WEST virginia legislature

2021 regular session

Second Engrossed

Committee Substitute

for

Senate Bill 295

By Senators Blair (Mr. President) and Baldwin
[By Request of the Executive]

[Originating in the Committee on Government Organization; reported on February 17, 2021]

A BILL to amend and reenact §12-6C-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §12-6C-11a; to amend and reenact §31-15-8 of said code; and to amend said code by adding thereto a new section, designated §31-15-8a, all relating generally to economic development loans and loan insurance issued by the state; clarifying provision stating that the Board of Treasury Investments has no fiduciary duty with regard to economic development loans administered by the Economic Development Authority; providing that the Board of Treasury Investments may inspect and copy, upon written notice, all records related to loans made available by the board to the Economic Development Authority and providing that such records shall not be considered public records and shall be exempt from disclosure pursuant to the provisions of chapter 29B of the code; defining terms; limiting the total amount of loan moneys that the board shall make available to the authority for the Broadband Loan Insurance Program to $80 million; establishing requirements that must be met before broadband loan insurance moneys will be made available to the authority; limiting the amount of loan insurance that the authority may award in a single year to a single broadband provider to $20 million; providing that the authority shall maintain broadband loan insurance loan moneys in a separate and segregated account; providing that broadband loan insurance moneys may only be drawn upon in the event of a broadband provider default on an insured debt or security instrument; clarifying that the authority may not deduct administrative or operational costs from broadband loan insurance loan moneys; setting forth requirements that must be met before the authority may withdraw loan insurance moneys in the event of a broadband provider’s default; providing that the authority may only use loan insurance moneys to satisfy certain obligations arising under a loan insurance agreement; requiring the authority to submit quarterly reports to the Joint Committee on Government and Finance and to the Governor containing certain information related to its loan insurance program; requiring the authority to make application forms for broadband loan insurance publicly available on its website; establishing the minimum information an applicant for broadband loan insurance shall be required to submit to the authority; establishing minimum criteria that the authority must consider in its broadband loan insurance application review process; establishing that the authority may provide loan insurance for eligible broadband providers pursuant to awards made by federally funded broadband expansion programs; providing that the authority may not issue loan insurance to a broadband provider that has previously defaulted on any debt or security instrument insured by the authority; requiring the authority to post certain information regarding loan insurance agreements on its website; requiring the authority to adhere to certain accounting and record-keeping practices; requiring the authority to submit quarterly reports to the Board of Treasury Investments, the Joint Committee on Government and Finance, and the Governor containing certain information on insured loans and broadband projects financed by insured loans; requiring a biennial legislative audit of the Broadband Loan Insurance Program; removing obsolete language; and 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.

(a) The Legislature finds and declares that the citizens of the state benefit from the creation of jobs and businesses within the state; that business and industrial development loan programs provide for economic growth and stimulation within the state; that loans from pools established in the Consolidated Fund will assist in providing the needed capital to assist business and industrial development; and that time constraints relating to business and industrial development projects prohibit duplicative review by both the board and West Virginia Economic Development Authority Board. ~~The Legislature further finds and declares that an investment in the West Virginia Enterprise Capital Fund, LLC, of moneys in the Consolidated Fund as hereinafter provided will assist in creating jobs and businesses within the state and provide the needed risk capital to assist business and industrial development. This section is enacted in view of these findings~~

(b) The West Virginia Board of Treasury Investments shall make available, subject to a liquidity determination, in the form of a revolving loan, up to $175 million from the Consolidated Fund to loan the West Virginia Economic Development Authority for business or industrial development projects authorized by §31-15-7 of this code and to consolidate existing loans authorized to be made to the West Virginia Economic Development Authority pursuant to this section and pursuant to §31-15-2 of this code which authorizes a $175 million revolving loan and §31-18B-1 *et seq.* of this code which authorizes a $50 million investment pool: *Provided,* That the West Virginia Economic Development Authority may not loan more than $15 million for any one business or industrial development project. The revolving loan authorized by this subsection shall be secured by one note at a variable interest rate equal to the 12-month average of the board’s yield on its ~~cash liquidity~~ West Virginia Money Market pool. The rate shall be set on July 1 and adjusted annually on the same date. The maximum annual adjustment may not exceed one percent. Monthly payments made by the West Virginia Economic Development Authority to the board shall be calculated on a 120-month amortization. The revolving loan is secured by a security interest that pledges and assigns the cash proceeds of collateral from all loans under this revolving loan pool. The West Virginia Economic Development Authority may also pledge as collateral certain revenue streams from other revolving loan pools which source of funds does not originate from federal sources or from the board.

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

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

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

(f) The directors of the ~~board~~ West Virginia Board of Treasury Investments shall bear no fiduciary responsibility with regard to any of the loans contemplated in this section.

~~(g) Subject to cash availability, the board shall make available to the West Virginia Economic Development Authority, from the Consolidated Fund, a nonrecourse loan in an amount up to $25 million, for the purpose of the West Virginia Economic Development Authority making a loan or loans from time to time to the West Virginia Enterprise Advancement Corporation, an affiliated nonprofit corporation of the West Virginia Economic Development Authority. The respective loans authorized by this subsection by the board to the West Virginia Economic Development Authority to the West Virginia Enterprise Advancement Corporation shall each be evidenced by one note and shall each bear interest at the rate of three percent per annum. The proceeds of any and all loans made by the West Virginia Economic Development Authority to the West Virginia Enterprise Advancement Corporation pursuant to this subsection shall be invested by the West Virginia Enterprise Corporation in the West Virginia Enterprise Capital Fund, LLC, the manager of which is the West Virginia Enterprise Advancement Corporation. The loan to West Virginia Economic Development Authority authorized by this subsection shall be nonrevolving, and advances under the loan shall be made at times and in amounts requested or directed by the West Virginia Economic Development Authority, upon reasonable notice to the board. The loan authorized by this subsection is not subject to or included in the limitations set forth in subsection (b) of this section with respect to the $15 million limitation for any one business or industrial development project and limitation of 103% of outstanding loans, and may not be included in the revolving fund loan principal balance for purposes of calculating the loan amortization in subsection (b) of this section. The loan authorized by this subsection to the West Virginia Economic Development Authority shall be classified by the board as a long-term fixed income investment, shall bear interest on the outstanding principal balance of the loan at the rate of three percent per annum payable annually on or before June 30 of each year, and the principal of which shall be repaid no later than June 30, 2022, in annual installments due on or before June 30 of each year. The annual installments, which need not be equal shall commence no later than June 30, 2005, in annual principal amounts agreed upon between the board and the West Virginia Economic Development Authority. The loan authorized by this subsection shall be nonrecourse and shall be payable by the West Virginia Economic Development Authority solely from amounts or returns received by the West Virginia Economic Development Authority in respect of the loan authorized by this subsection to the West Virginia Enterprise Advancement Corporation, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which the board shall have a security interest to secure repayment of the loan to the West Virginia Economic Development Authority authorized by this subsection. Any and all loans from the West Virginia Enterprise Advancement Corporation made pursuant to this subsection shall also bear interest on the outstanding principal balance of the loan at the rate of three percent per annum payable annually on or before June 30 of each year, shall be nonrecourse and shall be payable by the West Virginia Enterprise Advancement Corporation solely from amounts of returns received by the West Virginia Enterprise Advancement Corporation in respect to its investment in the West Virginia Enterprise Capital Fund, LLC, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which that board shall have a security interest to secure repayment of the loan to the West Virginia Economic Development Authority authorized by this subsection. In the event the amounts or returns received by the West Virginia Enterprise Corporation in respect to its investment in the West Virginia Enterprise Capital Fund, LLC, are not adequate to pay when due the principal or interest installments, or both, with respect to the loan authorized by this subsection by the board to the West Virginia Economic Development Authority, the principal or interest, or both, as the case may be, due on the loan made to the West Virginia Economic Development Authority pursuant to this subsection shall be deferred and any and all past due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the West Virginia Enterprise Advancement Corporation of moneys in respect to its investments in the West Virginia Enterprise Capital Fund, LLC. The directors or the board shall bear no fiduciary responsibility as provided in section thirteen of this article with regard to the loan authorized by this subsection.~~

~~(h) Notwithstanding any provision in this code to the contrary, subject to a liquidity determination and cash availability, the board shall make available to the West Virginia Economic Development Authority, from the Consolidated Fund, in the form of a nonrecourse revolving loan, $50 million, for the purpose of insuring the payment or repayment of all or any part of the principal, the redemption or prepayment premiums or penalties on, and interest on any form of debt instrument entered into by an enterprise, public body or authority of the state with a financial institution, including, but not limited to, banks, insurance companies and other institutions in the business of lending money, as authorized and as set forth in section eight, article fifteen, chapter thirty-one of this code, but only for the purpose of providing insurance on such debt instruments relating solely to the deployment of broadband under said section:~~ *~~Provided~~*~~, That the West Virginia Economic Development Authority may not insure more than $10 million for any one enterprise, public body or authority of the state in any single calendar year. The loan authorized by this subsection may not be included in the revolving fund loan principal balance for purposes of calculating the loan amortization in subsection (b) of this section. The loan authorized by this subsection shall be classified by the board as a long-term fixed income investment, and shall bear interest on the outstanding principal balance of the loan at a variable interest rate equal to the twelve-month average of the board’s yield on its cash liquidity pool. The rate shall be set on July 1, 2017 and adjusted quarterly during each year thereafter. The maximum annual adjustment may not exceed one percent. Quarterly, the West Virginia Economic Development Authority shall make a payment sufficient to pay in full all accrued interests on the loan for the prior quarter. The loan authorized by this subsection is nonrecourse and is payable by the West Virginia Economic Development Authority solely from moneys received by the West Virginia Economic Development Authority in respect to insured debt instruments relating to providing broadband service under section eight, article fifteen, chapter thirty-one of this code. Upon payment in full of any said insured debt instruments, the West Virginia Economic Development Authority shall reduce the outstanding balance of the loan by a like amount. Additionally, quarterly, the West Virginia Economic Development Authority shall determine the outstanding balance of all such insured debt instruments and shall accordingly adjust the outstanding balance of the loan to equal the outstanding obligations of the West Virginia Economic Development Authority for all said insured debt instruments. The loan is hereby secured by a security interest that pledges and assigns the cash proceeds of all collateral securing all insurance agreements entered into by the authority respecting debt instruments relating to the deployment of broadband under said section. In the event moneys received by the West Virginia Economic Development Authority respecting any individual insured debt instrument relating to providing broadband service under said section is insufficient to pay when due the principal or interest installments, or both, with respect to the loan authorized by this subsection by the board to the authority, the principal or interest, or both, as the case may be, due on the loan made to the authority pursuant to this subsection shall be deferred and any and all past-due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the authority of all moneys respecting said debt s. The directors of the board bear no fiduciary responsibility as provided in section thirteen of this article with regard to the loan authorized by this subsection.~~

(g) *Inspection of records*. — Within 30 days of receiving a written request from the board, the authority shall provide the board with the opportunity to inspect and copy any records in the custody of the authority related to any loan issued by the board to the authority or any loan from the authority to a third party funded by a loan issued by the board. Records to be made available pursuant to this subsection include, but are not limited to, accounting records, loan applications, loan agreements, board minutes, audit reports, and transaction records. Records of the authority that may be held from time to time by the board pursuant to this subsection shall not be considered public records and shall be exempt from disclosure pursuant to the provisions of §29B-1-1 *et seq.* of this code.

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

(a) *Definitions. —* For the purposes of this section, the following terms have the following meanings:

(1) “Authority” refers to the West Virginia Economic Development Authority.

(2) “Board” refers to the West Virginia Board of Treasury Investments.

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

(4) “Debt instrument” means any note, loan agreement, or any other form of indebtedness whatsoever and shall expressly include a letter of credit or other agreement relating to a letter of credit.

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

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

(b) *Loan for broadband deployment. —*

(1) The loan previously authorized by §12‑6C‑11(h) of this code is hereby continued, subject to the requirements of this section.

(2) Subject to a liquidity determination and cash availability, the board shall provide a nonrecourse revolving loan to the authority, from the Consolidated Fund, in an amount not to exceed $80 million, for the purpose of funding the Broadband Loan Insurance Program authorized by §31‑15‑8a of this code.

(3) The board shall make the loan moneys available to the authority upon receipt of the following:

(A) A written request by the authority that the board transfer a specific amount of loan moneys to the authority; and

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

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

(5) The authority shall maintain the loan moneys made available pursuant to this section in an account that is separate and segregated from its other assets and programs. The loan moneys may not be transferred to any other fund or account or used for any purpose other than to insure debt and security instruments, as expressly authorized in §31‑15‑8a of this code. The authority may withdraw the loan moneys from the account only as provided in subsection(d) of this section.

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

(c) *Loan terms and requirements. —*

(1) The loan authorized by this subsection shall be classified by the board as a long-term fixed income investment and shall bear interest on the outstanding principal balance of the loan at a variable interest rate equal to the 12-month average of the board’s yield on its West Virginia Money Market pool. The rate shall be set on July 1, 2017, and adjusted quarterly during each year thereafter. The maximum annual adjustment may not exceed one percent.

(2) The loan authorized by this section is nonrecourse. Upon payment in full of any said insured debt instruments or release in full of any security instruments, the authority shall reduce the outstanding balance of the loan by a like amount. Additionally, quarterly, the authority shall determine the outstanding balance of all such insured debt and security instruments and shall accordingly adjust the outstanding balance of the loan to equal the outstanding obligations of the authority for all said insured debt and security instruments. The authority shall notify the board, in writing, of any such adjustment.

(3) The loan is secured by a security interest that pledges and assigns the cash proceeds of all collateral securing all insurance agreements entered into by the authority pursuant to §31-15-8a of this code. In the event moneys received by the authority respecting any individual insured debt or security instrument relating to providing broadband service under §31-15-8a of this code is insufficient to pay when due the principal or interest installments, or both, with respect to the loan authorized by this section by the board to the authority, the principal or interest, or both, as the case may be, due on the loan made to the authority pursuant to this section shall be deferred and any and all past-due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the authority of all moneys respecting said debt instruments.

(d) *Withdraw of moneys in event of default. –* The authority may withdraw loan moneys from the separate and segregated account required by subdivision (5), subsection (b) of this section, only in the event that a broadband provider has defaulted on a debt instrument or security interest insured by the authority. The loan monies may not be used for any purpose other than to pay amounts due to a financial institution resulting from the broadband provider’s default, according to a loan insurance agreement entered into pursuant to §31‑15‑8a of this code. Prior to withdrawing any amount of loan monies from the separate and segregated account, the authority shall provide notice of the default to the board and certify to the board that:

(1) The broadband provider has defaulted on a debt instrument or security interest insured by the authority and the broadband provider does not have the option to enter into a forbearance agreement with the financial institution; and

(2) The authority has pursued or will pursue any reasonable remedies to recoup the costs to the state resulting from the default, including, but not limited to, instituting a legal action to seize the collateral described in subdivision (3), subsection (c) of this section.

(e) *Inspection of records. –* Within 30 days of receiving a written request from the board, the authority shall provide the board with the opportunity to inspect and copy any records in the custody of the authority related to the Broadband Loan Insurance Program. Records to be made available pursuant to this subsection include, but are not limited to, accounting records, loan insurance applications, loan insurance agreements, board minutes, audit reports, and transaction records. Records of the authority that may be held from time to time by the board pursuant to this subsection shall not be considered public records and shall be exempt from disclosure pursuant to the provisions of §29B-1-1 *et seq.* of this code.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-8. Insurance fund.

(a) There is hereby created an insurance fund which shall be a continuing, nonlapsing, revolving fund that consists of:

(1) Moneys appropriated by the state to the insurance fund;

(2) Premiums, fees, and any other amounts received by the authority with respect to financial assistance provided by the authority from the insurance fund;

(3) Upon the satisfaction of any indebtedness or other obligation owed on any property held or acquired by the authority, such proceeds as designated by the authority from the sale, lease, or other disposition of such property;

(4) Income from investments made from moneys in the insurance fund; and

(5) Any other moneys transferred to the insurance fund or made available to it for the purposes described under this section, under this article, or pursuant to any other provisions of this code.

Subject to the provisions of any outstanding insurance agreements entered into by the authority under this section, the authority may enter into covenants or agreements with respect to the insurance fund, and establish accounts within the insurance fund which may be used to implement the purposes of this article. If the authority elects to establish separate accounts within the insurance fund, the authority may allocate its revenues and receipts among the respective accounts in any manner the authority considers appropriate.

If the authority at any time finds that more money is needed to keep the reserves of the insurance fund at an adequate level, the authority, with the consent of the chair, shall send a written request to the Legislature for additional funds.

(b) The insurance fund shall be used for the following purposes by the authority to financially assist projects so long as such financial assistance will, as determined by the authority, fulfill the public purposes of this article:

(1) To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on bonds or notes whether issued under this article or under the Industrial Development and Commercial Development Bond Act, the West Virginia Hospital Finance Authority Act or, with respect to health care facilities only, §8-33-1 *et seq.* of this code;

(2) To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on any instrument executed, obtained, or delivered in connection with the issuance and sale of bonds or notes whether under this article or under the Industrial Development and Commercial Development Bond Act, the West Virginia Hospital Finance Authority Act or, with respect to health care facilities only, §8-33-1 *et seq.* of this code;

(3) To insure the payment or repayment of all or any part of the principal of, prepayment premiums or penalties on, and interest on any form of debt instrument entered into by an enterprise, public body or authority of the state with a financial institution, including, but not limited to, banks, insurance companies and other institutions in the business of lending money, which debt instruments shall include, but not be limited to, instruments relating to loans for working capital and to the refinancing of existing debt: *Provided,* That nothing contained in this subsection or any other provision of this article shall be construed as permitting the authority to insure the refinancing of existing debt except when such insurance will result in the expansion of the enterprise whose debt is to be refinanced or in the creation of new jobs;

(4) To pay or insure the payment of any fees or premiums necessary to obtain insurance, guarantees, letters of credit, or other credit support from any person or financial institution in connection with financial assistance provided by the authority under this section;

(5) To pay any and all expenses of the authority, including, but not limited to:

~~(i)~~ (A) Any and all expenses for administrative, legal, actuarial, and other services related to the operation of the insurance fund; and

~~(ii)~~ (B) All costs, charges, fees, and expenses of the authority related to the authorizing, preparing, printing, selling, issuing, and insuring of bonds or notes (including, by way of example, bonds or notes, the proceeds of which are used to refund outstanding bonds or notes) and the funding of reserves; and

(6) To insure, for up to 20 years, the payment or repayment of all or any part of the principal of and interest on any form of debt instrument entered into by an ~~enterprise, public body, or authority of the state~~ eligible broadband provider with a financial institution, including, but not limited to, banks, insurance companies, and other institutions in the business of lending money, which debt instruments are to be solely for capital costs relating to the purposes authorized in §31-15-8a of this code: *Provided,* That beginning on the effective date of the amendments made to this section during the regular session of the Legislature, 2021, loan moneys shall not be transferred to the fund except as authorized by §12-6C-11a of this code.

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

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

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

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

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

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

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

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

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

(h) By October 30, 2021, and on or before the 30th day of January, April, July, and October of each year thereafter, the authority shall prepare and submit to the Joint Committee on Government and Finance and the Governor a quarterly report which shall include, at a minimum:

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

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

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

(a) *Definitions. –* For the purposes of this section:

(1) “Broadband Enhancement Council” or “council” refers to the governmental instrumentality established by §31G-1-3 of this code.

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

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

(4) “Debt instrument” means any note, loan agreement, or any other form of indebtedness whatsoever and shall expressly include a letter of credit or other agreement relating to a letter of credit.

(5) “Eligible broadband provider” means a business or enterprise certified, in writing, by the Broadband Enhancement Council to the authority to be a broadband provider, and that is not disqualified from participating in the Broadband Loan Insurance Program according to subdivision (4), subsection (c) of this section, as certified, in writing, by the authority.

(6) “Federally funded broadband expansion program” means the Rural Digital Opportunity Fund of the Federal Communications Commission, the Broadband ReConnect Program of the United States Department of Agriculture, or any other federally funded broadband expansion or enhancement program that Congress may from time to time establish.

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

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

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

(1) The authority is authorized to insure, for up to 20 years, the payment or repayment of all or any part of the principal of and interest on any form of debt or security instrument entered into by an eligible broadband provider with a financial institution, which debt or security instruments are to be solely for capital costs relating to:

(A) A project which has as its principal purpose providing broadband service, as defined in §31G-1-1 of this code, to a household or business located in an unserved area, as defined in §31G-1-2 of this code, or to an underserved area meeting the following criteria:

(i) Access to internet service is only available by wireline or fixed wireless technology;

(ii) Access to internet service in which 15 percent or more of households and businesses cannot obtain internet service with an actual downstream or upstream data rate equivalent to or faster than the current definition of broadband service as defined by the Federal Communications Commission and further certified by the council.

(B) A project which has as its principal purpose building a segment of a telecommunications network that links a network operator’s core network to a local network plant that serves either an unserved area, as defined in §31G-1-2 of this code, or an area in which no more than two wireline providers are operating.

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

(3) The authority may make the provision of loan insurance authorized by this section contingent upon the eligible broadband provider receiving an award under a federally funded broadband expansion program.

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

(c) *Insurance application requirements. –*

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

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

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

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

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

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

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

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

(G) Any additional information that is relevant to the provider’s eligibility to receive loan insurance and the provider’s ability to deploy broadband in the state, including, but not limited to, any required authorizations or determinations by any applicable regulatory bodies.

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

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

(B) The credit history of­­ the provider;

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

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

(E) The provider’s experience with broadband service deployment in the state or any other state; and

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

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

(5) The requirements of this subsection do not apply to applications received by the authority for broadband loan insurance or debt instrument insurance prior to the effective date of this section for such applications.

(d) *Public notice by applicant. –*

(1) Upon the filing of an application for loan insurance under this section, the broadband provider shall cause to be published as a Class II legal advertisement in compliance with §59-3-1 *et seq.* of this code notice of the filing of the application and that the authority may approve the same unless within 10 business days after completion of publication a written objection is received by the authority from a person or persons alleging that the proposed broadband project does not satisfy the provisions of this section.

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

(3) If an objection under this subsection is timely received by the authority, the authority shall advise the council within five business days. The council shall set the matter for hearing within 30 days of receipt of notice from the authority. The council may establish procedural rules governing such hearings by legislative rule, or the council may follow the Rules of Practice and Procedure of the Public Service Commission. The council shall issue a decision on whether the proposed project satisfies the requirements of this section or not within 30 days of completion of the hearing. Any party participating in the hearing may appeal the council’s decision within 30 days of the issuance of the council’s decision to the Circuit Court of Kanawha County.

(4) This provision shall apply to all applicants except to those broadband providers that plan on providing a downstream data rate of at least one gigabyte per second to the end user or applicants that have been preliminarily determined to be eligible for a federally funded broadband expansion program.

(5) The requirements this subsection do not apply to applications received by the authority for broadband loan insurance or debt instrument insurance prior to the effective date of this section for such applications.

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

(1) The name of the insured provider;

(2) The location or locations of the project;

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

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

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

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

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

(g) *Quarterly reports and annual legislative audit. —*

(1) By October 30, 2021, and on or before the 30th day of January, April, July, and October of each year thereafter, the authority shall prepare and submit to the Joint Committee on Government and Finance, the Governor, and the West Virginia Board of Treasury Investments a quarterly report which shall include, at a minimum:

(A) For each insured project, the provider name; the lending financial institution; the total value of the loan; the total amount of the loan that is insured pursuant to this section; the maturity date of the loan; the balance of loan moneys outstanding with the authority; and the status of the loan, including whether the loan is in delinquent or in default status.

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

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

(3) Beginning in 2022, and every other year thereafter so long as a loan insurance agreement entered into pursuant to this section remains in effect, the Legislative Auditor shall audit the procedures, accounting practices, and internal controls of the authority for compliance with this section and §12-6C-11a of this code and report the findings of the audit to the Joint Committee on Government and Finance.