

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 614**

BY SENATORS BLAIR, BOSO AND SYPOLT

[Introduced March 15, 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 of said chapter which authorizes a \$50 million investment pool: *Provided*, That the West Virginia  
19 Economic Development Authority may not loan more than \$15 million for any one business or  
20 industrial development project. The revolving loan authorized by this subsection shall be secured  
21 by one note at a variable interest rate equal to the twelve-month average of the board's yield on  
22 its cash liquidity pool. The rate shall be set on the first day of July and adjusted annually on the  
23 same date. The maximum annual adjustment may not exceed one percent. Monthly payments  
24 made by the West Virginia Economic Development Authority to the board shall be calculated on  
25 a 120-month amortization. The revolving loan is secured by a security interest that pledges and  
26 assigns the cash proceeds of collateral from all loans under this revolving loan pool. The West  
27 Virginia Economic Development Authority may also pledge as collateral certain revenue streams  
28 from other revolving loan pools which source of funds does not originate from federal sources or  
29 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 the  
46 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 million, 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 June 30  
70 of each year, and the principal of which shall be repaid no later than June 30, 2022, in annual  
71 installments due on or before June 30 of each year. The annual installments, which need not be  
72 equal shall commence no later than June 30, 2005, in annual principal amounts agreed upon  
73 between the board and the West Virginia Economic Development Authority. The loan authorized  
74 by this subsection shall be nonrecourse and shall be payable by the West Virginia Economic  
75 Development Authority solely from amounts or returns received by the West Virginia Economic  
76 Development Authority in respect of the loan authorized by this subsection to the West Virginia  
77 Enterprise Advancement Corporation, whether in the form of interest, dividends, realized capital  
78 gains, return of capital or otherwise, in all of which the board shall have a security interest to  
79 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 June 30 of each  
83 year, shall be nonrecourse and shall be payable by the West Virginia Enterprise Advancement  
84 Corporation solely from amounts of returns received by the West Virginia Enterprise  
85 Advancement Corporation in respect to its investment in the West Virginia Enterprise Capital

86 Fund, LLC, whether in the form of interest, dividends, realized capital gains, return of capital or  
87 otherwise, in all of which that board shall have a security interest to secure repayment of the loan  
88 to the West Virginia Economic Development Authority authorized by this subsection. In the event  
89 the amounts or returns received by the West Virginia Enterprise Corporation in respect to its  
90 investment in the West Virginia Enterprise Capital Fund, LLC, are not adequate to pay when due  
91 the principal or interest installments, or both, with respect to the loan authorized by this subsection  
92 by the board to the West Virginia Economic Development Authority, the principal or interest, or  
93 both, as the case may be, due on the loan made to the West Virginia Economic Development  
94 Authority pursuant to this subsection shall be deferred and any and all past due principal and  
95 interest payments shall promptly be paid to the fullest extent possible upon receipt by the West  
96 Virginia Enterprise Advancement Corporation of moneys in respect to its investments in the West  
97 Virginia Enterprise Capital Fund, LLC. The directors or the board shall bear no fiduciary  
98 responsibility as provided in section thirteen of this article with regard to the loan authorized by  
99 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 said section: *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 quarterly during each year thereafter. The maximum annual adjustment  
118 may not exceed one percent. Quarterly, the West Virginia Economic Development Authority shall  
119 make a payment sufficient to pay in full all accrued interests on the loan for the prior quarter. The  
120 loan authorized by this subsection is nonrecourse and is payable by the West Virginia Economic  
121 Development Authority solely from moneys received by the West Virginia Economic Development  
122 Authority in respect to insured debt instruments relating to providing broadband service under  
123 section eight, article fifteen, chapter thirty-one of this code. Upon payment in full of any said  
124 insured debt instruments, the West Virginia Economic Development Authority shall reduce the  
125 outstanding balance of the loan by a like amount. Additionally, quarterly, the West Virginia  
126 Economic Development Authority shall determine the outstanding balance of all such insured debt  
127 instruments and shall accordingly adjust the outstanding balance of the loan to equal the  
128 outstanding obligations of the West Virginia Economic Development Authority for all said insured  
129 debt instruments. The loan is hereby secured by a security interest that pledges and assigns the  
130 cash proceeds of all collateral securing all insurance agreements entered into by the authority  
131 respecting debt instruments relating to the deployment of broadband under said section. In the  
132 event moneys received by the West Virginia Economic Development Authority respecting any  
133 individual insured debt instrument relating to providing broadband service under said section is  
134 insufficient to pay when due the principal or interest installments, or both, with respect to the loan  
135 authorized by this subsection by the board to the authority, the principal or interest, or both, as  
136 the case may be, due on the loan made to the authority pursuant to this subsection shall be  
137 deferred and any and all past-due principal and interest payments shall promptly be paid to the



138 fullest extent possible upon receipt by the authority of all moneys respecting said debt  
139 instruments. The directors of the board bear no fiduciary responsibility as provided in section  
140 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 twenty years, the payment or repayment of all or any part of the  
56 principal of and interest on any form of debt instrument entered into by an enterprise, public body  
57 or authority of the state with a financial institution, including, but not limited to, banks, insurance  
58 companies and other institutions in the business of lending money, which debt instruments are to  
59 be solely for capital costs relating to:

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

67 (ii) Building a segment of a telecommunications network that links a network operator's  
68 core network to a local network plant that serves either an unserved area, as defined in section  
69 one, article fifteen-c, chapter thirty-one of this code, or an area in which no more than two wireline  
70 providers are operating.

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

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

97 broadband providers that plan on providing a downstream data rate of at least one gigabyte per  
98 second to the end user.

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

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- 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.