

H. B. 2979

(By Delegates Boggs, Skaff, E. Nelson, White,
Morgan, M. Poling and Miley)

[Introduced March 19, 2013; referred to the
Committee on Finance.]

A BILL to amend and reenact §31-15C-2, §31-15C-8, §31-15C-9 and §31-15C-10 of the Code of West Virginia, 1931, as amended, all relating to broadband deployment projects; clarifying that the West Virginia Infrastructure and Jobs Development Council's public outreach and education efforts extend beyond unserved areas; revising the council's guidelines on requests for funding assistance; requiring projects for broadband service involving the construction of a network to meet the revised definition of "broadband" before being approved; revising the criteria for funding assistance applications; providing that projects to promote demand may be on a regional or statewide basis; revising notice and posting requirements; and redefining certain terms.

Be it enacted by the Legislature of West Virginia:

That §31-15C-2, §31-15C-8, §31-15C-9 and §31-15C-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted,

1 all to read as follows:

2 **ARTICLE 15C. Broadband Deployment.**

3 **§31-15C-2. Definitions.**

4 (a) For the purposes of this article,

5 (1) "Broadband" or "broadband service" means any service
6 providing advanced telecommunications capability with ~~either~~ a
7 minimum downstream data rate ~~or of 6 Mbps and a minimum~~ upstream
8 data rate of ~~at least 200 kilobits per second~~ 1.5 Mbps, that does
9 not require the end-user to dial up a connection that has the
10 capacity to always be on, and for which the transmission speeds are
11 based on regular available bandwidth rates, not sporadic or
12 burstable rates, with ~~a minimum downstream-to-upstream data ratio~~
13 ~~of 10:1 for services with a downstream data rate of up to five~~
14 ~~megabits per second, and with a minimum upstream data rate of 500~~
15 ~~kilobits per second for services with a downstream data rate of~~
16 ~~five megabits per second or greater~~ latency suitable for real-time
17 applications and services such as VoIP and video conferencing, and
18 with monthly usage capacity reasonably comparable to that of
19 residential terrestrial fixed broadband offerings in urban areas.

20 (2) "Broadband deployment project" means either: (A) A project
21 to provide broadband services to a type 2 and/or type 3 unserved
22 area, as defined in section six of this article; or (B) a statewide
23 or regional project to undertake activities to promote demand for
24 broadband services and broadband applications.

1 (3) "Downstream data rate" means the transmission speed from
2 the service provider source to the end-user.

3 (4) "Upstream data rate" means the transmission speed from the
4 end-user to the service provider source.

5 (5) "Unserved area" means a community that has no access to
6 broadband service.

7 (b) The definition of the term "broadband," the designation of
8 areas that are "unserved", and the level of service required to
9 qualify for funding of state programs and projects, are based on
10 the ~~Federal Communications Commission's current definition of~~
11 ~~broadband, which is stated in terms of the number of Kilobits~~
12 ~~(Kbps) per second, either upstream or downstream~~ National
13 Telecommunications and Information Administration's speed tiers.

14 It is the intention of the Legislature that the definition of
15 broadband in this article and the level of service requirements for
16 state funding be promptly updated by future Legislatures to conform
17 with any revisions enacted by Congress or any rule or regulation
18 promulgated by the Federal Communications Commission or other
19 federal agencies involved with deploying and enhancing broadband
20 services.

21 **§31-15C-8. Stimulation of demand through public outreach and**
22 **education.**

23 In order to implement and carry out the intent of this
24 article, the council may take such actions as it deems necessary or

1 advisable in order to stimulate demand through public outreach and
2 education. ~~in unserved areas.~~ The council shall consider the
3 views, if offered, of affected members of the public, including
4 private industry.

5 **§31-15C-9. Development of guidelines and application for funding**
6 **assistance; emergency rule-making authority.**

7 (a) In order to implement and carry out the intent of this
8 article ~~in type 2 and type 3 unserved areas,~~ the council shall
9 promulgate emergency rules pursuant to the provisions of section
10 fifteen, article three, chapter twenty-nine-a of this code to
11 develop comprehensive, uniform guidelines for use by the council in
12 evaluating any request by a project sponsor for funding assistance
13 to plan, acquire, construct, improve or otherwise develop and
14 execute a broadband deployment project. ~~in a type 2 or type 3~~
15 ~~unserved area.~~ The guidelines shall include the following factors:
16 (1) The cost-effectiveness of the project; (2) the economic
17 development benefits of the project; (3) the availability of
18 alternative sources of funding that could help finance the project,
19 including, but not limited to, private grants or federal funding
20 and the efforts undertaken to obtain such funding; (4) if the
21 project requires the construction of a network, the applicant's
22 ability to operate and maintain such network; (5) the degree to
23 which the project advances statewide broadband access and other
24 state broadband planning goals; (6) if the project involves the

1 construction of a network, the proposed technologies, bandwidths,
2 upstream data rates and downstream data rates; (7) the estimated
3 date the project would commence and be completed; (8) how the
4 proposed project compares to alternative proposals for the same
5 unserved area with regard to the number of people served, the
6 amount of financial assistance sought, and the long-term viability
7 of the proposed project; and (9) any other consideration the
8 council deems pertinent in evaluating requests for funding
9 assistance.

10 (b) Under no circumstances may the council's guidelines allow
11 for the approval of any project for broadband service ~~that does not~~
12 ~~include a minimum downstream transmission rate of 600 kilobits per~~
13 ~~second (Kbps) and a minimum downstream-to-upstream ratio of 8.5:1~~
14 ~~for services with a downstream rate of up to five megabits per~~
15 ~~second (Mbps). In those cases where a project's broadband~~
16 ~~service's downstream rate is five Mbps or greater, the council's~~
17 ~~guidelines must require a minimum upstream data rate of 588 Kbps~~
18 ~~and allow information applications and market demands to dictate~~
19 ~~acceptable downstream-to-upstream data ratios~~ involving the
20 construction of a network that does not meet, at a minimum, the
21 current definition of broadband in section two of this article.

22 (c) The council shall create an application form that shall
23 be used by all project sponsors requesting funding assistance from
24 the council to plan, acquire, construct, improve or otherwise

1 develop and execute broadband deployment projects. ~~in type 2 or~~
2 ~~type 3 unserved areas.~~ The application form shall ~~contain all~~
3 advise applicants of information required by ~~all~~ state agencies
4 that will ~~be required to~~ issue permits and certificates regarding
5 the project. The application form shall require the project
6 sponsor to set forth the proposed location of the project; if the
7 project involves the construction of a network, the type(s) of
8 unserved area(s) the project proposes to address; ~~the estimated~~
9 total cost of the project; ~~the amount of funding assistance~~
10 required and the specific uses of the funding; other sources of
11 funding available or potentially available for the project;
12 information demonstrating the need for the project; that the
13 proposed funding of the project is the most economically feasible
14 and viable alternative to completing the project; and such other
15 information as the council considers necessary.

16 **§31-15C-10. Requirements for project funding assistance; review**
17 **of project application by council; competitive**
18 **applications.**

19 (a) ~~Once the council has categorized unserved areas pursuant~~
20 ~~to section six of this article,~~ At a time and place determined by
21 the council, project sponsors may submit applications for funding
22 assistance. ~~for projects in those unserved areas. Upon receiving~~
23 ~~its first completed application for a categorized unserved area,~~

1 ~~the council shall post notice of such application with the~~
2 ~~Secretary of State~~ Projects involving the construction of a network
3 may be submitted for unserved areas categorized by the council
4 pursuant to section six of this article. Projects to promote
5 demand may be submitted on a statewide or regional basis. If more
6 than one completed application is received for the same project
7 area, the council shall post notice with the Secretary of State of
8 the first completed application received for that project area.
9 The notice shall be published in the State Register for sixty days
10 so as to allow for competing applications to be submitted to the
11 council. Within thirty days of the close of the aforementioned
12 sixty-day notice period, the council shall review all applications
13 timely received during the sixty-day period and either: (i)
14 Approve funding for one or more projects after determining that the
15 funding would constitute an appropriate investment of public funds;
16 or (ii) if the council determines that the application does not
17 contain all of the required information or otherwise is incomplete,
18 or that a proposed project is not eligible for funding assistance,
19 or that the proposed project is otherwise not an appropriate or
20 prudent investment of state funds, the council shall deny the
21 project funding request. Prior to approving or denying any funding
22 request, the council may seek the advice of any expert consultant
23 retained pursuant to section seven of this article, but the council
24 is not bound by that advice. The council shall also consider the

1 views, if offered, of affected members of the public, including
2 private industry.

3 (b) To apply for or receive any funding assistance for a
4 broadband deployment project from the council pursuant to
5 subsection (a) of this section, the project sponsor seeking the
6 funding assistance shall submit a completed application to the
7 council on the form prepared for such purpose by the council
8 pursuant to section nine of this article.

9 (c) In reviewing each application, the council may use the
10 engineering, financial and technical expertise of outside
11 consultants in addition to the respective staffs of the government
12 agencies and private-sector entities represented on the council or
13 other government agencies.

14 (d) Notwithstanding any provision of article fifteen-a,
15 chapter thirty-one or any other provision of this code, broadband
16 deployment project proposals submitted to the council for its
17 consideration pursuant to this article and the council's decisions
18 with regard to such projects shall not be subject to review by the
19 West Virginia Infrastructure and Jobs Development Council.

NOTE: The purpose of this bill is to clarify that the West Virginia Infrastructure and Jobs Development Council's public outreach and education efforts extend beyond unserved areas. The bill revises the council's guidelines on requests for funding assistance. The bill requires projects for broadband service involving the construction of a network meet the revised definition

of "broadband" before being approved. The bill revises the criteria for funding assistance applications. The bill provides that projects to promote demand may be on a regional or statewide basis. The bill revises notice and posting requirements. The bill redefines certain terms.

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