WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

**FISCAL NOTE**

Introduced

House Bill 4001

By Delegates Linville, Pack, Holstein, Toney, Mallow, Hamrick, Barnhart, Worrell, Kimble, Rowan, and Nestor

[Introduced January 13, 2022; Referred to

the Committee on Technology and Infrastructure then Finance.]

A BILL to amend the Code of the West Virginia, 1931, as amended, by adding thereto a new article, designated §4-16-1, §4-16-2, §4-16-3, §4-16-4, and §4-16-5; to amend said code by adding thereto two new sections, designated §17-2E-3a and §17-2E-5a; to amend and reenact §31G-1A-7 of said code; to amend said code by adding thereto two new sections, designated §31G-1A-8 and §31G-1A-9; to amend said code by adding thereto a new section, designated §31G-3-5; to amend said code by adding thereto a new section, designated §31G-4-2a; to amend said code by adding thereto a new article, designated §31G-7-1, §31G-7-2, §31G-7-3 and §31G-7-4; and to amend said code by adding thereto a new article, designated §31G-8-1, §31G-8-2 and §31G-8-3, all relating to the creation of the Legislative Oversight Commission on Department of Economic Development Accountability; providing findings, purpose and intent; providing definitions; establishing the creation of the commission by defining membership and clarifying compensation; defining meeting times for the commission; defining powers and duties of the commission; providing for limited subpoena power; providing for legislative reports; creating the Conduit Installation Fund in the State Treasury to be administered by the Department of Transportation; creating the Dig Once Fund to be administered by the Office of Broadband; modifying bidding procedures; creating the Broadband Middle Mile Fund; creating the Pole Replacement and Relocation Fund; creating a process for the mapping of disturbances in rights of way; creating utility pole rights of way and easement mapping initiative; creating existing customer protections for the Office of the Attorney General in coordination with the Office of Broadband and Department of Economic Development; establishing fees; defining modems and other connection devices; defining competitive access infrastructure; defining eligible telecommunications carriers; defining the status of such; and providing for penalties where misrepresentation of eligible telecommunications carrier status occurs.

Be it enacted by the Legislature of West Virginia:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 16. LEGISLATIVE OVERSIGHT COMMISSION ON DEPARTMENT OF ECONOMIC DEVELOPMENT ACCOUNTABILITY.

§4-16-1. Findings, purpose and intent.

(a) The Legislature hereby finds and declares that:

(1) Investment in the matters which enable economic development is crucial to the fiscal well-being of West Virginia long-term;

(2) The state must spend funds wisely in order to get the best return on its investment in economic development and make long-term plans for such investment;

(3) In order to maintain the level of proper oversight to ensure that these funds are expended wisely and efficiently, and the Department of Economic Development is expending these funds appropriately, the Legislative Oversight Commission on Department of Economic Development Accountability is hereby created.

(b) It is the intent of the Legislature that all actions taken pursuant to the provisions of this article by the Legislature and the Department of Economic Development serve the following core set of principles:

(1) That all Department of Economic Development investments be coordinated to maximize efficiencies and minimize cost thereby addressing the needs of the citizens more effectively;

(2) That communication be facilitated between the Department of Economic Development and the Legislature;

(3) That policy changes, not made by legislative rule, be discussed with the commission for purposes of coordinating those policies with stated goals;

(4) That programs or policies implemented in accordance with federal mandates be communicated to the commission; and

(5) That in developing and implementing programs with private or federal grant moneys, the various agencies communicate their efforts to the commission to ensure and facilitate future state funding.

§4-16-2. Definitions.

As used in this article:

“Commission” means the Legislative Oversight Commission on Transportation Accountability, as created in section three of this article; and

“Department” means each agency, authority, board, committee, commission or division of the Department of Economic Development.

§4-16-3. Creation of a Legislative Oversight Commission on Department of Economic Development Accountability.

(a) There is hereby created a joint commission of the Legislature known as the Legislative Oversight Commission on Department of Economic Development Accountability. The commission shall be composed of seven members of the Senate appointed by the President of the Senate and seven members of the House of Delegates appointed by the Speaker of the House of Delegates. No more than five of the seven members appointed by the President of the Senate and the Speaker of the House of Delegates, respectively, may be members of the same political party. In addition, the President of the Senate and Speaker of the House of Delegates shall be *ex officio* nonvoting members of the commission. The co-chairs of the commission shall be by appointment of the Senate President and the Speaker of the House. Members of the committee shall include the chair of the Senate Economic Development Committee, the chair of the Senate Roads and Transportation Committee, the chair of the House Committee on Small Business, Entrepreneurship, and Economic Development Committee, and the chair of the House Technology and Infrastructure Committee.At least one of the Senate appointees and at least one of the House of Delegates appointees shall be a member of the committee on finance of the Senate and House of Delegates, respectively. The members shall serve until their successors shall have been appointed as heretofore provided.

(b) Members of the commission shall receive such compensation and expenses as provided in article two-a, chapter four of this code. Such expenses and all other expenses including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel shall be paid from an appropriation to be made expressly for the Legislative Oversight Commission on Department of Economic Development Accountability: *Provided*, That if no such appropriation be made, such expenses shall be paid from the appropriation under Fund No. 0175 for Joint Expenses created pursuant to the provisions of said chapter*: Provided*, *however*, That no expense of any kind payable under the account for joint expenses shall be incurred unless first approved by the Joint Committee on Government and Finance.

(c) The commission shall meet at any time both during sessions of the Legislature and in the interim or as often as may be necessary.

(d) The President of the Senate and Speaker of the House of Delegates shall assign such staff as may be deemed necessary to aid the commission in carrying out the provisions of this article.

§4-16-4. Powers and duties of commission.

(a) The powers, duties and responsibilities of the commission include the following:

(1) Make a continuing investigation, study and review of the practices, policies and procedures of the department;

(2) Make a continuing investigation, study and review of all matters related to economic development policy in the state;

(3) Review long-term plans by the various agencies of the Department of Economic Development and how they impact the citizens of West Virginia;

(4) Conduct studies on:

(A) The amount of state, federal and other funds expended in infrastructure and other investment in the state for the purposes of economic development and the plan for future funds;

(B) The costs associated with failure to invest in the infrastructure and other items related to economic development in this state to citizens and businesses;

(C) The extent to which the state is maximizing available federal programs and other moneys in providing economic development investment to the citizens of this state;

(D) The operation of the Department of Economic Development as a whole or its individual agencies; and

(E) The roles of the public, private and private nonprofit sectors in collaborating for improved investment in economic development;

(5) Review and study the funding mechanisms for the Department of Economic Development and review any plans to adjust funding to ensure the necessary investment is made;

(6) Review and study the feasibility and financial impact upon the state of the long-term development plans, if any, in place in the department and its agencies; and

(7) Review and study the feasibility and financial impact upon the state of the establishment of alternative long-term economic development plans and alternative funding sources.

(b) The commission shall make annual reports to the Legislature regarding the results of all investigations, studies, and reviews pursuant to the provisions of section five of this article.

(c) *Limited subpoena power*: —

(1) For purposes of carrying out its duties, the commission is hereby empowered and authorized to examine witnesses and to subpoena such persons and books, records, documents, papers or any other tangible things as it believes should be examined to make a complete investigation.

(2) All witnesses appearing before the commission under subpoena shall testify under oath or affirmation. Any member of the commission may administer oaths or affirmations to such witnesses.

(3) To compel the attendance of witnesses at such hearings or the production of any books, records, documents, papers or any other tangible thing, the commission is hereby empowered and authorized to issue subpoenas, signed by one of the co-chairs, in accordance with section five, article one, chapter four of this code. Such subpoenas shall be served by any person authorized by law to serve and execute legal process and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

(4) If any person subpoenaed to appear at any hearing refuses to appear or to answer inquiries there propounded, or fails or refuses to produce books, records, documents, papers or any other tangible thing within his or her control when the same are demanded, the commission shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court shall compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance.

§4-16-5. Legislative reports.

(a) The department shall report to the commission annually on or before December 31 of each year and provide detailed reports as directed by the commission. The commission shall describe to the department, in writing, the criteria to be addressed in each report. Reports required by this subsection may be provided in a format as directed by the commission.

(b) The commission shall submit annual reports to the Legislature, as required by the provisions of section four of this article, which such reports shall describe and evaluate in a concise manner:

(1) The major activities of the Department of Economic Development and its agencies for the fiscal year immediately past, including important policy decisions reached on initiatives undertaken during that year, especially as such activities, decisions and initiatives relate to infrastructure investment, long-term planning for infrastructure investment, use of federal funds and any public-private partnerships for infrastructure or economic development investment.

(2) Other information considered by the commission to be important, including recommendations for statutory, fiscal or policy reforms and reasons for such recommendations.

(c) The reports may specify in what manner any practice, policy or procedure may or should be modified to satisfy the goal of efficient and effective delivery of infrastructure investment and to improve the quality of roads, bridges and other transportation infrastructure in the state.

CHAPTER 17. ROADS AND HIGHWAYS.

**ARTICLE 2E. DIG ONCE POLICY**.

§17-2E-3a. Conduit Installation Fund.

(a) There is hereby created in the State Treasury a fund known as the Conduit Installation Fund. The fund shall be administered by and under the control of the Department of Transportation. Expenditures from the fund shall be for the purposes set forth in this section and are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.

(b) The fund shall consist of moneys appropriated by the Legislature. The amount appropriated shall be transferred to the fund to be used solely for the purposes provided by this section.

(c) Expenditures from the fund shall be:

(1) (A) For the purposes of installation of conduit or innerduct when any project triggers NEPA/NHPA review; or

(B) Any bridge construction or repair; and

(2) For the incremental costs of installation, supply, and reasonable administrative expenses.

§17-2E-5a. Dig Once Fund.

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

(b) The fund shall consist of moneys appropriated by the Legislature. The amount appropriated shall be transferred to the fund to be used solely for the purposes provided by this section.

(c) Expenditures from the fund shall be:

(1) For the purposes of installation of conduit or innerduct when a project triggers Dig Once but no other telecommunications carrier elects to participate; and

(2) For the incremental costs of installation, supply, and reasonable administrative expenses.

(d) If sufficient moneys are available in this fund, then any telecommunications carrier installing in state rights-of-way must install additional conduit or innerduct equal to that which they are installing for their own purposes.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 1A. OFFICE OF BROADBAND.

§31G-1A-7. Broadband Development Fund.

(a) The Broadband Development Fund is hereby created in the State Treasury. The fund shall be administered by the Secretary of the Department of Economic Development and shall consist of all moneys made available for the purposes of this article from any source, including, but not limited to, all gifts, grants, bequests or transfers from any source, any moneys that may be appropriated to the fund by the Legislature, and all interest or other return earned from investment of the fund. Expenditures from the fund shall be for the purposes set forth in subsection (b) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq*. of this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq*. of this code: *Provided*, That for the fiscal year ending June 30, 2022, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

(b) ~~Monies~~ Moneys of the Broadband Development Fund may only be expended for the following purposes:

(1) Expenses for the administration of the Office of Broadband;

(2) Line extension advancement and development projects, including expansion of existing fiber and cable networks;

(3) Major broadband project strategies, including new networks or major expansions of existing networks;

(4) GigReady incentive projects, including a state incentive for ISP and local governments and organizations to pool some of their federal American Rescue Plan Act allocations or other local funding;

And

(5) Wireless Internet Networks, including expansions or upgrades of existing fixed wireless networks.

(c) Except funds expended for the administration of the Office of Broadband, monies of the Broadband Development Fund may only be expended for projects authorized by subsection (b) of this section that have been certified to the Joint Committee on Government and Finance by the Director of the Office of Broadband or the Secretary of the Department of Economic Development prior to making the expenditures.

(d) In addition to any grant or bid scoring metrics assigned to any grant program for broadband expansion or other financial support afforded, where there is any application or bid which involves not-less-than two last-mile internet service providers owning, operating, or offering services to the locations for which the application or bid covers, or where there is any application or bid wherein the applicant or bidder commits to making the infrastructure built utilizing the funds associated therewith competitive or open access infrastructure, then such application or bid shall be afforded not-less-than a five percent positive weight to their score thereof.

§31G-1A-8. Broadband Middle Mile Fund.

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

(b) The fund shall consist of moneys appropriated by the Legislature. The amount appropriated shall be transferred to the fund to be used solely for the purposes provided by this section.

(c) Expenditures from the fund shall be for the purposes of constructing middle mile fiber broadband to unserved and unfunded areas on the broadband availability map as so designated by the Office of Broadband and pursuant to this code: *Provided,* That if a broadband project is funded solely with public money, the project shall be an open access project.

§31G-1A-9. Pole Replacement and Relocation Fund.

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

(b) The fund shall consist of moneys appropriated by the Legislature. The amount appropriated shall be transferred to the fund to be used solely for the purposes provided by this section.

(c) Expenditures from the fund shall be for the purposes of assisting in the replacement or relocation of utility poles, in order to the facilitate placement of telecommunications facilities, when and where required, to unserved areas or in connection with a required relocation due to road improvement projects undertaken by the Division of Highways.

(d) Funds may not be disbursed from the Pole Replacement and Relocation Fund for project areas funded by another program, when the provider has a requirement to complete this replacement at their own expense, or, where the costs thereof were known or should have been known to a reasonable and prudent telecommunications carrier at the time of any other grant award or financial support from a public entity.

ARTICLE 3. CONDUIT INSTALLATION; MICROTRENCHING.

§31G-3-5. Mapping of disturbances in rights of way.

(a) Beginning July 1, 2022, every agency of state government, every Public Service District, and every County Commission or other political subdivision must furnish to the Department of Economic Development, in a timely manner, all information relating to

(1) Any maps which they have; or

(2) Descriptions of routes (if maps are not available) which they have for any underground disturbances in state rights of way or easements.

(b) This requirement shall not constitute a new duty to create or maintain maps for any agency of state government, Public Service District, County Commission or other political subdivision, or any regulated public utilities or any other entity with facilities in the rights of way of this state but does require any such information in their possession to be submitted to the Department of Economic Development.

(c) The Department of Economic Development shall map those disturbances.

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-2a. Utility pole rights of way and easement mapping initiative.

(a) Beginning July 1, 2022, every Pole Owner must furnish to the Department of Economic Development, in a timely manner, all information which they have required to be furnished by Attachers, since January 1, 2001, or from such time as necessary and available, to accurately map the locations, class, number of attachments, weight, and such other information as the Department of Economic Development deems necessary to accurately map and present the data, including, but not limited to, all engineering reports or other documentation.

(b) The Department of Economic Development is hereby required to utilize this information to produce a map, which is to include information, where available, delineating the following:

(1) Class of poles;

(2) Age of utility poles;

(3) Distance between poles;

(4) Weight between those spans; and

(5) What is attached to those poles.

(c) This map is to be published by the Department of Economic Development and made available at no cost to afford potential Attachers considering projects to quickly gain information to determine feasibility of a project.

ARTICLE 7. CONSUMER PROTECTIONS.

§31G-7-1. Existing consumer protections.

The Consumer Protection Division of the Office of the Attorney General is responsible for effectuating and enforcing the following consumer protections in coordination with and the assistance of the Office of Broadband and the Department of Economic Development:

 (a) If a broadband service to a subscriber is interrupted for more than 24 continuous hours, such subscriber shall, upon request, receive a credit or refund from the broadband operator in an amount that represents the proportionate share of such service not received in a billing period, provided such interruption is not caused by the subscriber;

(b) A broadband operator may not deny service, deny access, or otherwise discriminate against subscribers, channel users, or any other citizens on the basis of age, race, religion, sex, physical handicap, political affiliation, political views, or exercise of other speech protected by the 1st Amendment to the United States Constitution, or country of natural origin;

(c) A broadband operator shall provide subscribers 30 days advance written notice of any changes to rates or charges, including the expiration of any promotion or special pricing that would result in an increase in the subscribers billing or cost of service; and

(d) A broadband operator shall inform subscribers and provide written notice to subscribers of disputes regarding interrupted or substandard service or billing issues, which are unresolved to satisfaction of the subscriber.

§31G-7-2. Fees.

(a) No telecommunications provider may impose any fee, additional to the cost of service, on fixed broadband internet services: *Provided*, that does not apply to governmentally imposed or mandated fees.

(b) No telecommunications provider may impose a fee for a customer to receive a paper bill or invoice for fixed broadband or cable television service.

§31G-7-3. Modems and other connection devices.

(a)(1) No telecommunications provider may impose any mandate that customers be required to rent a modem from that provider.

(2) All customers are to be permitted to utilize or furnish their own modem, if the network is built upon a nonproprietary, industry standard communication protocol.

(b) If there are not commercially available modems or devices to interface with the Wide Area Network, the provider must offer the ability for a customer to purchase, rather than rent, that hardware.

§31G-7-4. Competitive Access Infrastructure.

(a) Competitive Access Infrastructure is that infrastructure and related facilities which:

(1) Offer nondiscriminatory, nonexclusive access to independent service providers and other entities with reasonable costs comparable to that of the owner; and

(2) On reasonable and equal terms, including location, pricing, applicable tariffs, terms and conditions.

(b) An assertion of Competitive Access telecommunications facilities may be demonstrated by filing with the Public Service Commission of West Virginia that documentation necessary to demonstrate the elements of a Competitive Access Infrastructure in subdivision a of this section.

(c) Where referenced elsewhere in the Code of West Virginia, 1931 as amended, the phrase “open-access networks” shall have the same meaning as “Competitive Access Infrastructure”, as defined by this section.

ARTICLE 8. ELIGIBLE TELECOMMUNICATIONS CARRIERS.

§31G-8-1. Definition.

“Eligible Telecommunications Carrier” means the status for a telecommunications carrier to be eligible for Universal Service Fund support pursuant to 47 CFR § 54.201.

§31G-8-2. Eligible Telecommunications Carriers Status.

Eligible Telecommunications Carriers Status shall be issued by the PSC, issuance thereof shall not be unreasonably withheld, considering the recommendation of the Office of Broadband and only if the applicant for Eligible Telecommunications Carrier Status is in compliance with the following:

(a) The Office of Broadband shall check the Universal Service Administrative Company HUB (the HUB) for any commitments, assertions, and/or obligations of Eligible Telecommunications Carriers in the State of West Virginia.

(b) The Office of Broadband shall require certification of completion thereof and ongoing compliance therewith, under penalty of perjury prior to making a favorable recommendation to the Public Service Commission of the application to be an Eligible Telecommunications Carrier. The Office of Broadband shall transmit all recommendations to the Public Service Commission.

§31G-8-3. Misrepresentation of Eligible Telecommunications Carriers status, penalty.

If the Office of Broadband finds evidence that an Eligible Telecommunications Carrier has materially misrepresented compliance referenced in the previous subdivision, notification thereof shall be transmitted to the West Virginia Public Service Commission. The Public Service Commission shall conduct a hearing on the merits thereof and if the Eligible Telecommunications Carrier is found to be noncompliant, the PSC shall assess a fine equal to the amount of any subsidization received for which the commitment, assertion, and/or obligation was established. The PSC shall seek enforcement of any fine and any court of competent jurisdiction in this state shall order payment and compliance with the order of the PSC associated herewith. Funds from any fine shall be deposited into the Broadband Development Fund, less any reasonable expenses and costs of the Public Service Commission in connection therewith.

The Office of Broadband, Department of Economic Development, and any other department, office, bureau, or agency and any political subdivision of this state shall cause any Eligible Telecommunications Carrier and its subsidiaries found to be in violation of the provisions in the previous subdivision or failing to make the certification required thereunder to no longer be certified as an Eligible Telecommunications Carrier and to be ineligible for any state grants, awards, procurement, leasing, licensing other than a business license issued by the Secretary of State or any business license by a political subdivision of this state, easement, right-of-way access, or purchase.

NOTE: The purpose of this bill is to create the Legislative Oversight Commission on Department of Economic Development Accountability. The bill provides for findings, purpose and intent. The bill provides for definitions. The bill establishes the creation of the commission by defining membership and clarifying compensation. The bill defines meeting times for the commission. The bill defines powers and duties of the commission. The bill provides for limited subpoena power. The bill provides for legislative reports. The bill provides for the creation of the Conduit Installation Fund in the State Treasury to be administered by the Department of Transportation. The bill provides for the creation of the Dig Once Fund to be administered by the Office of Broadband. The bill modifies bidding procedures. The bill creates the Broadband Middle Mile Fund. The bill creates the Pole Replacement and Relocation Fund. The bill provides for the creation of a process for the mapping of disturbances in rights of way. The bill creates utility pole rights of way and easement mapping initiative. The bill creates existing customer protections for the Office of the Attorney General in coordination with the Office of Broadband and Department of Economic Development. The bill establishes fees. The bill defines modems and other connection devices. The bill defines competitive access infrastructure. The bill defines eligible telecommunications carriers. The bill defines the status of such. Finally, the bill provides for penalties where misrepresentation of eligible telecommunications carrier status occurs.

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