

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4015

BY DELEGATES LINVILLE, ATKINSON, BARNHART, D.

KELLY, MAYNARD, SYPOLT, PORTERFIELD, HANSHAW

(MR. SPEAKER), QUEEN, PACK AND NELSON

[Passed March 7, 2020; in effect ninety days from passage.]

1 AN ACT to amend and reenact §31G-1-3 of the Code of West Virginia, 1931, as amended; and
2 to amend said code by adding thereto a new article, designated §31G-5-1, §31G-5-2,
3 §31G-5-3, and §31G-5-4, all relating to telecommunications and broadband; limiting the
4 consecutive terms of the public members of the Broadband Enhancement Council; limiting
5 the consecutive terms of the chair and vice-chair of the Broadband Enhancement Council;
6 enacting the Vertical Real Estate Management and Availability Act; requiring the
7 Department of Administration to coordinate with the Governor to seek proposals to
8 manage state-owned vertical real estate; establishing how the vertical real estate is to be
9 managed; defining “vertical real estate” as any structure that is suitable for the mounting
10 of communications equipment and associated ground facilities; providing for a distribution
11 of funds from leasing state-owned vertical real estate; and setting forth certain exceptions
12 to the availability for management of state-owned vertical real estate.

Be it enacted by the Legislature of West Virginia:

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, subsection (d) of this section, at the next regular meeting of the council following
5 July 1, 2017, the currently serving public members shall draw by lot for the length of their terms,
6 three members to serve for one additional year, three members to serve for two additional years
7 and the last three members to serve for three additional years, with all public members in future
8 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 13 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;

20 (5) Nine public members that shall serve no more than three consecutive three-year terms
21 from the date of their appointment and are appointed by and serve at the will and pleasure of the
22 Governor with the advice and consent of the Senate, as 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) Additionally, the President of the Senate shall name two Senators from the West
31 Virginia Senate, one from each party, and the Speaker of the House shall name two Delegates
32 from the West Virginia House of Delegates, one from each party, each to serve in the capacity of
33 ex officio, nonvoting advisory members of the council.

34 (d) The Secretary of Commerce shall chair the first meeting at which time a chair and vice
35 chair shall be elected from the members of the council for a term of two years: *Provided*, That a
36 chair or vice-chair may not serve more than two consecutive full or partial terms in that capacity.

37 In the absence of the chair, the vice chair shall serve as chair. The council shall appoint a

38 secretary-treasurer who need not be a member of the council and who, among other tasks or
39 functions designated by the council, shall keep 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 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, or other real estate suitable for the installation of a telecommunications
14 vertical asset: *Provided*, That any excess telecommunications facilities owned or controlled by the
15 West Virginia Division of Highways that do not meet this definition of Vertical Real Estate, shall
16 be subject to the provisions of §17-2E-6a of this code: *Provided further*, That nothing in this
17 definition may serve to prohibit terrestrial, middle-mile or last-mile broadband or high speed
18 internet wiring or facilities installation pursuant to §17-2E-1 *et seq.* nor may classification as such
19 facilities serve to prevent utility installation including, but not limited to, water, electric and sewer
20 services.

§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 managing
10 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 wireless broadband access.

13 (4) A minimum of 50 percent rental reduction for any entity whose utilization of that vertical
14 real estate is providing broadband access which is rate unlimited or unthrottled; subject to current
15 load/demand network management.

16 (b) There is hereby created in the state treasury a special account to be known as the
17 Technology Infrastructure Reinvestment Fund to be administered by the Office of Technology. All
18 revenue derived from the management of the vertical real estate shall be deposited into the fund
19 pursuant to §31G-5-3 of this code. Expenditures from the fund shall be made by the Office of
20 Technology for the purpose of reinvestment in the vertical real estate or technology infrastructure
21 supporting broadband on state-owned property. Expenditures are not authorized from collections
22 but are to be made in accordance with appropriation by the Legislature pursuant to the provisions
23 of §12-3-1, *et seq.* of this code and upon the fulfillment of the provisions of §11B-2-1, *et seq.* of
24 this code.

25 (c) The Office of Technology shall remit to the manager the compensation as per the
26 contract and then on June 30 each year shall distribute any funds received in excess of the
27 compensation due the manager as follows:

28 (1) Fifty percent to the Technology Infrastructure Reinvestment Fund,

29 (2) Fifty percent will go to the Broadband Expansion Fund established in §31G-1-5 of this
30 code in control of the Broadband Enhancement Council with the specific purpose of:

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

32 (B) To provide funds to match federal grants.

33 (d) Counties, municipalities and other political subdivisions, as applicable, may join or
34 participate in an awarded agreement with a successful manager under the same terms and
35 conditions: *Provided*, That distribution of funds attributable to their assets may be expended at
36 the discretion of their governing body.

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

1 Any vertical real estate shall 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: *Provided*, That if there
4 is a showing that a reasonable, technically feasible, nondiscriminatory design can prevent such
5 adverse effect on any public safety, emergency management or homeland security operations
6 then such management may occur; or

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

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Governor