

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4447

FISCAL
NOTE

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HARSHBARGER, FAST, LANE, HOLLEN, CAPITO AND

SUMMERS

[Introduced February 7, 2018; Referred
to the Committee on Roads and Transportation then the
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §31G-5-1, §31G-5-2, and §31G-5-3, all relating to providing a uniform and
 3 efficient system of broadband conduit installation coinciding with the construction,
 4 maintenance or improvement of highways, and right-of-way under the oversight of the
 5 Division of Highways.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. "DIG ONCE" POLICY.

§31G-5-1. Definitions.

1 In this article, unless the context otherwise requires:

2 (1) "Broadband conduit" means a conduit, innerduct or microduct for fiber optic cables that
 3 support broadband and wireless facilities for broadband service.

4 (2) "Broadband service" has the same meaning as defined in §31G-1-2 of this code.

5 (3) "Cost-based rate" means a lease rate that is only comprised of direct and actual
 6 associated indirect costs of obtaining and maintaining the associated right-of-way and broadband
 7 conduit and must be equitably allocated among users of the associated right-of-way, broadband
 8 conduit and innerduct or microduct.

9 (4) "Covered highway construction project" means:

10 (A) A project to construct a new highway or to construct or relocate an additional lane or
 11 shoulder for an existing highway that is commenced after the effective date of this section and
 12 that receives funding from state or federal monies; or

13 (B) Any other project undertaken by the department that opens, bores, or trenches
 14 alongside any state-owned infrastructure or right-of-way, including, but not limited to, surface
 15 mounting on bridges, overpasses, and other facilities where below ground placement is
 16 impossible or impractical.

17 (5) "Provider" means an entity that provides for the sale or resale of wholesale or retail
 18 broadband services in this state.

§31G-5-2. Broadband conduit installation; highway construction projects.

1 (a) The Division of Highways shall install vacant broadband conduit in accordance with
2 this article as part of a covered highway construction project. All work performed must be in
3 accordance with the National Electrical Safety Code and other generally accepted safety codes.
4 All details of such installation, including the depth of installation of conduit, the size of said conduit,
5 the placement of hand holes and manholes for fiber access, the location and access to pull tape,
6 the interval between access points, and other such considerations are to be in accordance with
7 industry best practices, and as determined by applicable rules promulgated by the Broadband
8 Enhancement Council.

9 (b) Providers desiring use of this conduit may make use of this vacant conduit upon
10 application to the Broadband Enhancement Council. If the council approves, it shall then lease
11 the broadband conduit to providers at a cost-based rate and coordinate with providers regarding
12 planning and relocating of broadband conduit and any related provider facilities within the right-
13 of-way at the provider's expense if future highway improvements make the relocations necessary.
14 The Broadband Enhancement Council shall take reasonable steps to ensure market-based,
15 nondiscriminatory pricing. The Division of Highways may limit provider access to any broadband
16 facilities within the right-of-way for initial installation and infrequent access for maintenance
17 purposes and may take other actions necessary to maintain highway safety

18 (c) The Division of Highways may install broadband conduit without regard to the timing
19 of a related existing construction project, based on a request and receipt of funding from the
20 Broadband Enhancement Council.

§31G-5-3. Infrastructure development.

1 (a) The Broadband Enhancement Council shall, in collaboration with the Department of
2 Transportation, Division of Highways, and private entities, encourage and coordinate “dig once”
3 efforts for the planning, relocation, installation, or improvement of broadband conduit within a
4 right-of-way in conjunction with any current or planned construction, including, but not limited to,

5 highways and bridges. To the extent necessary, the Broadband Enhancement Council shall, in
6 collaboration with the Department of Transportation and Division of Highways, evaluate
7 engineering and design standards, procedures and criteria for contracts or lease agreements with
8 private entities, and pricing requirements, and provide for allocation of risk, costs, and any
9 revenue generated.

10 (b) The Broadband Enhancement Council shall, in collaboration with other state
11 departments and agencies the Broadband Enhancement Council considers necessary, develop
12 a strategy to facilitate the timely and efficient deployment of broadband conduit or other
13 broadband facilities on state-owned lands and buildings.

14 (c) To the extent practicable, the Broadband Enhancement Council shall encourage and
15 assist local units of government to adopt and implement policies similar to those under
16 subsections (a) and (b) of this section for construction or other improvements to county and
17 municipal building projects, and any other right-of-way under the local unit of government's
18 jurisdiction, and to other lands or buildings owned by the local unit of government.

NOTE: The purpose of this bill is to provide for a uniform and efficient system of broadband conduit installation coinciding with the construction, maintenance or improvement of highways and right-of-way under the oversight of the Division of Highways.

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