

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Originating**

**House Bill 3302**

BY DELEGATES LINVILLE AND GARCIA

[Originating in the Committee on Technology and  
Infrastructure; reported on March 23, 2021]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §31G-6-1, §31G-6-2, §31G-6-3, and §31G-6-4, all relating generally to  
3 broadband enhancement and expansion policies; providing for the creation and  
4 administration of four funds in the State Treasury known as the Broadband Open Access  
5 Middle Mile Fund, the Broadband Grant Matching Fund, the Wired Wonderful West  
6 Virginia Fund, and the Broadband Provider Expansion Fund, all to be administered by and  
7 under the control of the Office of Broadband; providing for state budgeting and legislative  
8 appropriations concerning the funds; providing for the separate purposes of each of the  
9 funds and the separate conditions under which moneys in each fund may be expended,  
10 being generally broadband expansion in this state.

*Be it enacted by the Legislature of West Virginia:*

**CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION  
POLICIES.**

**ARTICLE 6. THE WEST VIRGINIA BROADBAND FUNDS.**

**§31G-6-1. Creation and Administration of the Broadband Open Access Middle Mile Fund.**

1 (a) There is hereby created in the State Treasury a fund known as the Broadband Open  
2 Access Middle Mile Fund. The fund shall be administered by and under the control of the Office  
3 of Broadband. Expenditures from the fund shall be for the purposes set forth in this section and  
4 are to be made only in accordance with appropriation by the Legislature and in accordance with  
5 the provisions of article two, chapter eleven-b of this code.

6 (b) The fund shall consist of moneys appropriated by the Legislature. For fiscal year 2023  
7 and each fiscal year thereafter, the Office of Broadband shall include in their budget requests and  
8 the Governor shall include in each budget bill submitted to the Legislature, an appropriation for  
9 the purposes of the fund in an amount not less than \$1,000,000. The amount appropriated shall  
10 be transferred to the fund to be used solely for the purposes provided by this section.

11 (c) Expenditures from the fund shall be for the purposes of constructing open access  
12 middle mile fiber broadband to unserved and unfunded areas on the broadband availability map  
13 as so designated by the Office of Broadband and pursuant to this code.

**§31G-6-2. Creation and Administration of the Broadband Grant Matching Fund.**

1 (a) There is hereby created in the State Treasury a fund known as the Broadband Grant  
2 Matching Fund. The fund shall be administered by and under the control of the Office of  
3 Broadband. Expenditures from the fund shall be for the purposes set forth in this section and are  
4 to be made only in accordance with appropriation by the Legislature and in accordance with the  
5 provisions of article two, chapter eleven-b of this code.

6 (b) The fund shall consist of moneys appropriated by the Legislature. For fiscal year 2023  
7 and each fiscal year thereafter, the Office of Broadband shall include in their budget requests and  
8 the Governor shall include in each budget bill submitted to the Legislature, an appropriation for  
9 the purposes of the fund in an amount not less than \$1,000,000. The amount appropriated shall  
10 be transferred to the fund to be used solely for the purposes provided by this section.

11 (c) Expenditures from the fund shall be for the purposes of facilitating broadband projects  
12 which require up to a 50% match from sources other than the primary grantor and which extends  
13 or improves broadband access in this state. No expenditures shall be made from this fund until  
14 and unless satisfactory documentation of financial need is provided to the office and approved by  
15 the director: *Provided*, That but for this assistance, the grantee would be unable to be awarded  
16 or benefited by a grant.

**§31G-6-3. Creation and Administration of the Wired Wonderful West Virginia Fund.**

1 (a) There is hereby created in the State Treasury a fund known as the Wired Wonderful  
2 West Virginia Fund. The fund shall be administered by and under the control of the Office of  
3 Broadband. Expenditures from the fund shall be for the purposes set forth in this section and are  
4 to be made only in accordance with appropriation by the Legislature and in accordance with the  
5 provisions of article two, chapter eleven-b of this code.

6           (b) The fund shall consist of moneys appropriated by the Legislature. For fiscal year 2023  
7 and each fiscal year thereafter, the Office of Broadband shall include in their budget requests and  
8 the Governor shall include in each budget bill submitted to the Legislature, an appropriation for  
9 the purposes of the fund in an amount not less than \$1,000,000. The amount appropriated shall  
10 be transferred to the fund to be used solely for the purposes provided by this section.

11           (c) Expenditures from the fund shall be for the purposes of establishing a pilot program for  
12 open-access last mile broadband internet service wherein internet service is provided on common  
13 infrastructure.

14           (d) Eligible recipients of disbursements from this fund must have an articulable nexus to  
15 healthcare, education, and a private sector network operator and must construct an open-access  
16 network which allows for multiple internet service providers to competitively offer their services  
17 upon this common middle and last mile infrastructure.

**§31G-6-4. Creation and Administration of the Broadband Provider Expansion Fund.**

1           (a) There is hereby created in the State Treasury a fund known as the Broadband Provider  
2 Expansion Fund. The fund shall be administered by and under the control of the Office of  
3 Broadband. Expenditures from the fund shall be for the purposes set forth in this section and are  
4 to be made only in accordance with appropriation by the Legislature and in accordance with the  
5 provisions of article two, chapter eleven-b of this code.

6           (b) The fund shall consist of moneys appropriated by the Legislature. For fiscal year 2023  
7 and each fiscal year thereafter, the Office of Broadband shall include in their budget requests and  
8 the Governor shall include in each budget bill submitted to the Legislature, an appropriation for  
9 the purposes of the fund in an amount not less than \$1,000,000. The amount appropriated shall  
10 be transferred to the fund to be used solely for the purposes provided by this section.

11           (c) Expenditures from the fund shall be for the purposes of supporting existing broadband  
12 providers to extend their last mile networks within unserved and unfunded areas as indicated on  
13 the broadband availability map as so designated by Office of Broadband and pursuant to this

14 code. The following amounts shall be made available to broadband providers, not receiving any  
15 other financial support in the eligible area, to provide service to unserved and unfunded areas  
16 after the provider demonstrates to the director that they have completed the necessary  
17 infrastructure build to serve a home or business premises including verifiable speed test data with  
18 GPS coordinates and a signed affidavit indicating under criminal penalties that to the best of the  
19 provider's knowledge no other terrestrial broadband service was available to the premises at the  
20 time of installation:

21 (1) A provider shall receive \$2,000 per premises for completing infrastructure installation  
22 to a residence or business with

23 (A) an actual downstream data rate of 1,000 megabits per second; and

24 (B) an actual upstream data rate of 50 megabits per second; and

25 (C) unlimited data usage without overage charges; and

26 (D) unlimited data usage without "throttling" or reduction of downstream or upstream data  
27 rate due, in whole or in part, to the amount of data transferred in any period; or

28 (2) A provider shall receive \$500 per premises for completing infrastructure installation to  
29 a residence or business with a terrestrial wired or fixed wireless connection with

30 (A) an actual downstream data rate of 25 megabits per second; and

31 (B) an actual upstream data rate of three megabits per second; and

32 (C) unlimited data usage without overage charges; and

33 (D) unlimited data usage without "throttling" or reduction of downstream or upstream data  
34 rate due, in whole or in part, to the amount of data transferred in any period.

35 (d) Disbursements from this fund shall be made available on a first-come, first-served  
36 basis and shall be expended and made available to providers until the fund is depleted. Upon  
37 additional legislative appropriation into this fund, disbursements shall be disbursed again in like  
38 fashion until the fund is depleted.

NOTE: The purpose of this bill is to enhance and expand broadband policies and access; provide for the creation and administration of four funds in the state treasury known as the Broadband Open Access Middle Mile Fund, the Broadband Grant Matching Fund, the Wired Wonderful West Virginia Fund, and the Broadband Provider Expansion Fund, all to be administered by and under the control of the Office of Broadband; provide for state budgeting and legislative appropriations concerning the funds; provide for the separate purposes of each of the funds and the separate conditions under which moneys in each fund may be expended, being generally broadband expansion in this state.

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