

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4015

FISCAL
NOTE

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(MR. SPEAKER), QUEEN, PACK AND NELSON

[Introduced January 09, 2020; Referred to the
Committee on Technology and Infrastructure then the
Judiciary]

1 A BILL to amend and reenact §31-15-8 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §31G-1-3 of said code; and to amend said code by adding thereto a new
 3 article, designated §31G-5-1, §31G-5-2, §31G-5-3 and §31G-5-4, all relating generally to
 4 economic development; permitting the existing insurance fund to insure additional
 5 broadband internet service; making the four legislative members of the Broadband
 6 Enhancement Council voting members of the council instead of ex officio, nonvoting
 7 advisory members; enacting the Vertical Real Estate Management and Availability Act;
 8 requiring the Department of Administration to coordinate with the Governor to seek
 9 proposals to manage state-owned vertical real estate; establishing how the vertical real
 10 estate is to be managed; and defining "vertical real estate" as any structure that is suitable
 11 for the mounting of communications equipment and associated ground facilities.

Be it enacted by the Legislature of West Virginia:

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 chair, 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 this article or under the Industrial Development and Commercial Development Bond Act, the West
28 Virginia Hospital Finance Authority Act or, with respect to health care facilities only, §8-33-1 *et*
29 *seq.* 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 this article or
33 under the Industrial Development and Commercial Development Bond Act, the West Virginia
34 Hospital Finance Authority Act or, with respect to health care facilities only, §8-33-1 *et seq.* of this
35 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;

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 20 years, the payment or repayment of all or any part of the principal
56 of and interest on any form of debt instrument entered into by an enterprise, public body, or
57 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
59 to be solely for capital costs relating to:

60 (i) Providing broadband service, as defined in §31G-1-1 of this code, to a household or
61 business located in an unserved area, as defined in ~~section two of said article~~ §31G-1-2 of this
62 code, or in an area with access to Internet service, by wireline or fixed wireless technology, but

63 that 15 percent or more of households and businesses in the area are served by Internet service
64 with an actual downstream data rate less than ~~ten~~ 40 megabits per second and an upstream data
65 rate less than ~~one megabit~~ seven megabits per second, and no part of the area has three or more
66 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~~ (1) An unserved area, as defined in
69 §31G-1-2 of this code; (2) an area in which no more than three wireline providers are operating
70 which are providing service with an actual downstream data rate less than 40 megabits per
71 second and an upstream data rate less than seven megabits per second; or (3) an area in which
72 no more than two wireline providers are operating.

73 In order to determine whether or not this level of service exists, the authority shall use the
74 mapping data compiled by the Broadband Enhancement Council under the authority of §31G-1-
75 6 of this code: *Provided*, That to be used by the authority such mapping data must: (1) Have data
76 from a subscriber of each reported provider within a given area; or (2) there must be a statement
77 which reports that no provider exists in that area.

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

85 Upon the filing of an application for loan insurance under this subsection, the broadband
86 provider shall cause to be published as a Class II legal advertisement in compliance with §59-3-
87 1 *et seq.* of this code, notice of the filing of the application and that the authority may approve the
88 same unless within 10 business days after completion of publication a written objection is received

89 by the authority from a person or persons challenging that the proposed broadband project does
90 not satisfy the provisions of this subsection. The publication area for such notice is to be the
91 county or counties in which any portion of the proposed broadband project is to be constructed.
92 The notice shall be in such form as the authority shall direct, and shall include a map of the area
93 or areas to be served by the proposed broadband project. The applicant shall also cause to be
94 mailed by first class, on or before the first day of publication of the notice, a copy of the notice to
95 all known current providers of broadband service within the area proposed to be served. If a
96 challenge under this paragraph is timely received by the authority, the authority shall advise the
97 Broadband Enhancement Council, established in §31G-1-1 *et seq.* of this code, in writing within
98 five business days. The council shall set the matter for hearing on a date within 30 days of receipt
99 of notice from the authority. The Broadband Enhancement Council shall issue a decision on
100 whether the proposed project satisfies the requirements of this subsection or not within 30 days
101 of completion of such hearing. Any party participating in said hearing may appeal the council's
102 decision within 30 days of the issuance of said decision to the Circuit Court of Kanawha County.
103 This provision shall apply to all applicants except to those broadband providers that plan on
104 providing a downstream data rate of at least one gigabyte per second to the end user.

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

109 (d) The authority may, in its sole and absolute discretion, set the premiums and fees to be
110 paid to it for providing financial assistance under this section. The premiums and fees set by the
111 authority shall be payable in the amounts, at the time, and in the manner that the authority, in its
112 sole and absolute discretion, requires. The premiums and fees need not be uniform among
113 transactions, and may vary in amount: (1) Among transactions; and (2) at different stages during
114 the terms of transactions.

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

118 (f) The authority may itself approve the form of any insurance agreement entered into
119 under this section or may authorize the chair or his or her designee to approve the form of any
120 such agreement. Any payment by the authority under an agreement entered into by the authority
121 under this section shall be made at the time and in the manner that the authority, in its sole and
122 absolute discretion, determines.

123 (g) The obligations of the authority under any insurance agreement entered into pursuant
124 to this article shall not constitute a debt or a pledge of the faith and credit or taxing powers of this
125 state or of any county, municipality or any political subdivision of this state for the payment of any
126 amount due thereunder or pursuant thereto, but the obligations evidenced by such insurance
127 agreement shall be payable solely from the funds pledged for their payment. All such insurance
128 agreements shall contain on the face thereof a statement to the effect that such agreements and
129 the obligations evidenced thereby are not debts of the state or any county, municipality, or political
130 subdivision thereof but are payable solely from funds pledged for their payment.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§31G-1-3. Broadband Enhancement Council; members of council; administrative support.

1 (a) The Broadband Enhancement Council is hereby established and continued. The
2 current members, funds, and personnel shall continue in effect and be wholly transferred; except
3 as may be hereinafter provided. With regard to the terms of the public members appointed under
4 subdivision five, of subsection (d) of this section, at the next regular meeting of the council
5 following July 1, 2017, the currently serving public members shall draw by lot for the length of

6 their terms, three members to serve for one additional year, three members to serve for two
7 additional years and the last three members to serve for three additional years, with all public
8 members in future to serve for the duration of the term described below.

9 (b) The council is a governmental instrumentality of the State. The exercise by the council
10 of the powers conferred by this article and the carrying out of its purpose and duties are
11 considered and held to be, and are hereby determined to be, essential governmental functions
12 and for a public purpose. The council is created under the Department of Commerce for
13 administrative, personnel, and technical support services only.

14 (c) The council shall consist of ~~thirteen~~ 17 voting members, designated as follows:

15 (1) The Secretary of Commerce or his or her designee;

16 (2) The Chief Technology Officer or his or her designee;

17 (3) The Vice Chancellor for Administration of the Higher Education Policy Commission or
18 his or her designee;

19 (4) The State Superintendent of Schools or his or her designee; ~~and~~

20 (5) Nine public members that shall serve three-year terms from the date of their
21 appointment and are appointed by the Governor with the advice and consent of the Senate, as
22 follows:

23 (i) One member representing users of large amounts of broadband services in this state;

24 (ii) One member from each congressional district representing rural business users in this
25 state;

26 (iii) One member from each congressional district representing rural residential users in
27 this state;

28 (iv) One member representing urban business users in this state; and

29 (v) One member representing urban residential users in this state; and

30 (6) ~~In addition to the thirteen voting members of the council~~ Additionally, the President of
31 the Senate shall name two Senators from the West Virginia Senate, one from each party, and the

32 Speaker of the House shall name two Delegates from the West Virginia House of Delegates, one
33 from each party, each to serve in the capacity of ~~an ex-officio, nonvoting advisory~~ a voting member
34 of the council.

35 (d) The Secretary of Commerce shall chair the first meeting at which time a chair and vice
36 chair shall be elected from the members of the council. In the absence of the chair, the vice chair
37 shall serve as chair. The council shall appoint a secretary-treasurer who need not be a member
38 of the council and who, among other tasks or functions designated by the council, shall keep
39 records of its proceedings.

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

43 (f) Seven voting members of the council constitute a quorum and the affirmative vote of a
44 simple majority of those members present is necessary for any action taken by vote of the council.

45 (g) The gubernatorial appointed members shall be deemed part-time public officials, and
46 may pursue and engage in another business or occupation or gainful employment. Any person
47 employed by, owning an interest in, or otherwise associated with a broadband deployment project,
48 project sponsor, or project participant may serve as a council member and is not disqualified from
49 serving as a council member because of a conflict of interest prohibited under §6B-2-5 of this
50 code and is not subject to prosecution for violation of ~~said that~~ section when the violation is created
51 solely as a result of his or her relationship with the broadband deployment project, project sponsor,
52 or project participant so long as the member recuses himself or herself from board participation
53 regarding the conflicting issue in the manner set forth in §6B-2-5 of this code and the legislative
54 rules promulgated by the West Virginia Ethics Commission.

55 (h) No member of the council who serves by virtue of his or her office may receive any
56 compensation or reimbursement of expenses for serving as a member. The public members and
57 members of any committees or subcommittees are entitled to be reimbursed for actual and

58 necessary expenses incurred for each day or portion thereof engaged in the discharge of his or
59 her official duties in a manner consistent with the guidelines of the Travel Management Office of
60 the Department of Administration.

61 (i) No person is subject to antitrust or unfair competition liability based on membership or
62 participation in the council, which provides an essential governmental function and enjoys state
63 action immunity.

ARTICLE 5. VERTICAL REAL ESTATE MANAGEMENT AND AVAILABILITY ACT.

§31G-5-1. Short title.

1 This article shall be known and cited as the Vertical Real Estate Management and
2 Availability Act.

§31G-5-2. Definitions.

1 For the purposes of this article unless the context otherwise requires:

2 “Ground facilities” means any shed, buildings, server rooms, or other ancillary structure
3 providing essential services to a tower, including, but not limited to, distributing power, providing
4 communications backhaul, or other service necessary to carry out the purposes of the tower.

5 “Tower” means a structure which hosts an antenna or other equipment used for the
6 purposes of transmitting cellular or wireless signals for communications purposes, including
7 telephonically, or, for computing purposes, including any antenna and all associated equipment;
8 and

9 “Vertical Real Estate” means any communication or broadcast tower, or any other
10 structure or similar installation mounted on a rooftop or other prominent place, and any other such
11 facilities associated with that structure, upon which is suitable to mount communications
12 equipment thereon, and the associated ground facilities necessary to accommodate that
13 communications purpose.

§31G-5-3 Management of vertical real estate.

1 (a) Beginning on July 1, 2020, the Department of Administration shall coordinate with the

2 executive to issue a request for proposals to manage state-owned vertical real estate. This
3 request for proposals shall contain at a minimum the following information from each prospective
4 manager:

5 (1) A standard method for valuation of space on each tower that is reasonable and
6 customary for the reach of and the numbers of the population served by the vertical real estate.

7 (2) A clause which forbids any vendor to enter into an exclusive arrangement with any
8 person for the right to use the vertical real estate, unless no other entity is interested, and a clause
9 which forbids the sharing of information, backhaul, or any other resources gleaned from
10 managing the assets competitively with any competitors.

11 (3) A clause forbidding the vendor from engaging in any preferential treatment to their own
12 operations as a competing provider of fixed wireless.

13 (4) An 80 percent rental reduction for any entity whose utilization of that particular asset
14 is providing broadband access which is rate unlimited or unthrottled; subject to current
15 load/demand network management.

16 (b) Each successful manager shall derive the contracted-for compensation and shall
17 distribute any funds received in excess of their management fee as follows:

18 (1) Thirty percent to the agency or entity owning the vertical real estate,

19 (2) Forty percent to the general revenue fund, and

20 (3) Thirty percent will go to the Broadband Expansion Fund established in §31G-1-5 of
21 this code in control of the Broadband Enhancement Council with the specific purpose of:

22 (A) Funding the ongoing operations of the Broadband Enhancement Council, and

23 (B) To provide matching funds to match federal grants.

§31G-5-4. Exceptions to the management of vertical real estate.

1 Any vertical real estate may be exempted from management if:

2 (A) The rental of that vertical real estate would potentially affect the operations of any
3 public safety, emergency management or homeland security operations, or

4 (B) It would have an adverse effect on historic preservation of a property: *Provided, That*
5 if there is a showing that a reasonable, technically feasible, nondiscriminatory, and technologically
6 neutral design or concealment measures can prevent such adverse effect on the property's
7 historic preservations then such management may occur.

NOTE: The purpose of this bill is to generally address economic development. The bill permits the existing insurance fund to insure additional broadband internet service. The bill makes the four legislative members of the Broadband Enhancement Council voting members of the council instead of ex officio, nonvoting advisory members. The bill enacts the Vertical Real Estate Management and Availability Act. The bill requires the Department of Administration to coordinate with the Governor to seek proposals to manage state-owned vertical real estate. The bill establishes how the vertical real estate is to be managed. The bill defines "vertical real estate" as any structure that is suitable for the mounting of communications equipment and associated ground facilities.

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