

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 2

FISCAL
NOTE

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[Introduced February 10, 2021; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §12-6C-11 of the Code of West Virginia, 1931, as amended; to
2 amend said code by adding thereto a new section, designated §12-6C-11a; to amend and
3 reenact §31-15-8 of said code; and to amend said code by adding thereto a new section,
4 designated §31-15-8a, all relating generally to economic development loans and loan
5 insurance issued by the state; eliminating provision stating that Economic Development
6 Authority has no fiduciary duty with regard to economic development loans; providing that
7 the Board of Treasury Investments may inspect and copy, upon written notice, all records
8 related to loans made available by the board to the Economic Development Authority;
9 defining terms; limiting the total amount of loan moneys that board shall make available to
10 the authority for the Broadband Loan Insurance Program to \$80 million; setting forth
11 requirements that must be met before broadband loan insurance moneys will be made
12 available to the authority; providing that board shall maintain broadband loan insurance
13 loan moneys in a separate account in the Consolidated Fund; providing that broadband
14 loan insurance moneys may only be drawn upon in the event of a broadband provider
15 default on an insured debt or security instrument; limiting the amount of loan insurance
16 that the authority may issue to a single broadband provider to \$20 million; clarifying that
17 the authority may not deduct administrative or operational costs from broadband loan
18 insurance loan moneys; setting forth requirements that must be met before the authority
19 may draw on broadband loan insurance moneys in the event of a broadband provider's
20 default; requiring the authority to submit quarterly reports to the Joint Committee on
21 Government and Finance and to the Governor containing certain information related to its
22 loan insurance program; requiring the authority to make applications for broadband loan
23 insurance publicly available on its website; establishing the minimum information an
24 applicant for broadband loan insurance shall be required to submit to the authority;
25 establishing minimum criteria that the authority must consider in its broadband loan
26 insurance application review process; providing that the authority may not issue loan

27 insurance to a broadband provider that has previously defaulted on any debt or security
28 instrument insured by the authority; requiring the authority to post certain information
29 regarding loan insurance agreements on its website; requiring the authority to adhere to
30 certain accounting and record-keeping practices; requiring the authority to submit
31 quarterly reports to the Board of Treasury Investments, the Joint Committee on
32 Government and Finance, and the Governor containing certain information on insured
33 loans and broadband projects financed by insured loans; requiring an annual legislative
34 audit of the Broadband Loan Insurance Program; removing obsolete language; and
35 making technical corrections.

Be it enacted by the Legislature of West Virginia:

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 §31-15-7 of this code and to consolidate existing loans
15 authorized to be made to the West Virginia Economic Development Authority pursuant to this
16 section and pursuant to §31-15-2 of this code which authorizes a \$175 million revolving loan and
17 §31-18B-1 *et seq.* of this code which authorizes a \$50 million investment pool: *Provided*, That the
18 West Virginia Economic Development Authority may not loan more than \$15 million for any one
19 business or industrial development project. The revolving loan authorized by this subsection shall
20 be secured by one note at a variable interest rate equal to the 12-month average of the board's
21 yield on its ~~cash liquidity~~ West Virginia Money Market pool. The rate shall be set on July 1 and
22 adjusted annually on the same date. The maximum annual adjustment may not exceed one
23 percent. Monthly payments made by the West Virginia Economic Development Authority to the
24 board shall be calculated on a 120-month amortization. The revolving loan is secured by a security
25 interest that pledges and assigns the cash proceeds of collateral from all loans under this
26 revolving loan pool. The West Virginia Economic Development Authority may also pledge as
27 collateral certain revenue streams from other revolving loan pools which source of funds does not
28 originate from federal sources or from the board.

29 (c) The outstanding principal balance of the revolving loan from the board to the West
30 Virginia Economic Development Authority may at no time exceed 103 percent of the aggregate
31 outstanding principal balance of the business and industrial loans from the West Virginia
32 Economic Development Authority to economic development projects funded from this revolving
33 loan pool. The independent audit of the West Virginia Economic Development Authority financial
34 records shall annually certify that 103 percent requirement.

35 (d) The interest rates and maturity dates on the loans made by the West Virginia Economic
36 Development Authority for business and industrial development projects authorized by §31-15-7
37 of this code shall be at competitive rates and maturities as determined by the West Virginia

38 Economic Development Authority Board.

39 (e) Any and all outstanding loans made by the West Virginia Board of Treasury
40 Investments, or any predecessor entity, to the West Virginia Economic Development Authority
41 are refundable by proceeds of the revolving loan contained in this section and the board shall
42 make no loans to the West Virginia Economic Development Authority pursuant to §31-15-20 of
43 this code or §31-18B-1 *et seq.* of this code.

44 ~~(f) The directors of the board shall bear no fiduciary responsibility with regard to any of the~~
45 ~~loans contemplated in this section.~~

46 ~~(g) Subject to cash availability, the board shall make available to the West Virginia~~
47 ~~Economic Development Authority, from the Consolidated Fund, a nonrecourse loan in an amount~~
48 ~~up to \$25 million, for the purpose of the West Virginia Economic Development Authority making~~
49 ~~a loan or loans from time to time to the West Virginia Enterprise Advancement Corporation, an~~
50 ~~affiliated nonprofit corporation of the West Virginia Economic Development Authority. The~~
51 ~~respective loans authorized by this subsection by the board to the West Virginia Economic~~
52 ~~Development Authority to the West Virginia Enterprise Advancement Corporation shall each be~~
53 ~~evidenced by one note and shall each bear interest at the rate of three percent per annum. The~~
54 ~~proceeds of any and all loans made by the West Virginia Economic Development Authority to the~~
55 ~~West Virginia Enterprise Advancement Corporation pursuant to this subsection shall be invested~~
56 ~~by the West Virginia Enterprise Corporation in the West Virginia Enterprise Capital Fund, LLC,~~
57 ~~the manager of which is the West Virginia Enterprise Advancement Corporation. The loan to West~~
58 ~~Virginia Economic Development Authority authorized by this subsection shall be nonrevolving,~~
59 ~~and advances under the loan shall be made at times and in amounts requested or directed by the~~
60 ~~West Virginia Economic Development Authority, upon reasonable notice to the board. The loan~~
61 ~~authorized by this subsection is not subject to or included in the limitations set forth in subsection~~
62 ~~(b) of this section with respect to the \$15 million limitation for any one business or industrial~~
63 ~~development project and limitation of 103% of outstanding loans, and may not be included in the~~

64 ~~revolving fund loan principal balance for purposes of calculating the loan amortization in~~
65 ~~subsection (b) of this section. The loan authorized by this subsection to the West Virginia~~
66 ~~Economic Development Authority shall be classified by the board as a long-term fixed income~~
67 ~~investment, shall bear interest on the outstanding principal balance of the loan at the rate of three~~
68 ~~percent per annum payable annually on or before June 30 of each year, and the principal of which~~
69 ~~shall be repaid no later than June 30, 2022, in annual installments due on or before June 30 of~~
70 ~~each year. The annual installments, which need not be equal shall commence no later than June~~
71 ~~30, 2005, in annual principal amounts agreed upon between the board and the West Virginia~~
72 ~~Economic Development Authority. The loan authorized by this subsection shall be nonrecourse~~
73 ~~and shall be payable by the West Virginia Economic Development Authority solely from amounts~~
74 ~~or returns received by the West Virginia Economic Development Authority in respect of the loan~~
75 ~~authorized by this subsection to the West Virginia Enterprise Advancement Corporation, whether~~
76 ~~in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of~~
77 ~~which the board shall have a security interest to secure repayment of the loan to the West Virginia~~
78 ~~Economic Development Authority authorized by this subsection. Any and all loans from the West~~
79 ~~Virginia Enterprise Advancement Corporation made pursuant to this subsection shall also bear~~
80 ~~interest on the outstanding principal balance of the loan at the rate of three percent per annum~~
81 ~~payable annually on or before June 30 of each year, shall be nonrecourse and shall be payable~~
82 ~~by the West Virginia Enterprise Advancement Corporation solely from amounts of returns~~
83 ~~received by the West Virginia Enterprise Advancement Corporation in respect to its investment in~~
84 ~~the West Virginia Enterprise Capital Fund, LLC, whether in the form of interest, dividends, realized~~
85 ~~capital gains, return of capital or otherwise, in all of which that board shall have a security interest~~
86 ~~to secure repayment of the loan to the West Virginia Economic Development Authority authorized~~
87 ~~by this subsection. In the event the amounts or returns received by the West Virginia Enterprise~~
88 ~~Corporation in respect to its investment in the West Virginia Enterprise Capital Fund, LLC, are not~~
89 ~~adequate to pay when due the principal or interest installments, or both, with respect to the loan~~

90 ~~authorized by this subsection by the board to the West Virginia Economic Development Authority,~~
91 ~~the principal or interest, or both, as the case may be, due on the loan made to the West Virginia~~
92 ~~Economic Development Authority pursuant to this subsection shall be deferred and any and all~~
93 ~~past due principal and interest payments shall promptly be paid to the fullest extent possible upon~~
94 ~~receipt by the West Virginia Enterprise Advancement Corporation of moneys in respect to its~~
95 ~~investments in the West Virginia Enterprise Capital Fund, LLC. The directors or the board shall~~
96 ~~bear no fiduciary responsibility as provided in section thirteen of this article with regard to the loan~~
97 ~~authorized by this subsection.~~

98 ~~(h) Notwithstanding any provision in this code to the contrary, subject to a liquidity~~
99 ~~determination and cash availability, the board shall make available to the West Virginia Economic~~
100 ~~Development Authority, from the Consolidated Fund, in the form of a nonrecourse revolving loan,~~
101 ~~\$50 million, for the purpose of insuring the payment or repayment of all or any part of the principal,~~
102 ~~the redemption or prepayment premiums or penalties on, and interest on any form of debt~~
103 ~~instrument entered into by an enterprise, public body or authority of the state with a financial~~
104 ~~institution, including, but not limited to, banks, insurance companies and other institutions in the~~
105 ~~business of lending money, as authorized and as set forth in section eight, article fifteen, chapter~~
106 ~~thirty-one of this code, but only for the purpose of providing insurance on such debt instruments~~
107 ~~relating solely to the deployment of broadband under said section: *Provided,* That the West~~
108 ~~Virginia Economic Development Authority may not insure more than \$10 million for any one~~
109 ~~enterprise, public body or authority of the state in any single calendar year. The loan authorized~~
110 ~~by this subsection may not be included in the revolving fund loan principal balance for purposes~~
111 ~~of calculating the loan amortization in subsection (b) of this section. The loan authorized by this~~
112 ~~subsection shall be classified by the board as a long-term fixed income investment, and shall bear~~
113 ~~interest on the outstanding principal balance of the loan at a variable interest rate equal to the~~
114 ~~twelve-month average of the board's yield on its cash liquidity pool. The rate shall be set on July~~
115 ~~1, 2017 and adjusted quarterly during each year thereafter. The maximum annual adjustment may~~

116 ~~not exceed one percent. Quarterly, the West Virginia Economic Development Authority shall make~~
117 ~~a payment sufficient to pay in full all accrued interests on the loan for the prior quarter. The loan~~
118 ~~authorized by this subsection is nonrecourse and is payable by the West Virginia Economic~~
119 ~~Development Authority solely from moneys received by the West Virginia Economic Development~~
120 ~~Authority in respect to insured debt instruments relating to providing broadband service under~~
121 ~~section eight, article fifteen, chapter thirty-one of this code. Upon payment in full of any said~~
122 ~~insured debt instruments, the West Virginia Economic Development Authority shall reduce the~~
123 ~~outstanding balance of the loan by a like amount. Additionally, quarterly, the West Virginia~~
124 ~~Economic Development Authority shall determine the outstanding balance of all such insured debt~~
125 ~~instruments and shall accordingly adjust the outstanding balance of the loan to equal the~~
126 ~~outstanding obligations of the West Virginia Economic Development Authority for all said insured~~
127 ~~debt instruments. The loan is hereby secured by a security interest that pledges and assigns the~~
128 ~~cash proceeds of all collateral securing all insurance agreements entered into by the authority~~
129 ~~respecting debt instruments relating to the deployment of broadband under said section. In the~~
130 ~~event moneys received by the West Virginia Economic Development Authority respecting any~~
131 ~~individual insured debt instrument relating to providing broadband service under said section is~~
132 ~~insufficient to pay when due the principal or interest installments, or both, with respect to the loan~~
133 ~~authorized by this subsection by the board to the authority, the principal or interest, or both, as~~
134 ~~the case may be, due on the loan made to the authority pursuant to this subsection shall be~~
135 ~~deferred and any and all past due principal and interest payments shall promptly be paid to the~~
136 ~~fullest extent possible upon receipt by the authority of all moneys respecting said debt s. The~~
137 ~~directors of the board bear no fiduciary responsibility as provided in section thirteen of this article~~
138 ~~with regard to the loan authorized by this subsection~~

139 (f) Inspection of Records. – Within 30 days of receiving a written request, the authority
140 shall provide a representative of the board with the opportunity to inspect and copy any records
141 in the custody of the authority related to any loan issued by the board to the authority or any loan

142 from the authority to a third party funded by a loan issued by the board. Records to be made
143 available pursuant to this subsection include, but are not limited to, accounting records, loan
144 applications, loan agreements, board minutes, audit reports, and transaction records.

§12-6C-11a. Broadband Loan Insurance Program; requirements.

1 (a) Definitions. – For the purposes of this section, the following terms have the following
2 meanings:

3 The “authority” refers to the West Virginia Economic Development Authority.

4 The “Broadband Loan Insurance Program” or the “program” refers to the program through
5 which the authority issues loan insurance, as authorized by §31-15-8a of this code.

6 The “board” refers to the West Virginia Board of Treasury Investments.

7 “Eligible broadband provider” has the same meaning provided in §31-15-8a of this code.

8 “Financial institution” means the bank, insurance company, or other institution in the
9 business of lending money, that conditions issuance of a debt or security instrument on loan
10 insurance by the authority, as described in §31-15-8a(b)(2) of this code.

11 (b) Loan for broadband deployment. --

12 (1) Subject to a liquidity determination and cash availability, the board shall provide a
13 nonrecourse revolving loan to the West Virginia Economic Development Authority, from the
14 Consolidated Fund, in an amount not to exceed \$80 million. The loan may be used by the authority
15 only as expressly authorized in §31-15-8a of this code.

16 (2) The board shall make the loan moneys available upon receipt of the following:

17 (A) A written request by the executive director of the authority that the board deposit a
18 specific amount of loan moneys, subject to the limitations provided in this section, into a separate
19 account within the Consolidated Fund for the purpose of funding the program; and

20 (B) A written statement by the executive director of the authority certifying that the authority
21 is in full compliance with all applicable provisions of federal and state law, as well as any
22 agreements entered into with the board.

23 (3) The West Virginia Board of Treasury Investments shall maintain the loan moneys made
24 available to the authority in a separate account within the Consolidated Fund. The West Virginia
25 Board of Treasury Investments shall transfer loan moneys to the authority only as authorized in
26 subsection (d) of this section.

27 (4) The authority may not use an amount of the loan moneys exceeding \$20 million, in any
28 single calendar year, to insure the debt or security instruments, or costs related thereto, of any
29 one broadband provider.

30 (5) The authority may not deduct or use any amount of loan moneys transferred pursuant
31 to this subsection to pay for the authority's operating or administrative expenses.

32 (c) Loan terms and requirements. –

33 (1) The loan authorized by this subsection shall be classified by the board as a long-term
34 fixed income investment and shall bear interest on the outstanding principal balance of the loan
35 at a variable interest rate equal to the 12-month average of the board's yield on its West Virginia
36 Money Market pool. The rate shall be set on July 1, 2021 and adjusted quarterly during each year
37 thereafter. The maximum annual adjustment may not exceed one percent.

38 (2) The loan authorized by this subsection is nonrecourse and may be used by the West
39 Virginia Economic Development Authority only as authorized by §31-15-8a of this code. Upon
40 payment in full of any said insured debt instruments or release in full of any security instruments,
41 the West Virginia Economic Development Authority shall reduce the outstanding balance of the
42 loan by a like amount. Additionally, quarterly, the West Virginia Economic Development Authority
43 shall determine the outstanding balance of all such insured debt and security instruments and
44 shall accordingly adjust the outstanding balance of the loan to equal the outstanding obligations
45 of the West Virginia Economic Development Authority for all of the insured debt and security
46 instruments. The West Virginia Economic Development Authority shall notify the Board of
47 Treasury Investments, in writing, of any such adjustment.

48 (3) The loan is secured by a security interest that pledges and assigns the cash proceeds

49 of all collateral securing all insurance agreements entered into by the authority pursuant to §31-
50 15-8a of this code. In the event moneys received by the West Virginia Economic Development
51 Authority respecting any individual insured debt or security instrument relating to providing
52 broadband service under said section is insufficient to pay when due the principal or interest
53 installments, or both, with respect to the loan authorized by this subsection by the board to the
54 authority, the principal or interest, or both, as the case may be, due on the loan made to the
55 authority pursuant to this subsection shall be deferred and any and all past-due principal and
56 interest payments shall promptly be paid to the fullest extent possible upon receipt by the authority
57 of all moneys respecting said debt instruments.

58 (d) *Transfer of moneys in event of default.* –

59 (1) The Board of Treasury Investments shall transfer loan moneys to the authority, only
60 upon receipt of the following:

61 (A) Written certification from the executive director of the authority that a broadband
62 provider has defaulted on a debt instrument or security interest insured by the authority, pursuant
63 to §31-15-8a of this code, and that the broadband provider does not have the option to enter into
64 a forbearance agreement with the financial institution;

65 (B) Written certification from the executive director of the authority that the authority has
66 pursued or will pursue any and all available remedies to recoup the costs to the state resulting
67 from the default, including but not limited to instituting a legal action to seize the collateral
68 described in subdivision (3), subsection (c) of this section; and

69 (C) A draw certificate, in good order, signed by the executive director of the authority.

70 (e) *Inspection of Records.* – Within 30 days of receiving a written request, the authority
71 shall provide a representative of the board with the opportunity to inspect and copy any records
72 in the custody of the authority related to the Broadband Loan Program. Records to be made
73 available pursuant to this subsection include, but are not limited to, accounting records, loan
74 insurance applications, loan insurance agreements, board minutes, audit reports, and transaction

75 records.

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~~ chairperson,
21 shall send a 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~~ may be construed as permitting the authority to insure
43 the refinancing of existing debt except when ~~such~~ the 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~~ eligible broadband provider with a financial institution, including, but not
58 limited to, banks, insurance companies, and other institutions in the business of lending money,
59 which debt instruments are to be solely for capital costs relating to the purposes authorized in
60 §31-15-8a of this code: *Provided, That beginning on the effective date of the amendments made*
61 to this section during the 2021 Regular Session of the Legislature, loan moneys may not be
62 transferred to the fund except as authorized by §12-6C-11a of this code.

63 ~~(i) Providing broadband service, as defined in §31G-1-1 of this code, to a household or~~
64 ~~business located in an unserved area, as defined in §31G-1-2 of this code, or in an area with~~
65 ~~access to Internet service, by wireline or fixed wireless technology, but that 15% or more of~~
66 ~~households and businesses in the area are served by Internet service with an actual downstream~~
67 ~~data rate less than 10 megabits per second and an upstream data rate less than one megabit per~~
68 ~~second, and no part of the area has three or more wireline or fixed wireless broadband service~~
69 ~~providers; or~~

70 ~~(ii) Building a segment of a telecommunications network that links a network operator's~~
71 ~~core network to a local network plant that serves either an unserved area, as defined in §31G-1-~~
72 ~~2 of this code, or an area in which no more than two wireline providers are operating.~~

73 The authority may not insure the payment or repayment of any part of the principal of and

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

80 ~~Upon the filing of an application for loan insurance under this subsection, the broadband~~
81 ~~provider shall cause to be published as a Class II legal advertisement in compliance with §59-3-~~
82 ~~1 et seq. of this code, notice of the filing of the application and that the authority may approve the~~
83 ~~same unless within 10 business days after completion of publication a written objection is received~~
84 ~~by the authority from a person or persons challenging that the proposed broadband project does~~
85 ~~not satisfy the provisions of this subsection. The publication area for such notice is to be the~~
86 ~~county or counties in which any portion of the proposed broadband project is to be constructed.~~
87 ~~The notice shall be in such form as the authority shall direct and shall include a map of the area~~
88 ~~or areas to be served by the proposed broadband project. The applicant shall also cause to be~~
89 ~~mailed by first class, on or before the first day of publication of the notice, a copy of the notice to~~
90 ~~all known current providers of broadband service within the area proposed to be served. If a~~
91 ~~challenge under this paragraph is timely received by the authority, the authority shall advise the~~
92 ~~Broadband Enhancement Council, established in §31G-1-1 et seq. of this code, in writing within~~
93 ~~five business days. The council shall set the matter for hearing on a date within 30 days of receipt~~
94 ~~of notice from the authority. The Broadband Enhancement Council shall issue a decision on~~
95 ~~whether the proposed project satisfies the requirements of this subsection or not within 30 days~~
96 ~~of completion of such hearing. Any party participating in said hearing may appeal the council's~~
97 ~~decision within thirty days of the issuance of said decision to the Circuit Court of Kanawha County.~~
98 ~~This provision shall apply to all applicants except to those broadband providers that plan on~~
99 ~~providing a downstream data rate of at least one gigabyte per second to the end user~~

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

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

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

113 (f) The authority may itself approve the form of any insurance agreement entered into
114 under this section or may authorize the ~~chairman~~ chairperson or his or her designee to approve
115 the form of any such agreement. Any payment by the authority under an agreement entered into
116 by the authority under this section shall be made at the time and in the manner that the authority,
117 ~~in its sole and absolute discretion,~~ determines.

118 (g) The obligations of the authority under any insurance agreement entered into pursuant
119 to this article ~~shall~~ may not constitute a debt or a pledge of the faith and credit or taxing powers
120 of this state or of any county, municipality, or any political subdivision of this state for the payment
121 of any amount due thereunder or pursuant thereto, but the obligations evidenced by ~~such~~ the
122 insurance agreement shall be payable solely from the funds pledged for their payment.

123 (h) By October 30, 2021, and on or before the 30th day of January, April, July, and October
124 of each year thereafter, the director shall prepare and submit to the Joint Committee on
125 Government and Finance and the Governor, a quarterly report which shall include, but not be

126 limited to:

127 (A) The aggregate outstanding amount of insurance issued from the insurance fund; and

128 (B) For each agreement to insure a debt or security instrument, the name of the parties to
129 the agreement; the lending financial institution to which any insured debt or security instrument is
130 owed; the total value of any insured debt or security interest; the maturity date of the insured debt
131 or security instrument; and the status of the insured debt or security instrument, including whether
132 the party to the insurance agreement is delinquent or in default on any insured debt or security
133 instrument.

§31-15-8a. Broadband Loan Insurance Program; requirements.

1 (a) Definitions. – For the purposes of this section, the following terms have the following
2 meanings:

3 The “Broadband Loan Insurance Program” or the “program” refers to the program through
4 which the authority issues loan insurance, as authorized by this section.

5 “Broadband provider” or “provider” means a business or enterprise providing broadband
6 service, as defined in §31G-1-2 of this code.

7 “Eligible broadband provider” means a business or enterprise that meets the definition of
8 “eligible telecommunications carrier” provided in 47 C.F.R. §54.803 and that is not disqualified
9 from participating in the Broadband Loan Insurance Program according to subdivision (4),
10 subsection (c) of this section.

11 “Financial institution” means the bank, insurance company, or other institution in the
12 business of lending money, that conditions issuance of a debt or security instrument on loan
13 insurance by the authority, as provided in subdivision (2), subsection (b) of this section.

14 “Loan insurance” refers to an agreement to insure the payment or repayment of all or any
15 part of the principal of and interest on a debt or security instrument.

16 (b) Insurance of certain debt or security instruments authorized. –

17 (1) The Economic Development Authority may insure, for up to 20 years, the payment or

18 repayment of all or any part of the principal of and interest on any form of debt or security
19 instrument entered into by an eligible broadband provider with a financial institution, which debt
20 or security instruments are to be solely for capital costs relating to:

21 (A) Providing broadband service, as defined in §31G-1-1 and §31G-1-2 of this code, to a
22 household or business located in an unserved area, as defined in §31G-1-2 of this code, or to an
23 area meeting the following criteria:

24 (i) Access to internet service in the area is only available by wireline or fixed wireless
25 technology;

26 (ii) Fifteen percent or more of the households and businesses in the area are served by
27 internet service with an actual downstream data rate of less than 10 megabits per second and an
28 upstream data rate of less than one megabit per second; and

29 (iii) No part of the area has three or more wireline or fixed wireless broadband service
30 providers; or

31 (B) Building a segment of a telecommunications network that links a network operator's
32 core network to a local network plant that serves either an unserved area, as defined in §31G-1-
33 2 of this code, or an area in which no more than two wireline providers are operating.

34 (2) The authority may not issue loan insurance to a provider, unless the participating
35 financial institution provides written certification to the authority that, but for the authority's insuring
36 the debt instrument, the financial institution would not otherwise make the loan based solely on
37 the creditworthiness of the loan applicant: *Provided*, That nothing contained in this subsection or
38 any other provision of this article may be construed as permitting the authority to insure the
39 refinancing of existing debt.

40 (3) The authority shall request a loan from the West Virginia Board of Treasury
41 Investments, according to the requirements of §12-6C-11a, to fund the loan insurance authorized
42 by this section.

43 (c) Insurance application requirements. –

44 (1) An eligible provider may apply to the board for loan insurance. The authority shall make
45 the application form or forms available to the public on its website.

46 (2) The application for loan insurance shall, at a minimum, require the applicant to submit:

47 (A) Proof of business ownership and other business registration information;

48 (B) Detailed information regarding all current, previous, and pending business debt,
49 including any past instances of loan delinquency or default or any breach of a borrower covenant;

50 (C) Detailed records of the provider's financial history, including but not limited to tax
51 returns and financial statements detailing the provider's income, cash flow, and account balances
52 for the past five years;

53 (D) The number of persons employed by the provider and the names and contact
54 information for all managers of the project to be insured;

55 (E) Detailed information regarding assets being presented as collateral, including, but not
56 limited to, serial or identification numbers for all large value machinery, equipment, furniture, and
57 fixtures, inventory records, and accounts receivable;

58 (F) Detailed business plans, financial plans, and financial projections related to the
59 broadband deployment project for which the applicant is requesting loan insurance; and

60 (G) Any additional information that is relevant to the provider's eligibility to receive loan
61 insurance and the provider's ability to deploy broadband in the state, including but not limited to
62 any required authorizations or determinations by the Public Service Commission.

63 (3) The board shall ensure that applicants are eligible to receive loan insurance and shall
64 select applicants who demonstrate a minimal risk of default on any debt or security instrument to
65 be insured through the program. At a minimum, the board shall consider the following criteria in
66 determining whether to approve a loan insurance application:

67 (A) The financial ability of the applicant to complete the insured project and repay the loan;

68 (B) The credit history of the provider;

69 (C) The past earnings and projected cash flow of the provider;

70 (D) The provider's past performance as a participant in any previous economic
71 development program of this state or of any other state;

72 (E) The quality of broadband service previously offered in the state or any other state; and

73 (F) The nature and value of the collateral being offered for the loan insurance.

74 (4) The authority may not issue loan insurance to a provider if the provider, or a parent
75 company of the provider, has previously defaulted on a debt or security instrument insured by the
76 authority.

77 (d) Public notice by applicant. –

78 (1) Upon the filing of an application for loan insurance under this subsection, the
79 broadband provider shall cause to be published as a Class II legal advertisement in compliance
80 with §59-3-1 et seq. of this code, notice of the filing of the application and that the authority may
81 approve the same unless within 10 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.

84 (2) The publication area for the notice is to be the county or counties in which any portion
85 of the proposed broadband project is to be constructed. The notice shall be in such form as the
86 authority shall direct and shall include a map of the area or areas to be served by the proposed
87 broadband project. The applicant shall also cause to be mailed by first class, on or before the first
88 day of publication of the notice, a copy of the notice to all known current providers of broadband
89 service within the area proposed to be served.

90 (3) If a challenge under this paragraph is timely received by the authority, the authority
91 shall advise the Broadband Enhancement Council, established in §31G-1-1 et seq. of this code,
92 in writing within five business days. The council shall set the matter for hearing on a date within
93 30 days of receipt of notice from the authority. The Broadband Enhancement Council shall issue
94 a decision on whether the proposed project satisfies the requirements of this subsection or not
95 within 30 days of completion of such hearing. Any party participating in the hearing may appeal

96 the council's decision within 30 days of the issuance of the decision to the Circuit Court of
97 Kanawha County.

98 (4) This provision shall apply to all applicants except to those broadband providers that
99 plan on providing a downstream data rate of at least one gigabyte per second to the end user.

100 (e) Information to be posted by the authority. – The authority shall make the following
101 information, pertaining to all loan insurance agreements, available on its website:

102 (1) The name of the insured provider;

103 (2) The location or locations of the project;

104 (3) The amount of the authority loan or financial assistance provided by the insurance
105 fund;

106 (4) The purpose of the loan or financial assistance;

107 (5) The term, rate, and interest of the loan, and

108 (6) The fixed assets which serve as security for the loan or insurance provided.

109 (f) Internal Controls and Accounting. – The authority shall keep itemized records of all
110 transactions and agreements entered into in furtherance of the program. In administering the
111 program, the authority shall adopt appropriate accounting practices and develop internal controls,
112 including but not limited to, strict compliance with the requirements of §5A-8-9 of this code.

113 (g) Quarterly reports and annual legislative audit. --

114 (1) By the 30th day of October, 2021, and on or before the 30th day of January, April, July,
115 and October of each year thereafter, the director shall prepare and submit to the Joint Committee
116 on Government and Finance, the Governor, and the West Virginia Board of Treasury Investments,
117 a quarterly report which shall include, but not be limited to:

118 (A) For each insured project, the provider name; the lending financial institution; the total
119 value of the loan; the total amount of the loan that is insured pursuant to this section; the maturity
120 date of the loan; the balance of loan moneys outstanding with the West Virginia Board of Treasury
121 Investments; and the status of the loan, including whether the loan is in delinquent or in default

122 status.

123 (B) For loans not in good standing with the financial institution, the reason for the
124 delinquent or default status of the loan; the provider's plans to address the delinquency or default;
125 the availability of loan collateral that may be seized by the state; the expected outcome of the
126 delinquency or default; and the estimated loss to any state funds that will result from the
127 delinquency or default.

128 (2) Beginning in 2022, and during each year in which a loan insurance agreement entered
129 into pursuant to this section remains in effect, the director shall prepare and submit to the Joint
130 Committee on Government and Finance, the Governor, and the West Virginia Board of Treasury
131 Investments, an annual report addressing the status of each project that is insured, pursuant to
132 this section. The report shall, at a minimum, provide project-specific data addressing the
133 broadband service levels being provided by the project, the geographic area to which different
134 broadband service levels are being provided by the project, and the number of households
135 actively receiving broadband service from the project.

136 (3) Beginning in 2022, and during each year in which a loan insurance agreement entered
137 into pursuant to this section remains in effect, the Legislative Auditor shall audit the procedures,
138 accounting practices, and internal controls of the authority for compliance with this section and
139 §12-6C-11a of this code and report the findings of the audit to the Joint Committee on Government
140 and Finance.

NOTE: The purpose of this bill is to ensure that Board of Treasury Investment loan moneys made available to the economic development authority are managed and spent according to appropriate fiscal and accounting standards.

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