

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4478**

BY DELEGATES HOUSEHOLDER AND CRISS

[Introduced February 1, 2022; referred  
to the Committee on Technology and Infrastructure  
then Government Organization]

1 A BILL to amend and reenact §31G-1-3 of the Code of West Virginia, 1931, as amended, relating  
 2 to transferring the Broadband Enhancement Council from the Department of Commerce  
 3 to the Department of Economic Development; removing the Secretary of Commerce from  
 4 the Broadband Enhancement Council; designating the Secretary of the Department of  
 5 Economic Development as a voting member; and removing archaic language.

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

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

**§31G-1-3. Broadband Enhancement Council; members of council; administrative support.**

1 (a) The Broadband Enhancement Council is hereby ~~established~~ and continued. The  
 2 current members, funds, and personnel shall continue in effect and be wholly transferred from the  
 3 Department of Commerce to the Department of Economic Development; except as may be  
 4 hereinafter provided. With regard to the terms of the public members appointed under subdivision  
 5 five, subsection (d) of this section, at the next regular meeting of the council following July 1,  
 6 2017, the currently serving public members shall draw by lot for the length of their terms, three  
 7 members to serve for one additional year, three members to serve for two additional years and  
 8 the last three members to serve for three additional years, with all public members in future to  
 9 serve for the duration of the term described below.

10 (b) The council is a governmental instrumentality of the State. The exercise by the council  
 11 of the powers conferred by this article and the carrying out of its purpose and duties are  
 12 considered and held to be, and are hereby determined to be, essential governmental functions  
 13 and for a public purpose. The council ~~is created under the Department of Commerce~~ shall be  
 14 situated within the Department of Economic Development for administrative, personnel, and  
 15 technical support services only.

16 (c) The council shall consist of 13 voting members, designated as follows:

17 (1) The Secretary of ~~Commerce~~ the Department of Economic Development or his or her  
 18 designee;

- 19 (2) The Chief Technology Officer or his or her designee;
- 20 (3) The Vice Chancellor for Administration of the Higher Education Policy Commission or  
21 his or her designee;
- 22 (4) The State Superintendent of Schools or his or her designee;
- 23 (5) Nine public members that shall serve no more than three consecutive three-year terms  
24 from the date of their appointment and are appointed by and serve at the will and pleasure of the  
25 Governor with the advice and consent of the Senate, as follows:
- 26 (i) One member representing users of large amounts of broadband services in this state;
- 27 (ii) One member from each congressional district representing rural business users in this  
28 state;
- 29 (iii) One member from each congressional district representing rural residential users in  
30 this state;
- 31 (iv) One member representing urban business users in this state; and
- 32 (v) One member representing urban residential users in this state; and
- 33 (6) Additionally, the President of the Senate shall name two Senators from the West  
34 Virginia Senate, one from each party, and the Speaker of the House shall name two Delegates  
35 from the West Virginia House of Delegates, one from each party, each to serve in the capacity of  
36 ex officio, nonvoting advisory members of the council.
- 37 ~~(d) The Secretary of Commerce shall chair the first meeting at which time a~~ A chair and  
38 vice chair shall be elected from the members of the council for a term of two years: *Provided*, That  
39 a chair or vice-chair may not serve more than two consecutive full or partial terms in that capacity.  
40 In the absence of the chair, the vice chair shall serve as chair. The council shall appoint a  
41 secretary-treasurer who need not be a member of the council and who, among other tasks or  
42 functions designated by the council, shall keep records of its proceedings.
- 43 (e) The council may appoint committees or subcommittees to investigate and make  
44 recommendations to the full council. Members of these committees or subcommittees need not

45 be members of the council.

46 (f) Seven voting members of the council constitute a quorum and the affirmative vote of a  
47 simple majority of those members present is necessary for any action taken by vote of the council.

48 (g) The gubernatorial appointed members shall be deemed part-time public officials, and  
49 may pursue and engage in another business or occupation or gainful employment. Any person  
50 employed by, owning an interest in, or otherwise associated with a broadband deployment project,  
51 project sponsor, or project participant may serve as a council member and is not disqualified from  
52 serving as a council member because of a conflict of interest prohibited under §6B-2-5 of this  
53 code and is not subject to prosecution for violation of that section when the violation is created  
54 solely as a result of his or her relationship with the broadband deployment project, project sponsor,  
55 or project participant so long as the member recuses himself or herself from board participation  
56 regarding the conflicting issue in the manner set forth in §6B-2-5 of this code and the legislative  
57 rules promulgated by the West Virginia Ethics Commission.

58 (h) No member of the council who serves by virtue of his or her office may receive any  
59 compensation or reimbursement of expenses for serving as a member. The public members and  
60 members of any committees or subcommittees are entitled to be reimbursed for actual and  
61 necessary expenses incurred for each day or portion thereof engaged in the discharge of his or  
62 her official duties in a manner consistent with the guidelines of the Travel Management Office of  
63 the Department of Administration.

64 (i) No person is subject to antitrust or unfair competition liability based on membership or  
65 participation in the council, which provides an essential governmental function and enjoys state  
66 action immunity.

NOTE: The purpose of this bill is to transfer the Broadband Enhancement Council from the Department of Commerce to the Department of Economic Development; substituting the Secretary of Commerce for the Secretary of Economic Development as a voting board meeting and removing archaic language.

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