument entered into by an
58 enterprise, public body or authority of the state with a financial institution, including, but not limited
59 to, banks, insurance companies and other institutions in the business of lending money, which
60 debt instruments are to be solely for capital costs relating to:

61 (i) Providing broadband service, as defined in section two, article fifteen-c, chapter thirty-
62 one of this code, to a household or business located in an unserved area, as defined in section
63 one, article fifteen-c, chapter thirty-one of this code, or in an area in with access to Internet service,
64 by wireline or fixed wireless technology, but that fifteen percent or more of households and
65 businesses in the area are served by Internet service with an actual downstream data rate less
66 than ten megabits per second and an upstream data rate less than one megabit per second, and
67 no part of the area has three or more wireline or fixed wireless broadband service providers; or

68 (ii) To build a segment of a telecommunications network that links a network operator's
69 core network to a local network plant that serves an unserved area, as defined in section one,

70 article fifteen-c, chapter thirty-one of this code or in an area in which fifteen percent or more of
71 households and business has access to Internet service with a downstream data rate less than
72 ten megabits per second and an upstream data rate less than one megabit per section.

73 The authority may not insure the payment or repayment of any part of the principal of and
74 interest on any form of debt instrument under this subdivision, unless the participating financial
75 institution provide written certification to the authority that, but for the authority's insuring the debt
76 instrument, the financial institution would not otherwise make the loan based solely on the
77 creditworthiness of the loan applicant: *Provided*, That nothing contained in this subsection or any
78 other provision of this article may be construed as permitting the authority to insure the refinancing
79 of existing debt.

80 Upon the filing of an application for loan insurance under this subsection, the broadband
81 provider shall cause to be published as a Class II legal advertisement in compliance with article
82 three, chapter fifty-nine of this code, notice of the filing of the application and that the authority
83 may approve the same unless within ten business days after completion of publication a written
84 objection is received by the authority from a person or persons challenging that the proposed
85 broadband project does not satisfy the provisions of this subsection. The publication area for such
86 notice is to be the county or counties in which any portion of the proposed broadband project is
87 to be constructed. The notice shall be in such form as the authority shall direct, and shall include
88 a map of the area or areas to be served by the proposed broadband project. The applicant shall
89 also cause to be mailed by first class, on or before the first day of publication of the notice, a copy
90 of the notice to all known current providers of broadband service within the area proposed to be
91 served. If a challenge under this paragraph is timely received by the authority, the authority shall
92 advise the Broadband Enhancement Council, established in article fifteen-c of chapter thirty-one
93 of this code, in writing within five business days. The council shall set the matter for hearing on a
94 date within thirty days of receipt of notice from the authority. The broadband enhancement council
95 shall issue a decision on whether the proposed project satisfies the requirements of this

96 subsection or not within thirty days of completion of such hearing. Any party participating in said
97 hearing may appeal the council's decision within thirty days of the issuance of said decision to
98 the circuit court of Kanawha County.

99 (c) ~~The~~ Except as relating to insured portions of debt instruments under subdivision (6),
100 subsection (b) of this section, the total aggregate amount of insurance from the insurance fund
101 with respect to the insured portions of principal of bonds or notes or other instruments may not
102 exceed at any time an amount equal to five times the balance in the insurance fund.

103 (d) The authority may, in its sole and absolute discretion, set the premiums and fees to be
104 paid to it for providing financial assistance under this section. The premiums and fees set by the
105 authority shall be payable in the amounts, at the time, and in the manner that the authority, in its
106 sole and absolute discretion, requires. The premiums and fees need not be uniform among
107 transactions, and may vary in amount: (1) among transactions, and (2) at different stages during
108 the terms of transactions.

109 (e) The authority may, in its sole and absolute discretion, require the security it believes
110 sufficient in connection with its insuring of the payment or repayment of any bonds, notes, debt
111 or other instruments described in subdivisions (1), (2), (3) and (4), subsection (b) of this section.

112 (f) The authority may itself approve the form of any insurance agreement entered into
113 under this section or may authorize the chairman or his or her designee to approve the form of
114 any such agreement. Any payment by the authority under an agreement entered into by the
115 authority under this section shall be made at the time and in the manner that the authority, in its
116 sole and absolute discretion, determines.

117 (g) The obligations of the authority under any insurance agreement entered into pursuant
118 to this article shall not constitute a debt or a pledge of the faith and credit or taxing powers of this
119 state or of any county, municipality or any political subdivision of this state for the payment of any
120 amount due thereunder or pursuant thereto, but the obligations evidenced by such insurance
121 agreement shall be payable solely from the funds pledged for their payment. All such insurance

122 agreements shall contain on the face thereof a statement to the effect that such agreements and
123 the obligations evidenced thereby are not debts of the state or any county, municipality or political
124 subdivision thereof but are payable solely from funds pledged for their payment.

NOTE: The purpose of this bill concerns the expansion of broadband service to unserved areas of West Virginia by providing loan insurance for commercial loans used for the expansion of broadband service to unserved or underserved areas. The bill establishes limits and conditions on the insuring of loans. The bill establishes interest rates. The bill establishes amortization periods. The bill provides for security interests. The bill sets forth the responsibilities of the West Virginia Economic Development Authority, the West Virginia Board of Treasury Investments and the Broadband Enhancement Council, provides that the members of the West Virginia Board of Treasury Investments do not have a fiduciary responsibility with regard to loans. The bill provides for notice for loan insurance. The bill provides for hearings and appeal. The bill also makes technical changes.

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