

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 459**

4 (By Senators Walters, Kessler, Nohe, Williams, Palumbo, Boso and Stollings)

5 _____
6 [Originating in the Committee on Transportation and Infrastructure;
7 reported February 18, 2015.]

8 _____
9 **FISCAL
NOTE**

10 A BILL to amend and reenact §31-15A-2, §31-15A-8, §31-15A-10, §31-15A-11 and §31-15A-17
11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto
12 sixteen new sections, designated §31-15A-9a, §31-15A-9b, §31-15A-10a, §31-15A-11a,
13 §31-15A-12a, §31-15A-13a, §31-15A-14a, §31-15A-15a, §31-15A-17c, §31-15A-18a,
14 §31-15A-19a, §31-15A-20a, §31-15A-21a, §31-15A-22a, §31-15A-23a and §31-15A-24a,
15 all relating generally to development of infrastructure in the state; providing for development
16 of broadband middle mile infrastructure; defining new terms; creating a separate
17 infrastructure fund for broadband middle mile infrastructure projects; providing for deposits
18 and expenditures; setting forth additional powers to West Virginia Network for Educational
19 Telecomputing and Water Development Authority; creating West Virginia Infrastructure
20 Fund for Broadband Middle Mile Development; providing for disposition of funds on
21 termination or dissolution of authority; providing that broadband middle mile projects funded
22 by authority are not public improvements for purposes of financing and noting bidding and

1 wage requirements; authorizing issuance of broadband middle mile revenue bonds; creating
2 West Virginia Broadband Middle Mile Infrastructure Revenue Debt Service Fund; providing
3 for funding of debt service fund; specifying requirements for issuance of bonds; providing
4 for contents of trust agreement and trustee for bonds; specifying remedies available to
5 bondholders, noteholders and trustee; making broadband middle mile infrastructure revenue
6 bonds lawful investments; providing for purchase, cancellation and refunding of bonds;
7 declaring that bonds are not state debts and are exempt from taxation; requiring periodic
8 reporting; limiting personal liability; and permitting legislative and emergency rulemaking.

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

10 That §31-15A-2, §31-15A-8, §31-15A-10, §31-15A-11 and §31-15A-17 of the Code of West
11 Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding
12 thereto sixteen new sections, designated §31-15A-9a, §31-15A-9b, §31-15A-10a, §31-15A-11a,
13 §31-15A-12a, §31-15A-13a, §31-15A-14a, §31-15A-15a, §31-15A-17c, §31-15A-18a, §31-15A-19a,
14 §31-15A-20a, §31-15A-21a, §31-15A-22a, §31-15A-23a and §31-15A-24a, all to read as follows:

15 **ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT**
16 **COUNCIL.**

17 **§31-15A-2. Definitions.**

18 ~~For purposes of this article:~~

19 (a) General. -- When used in this article, words defined in subsection (b) of this section have
20 the meaning ascribed to them in this section, except in those instances where a different meaning is
21 distinctly expressed or the context in which the word is used clearly indicates that a different
22 meaning is intended.

1 **(b) Definitions. --**

2 **(1) “Bond” or “infrastructure revenue bond” means a revenue bond, note, or other obligation**
3 **issued by the Water Development Authority pursuant to this article, including bonds to refund such**
4 **bonds and notes to renew such notes, and notes in anticipation of and payable from the proceeds of**
5 **such bonds;**

6 **(2) “Broadband infrastructure” means all facilities, hardware and software and other**
7 **intellectual property necessary to provide broadband services in this state, including, but not limited**
8 **to, voice, video and data services;**

9 **(3) “Broadband infrastructure project” means any middle mile project that deploys**
10 **equipment, fiber optic cables, facilities, or other technologies necessary to provide broadband**
11 **transport services: *Provided*, That nothing in this article may be construed to provide jurisdiction**
12 **or oversight over broadband infrastructure projects for the sole use of homeland security agencies**
13 **in this state.**

14 **(4) “Broadband infrastructure revenue bond” means a revenue bond, note, or other obligation**
15 **issued pursuant to this article to fund one or more broadband middle mile infrastructure projects,**
16 **including bonds to refund such bonds and notes to renew such notes, and notes in anticipation of and**
17 **payable from the proceeds of such bonds;**

18 **(5) “Broadband revenue” means all amounts deposited into the Infrastructure Fund for**
19 **Broadband Middle Mile Development, any amounts received directly or indirectly from any source**
20 **for the use of all or any part of any broadband project completed pursuant to this article and any other**
21 **amounts received by the Water Development Authority or WVNET for the purpose of broadband**
22 **middle mile development.**

1 **(b)** (6) “Code” means the Code of West Virginia, 1931, as amended;

2 **(c)** (7) “Cost” means, as applied to any project to be financed, in whole or in part, with
3 infrastructure revenues or funds otherwise provided pursuant to this article, the cost of planning,
4 acquisition, improvement and construction of the project; the cost of preliminary design and analysis,
5 surveys, borings; the cost of environmental, financial, market and engineering feasibility studies,
6 assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and
7 specifications and other engineering services; the cost of acquisition of all land, rights-of-way,
8 property rights, easements, franchise rights and any other interests required for the acquisition,
9 repair, improvement or construction of the project; the cost of demolishing or removing any
10 buildings or structures on land so acquired, including the cost of acquiring any lands to which
11 buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth,
12 demolishing or removing any buildings or structures; the cost of constructing any buildings or other
13 improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnishings and
14 equipment; loan or origination fees and all finance charges and interest incurred prior to and during
15 the construction and for no more than six months after completion of construction; the cost of all
16 legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all
17 working capital and other expenses necessary or incident to determining the feasibility or
18 practicability of acquiring, repairing, improving or constructing any project; the cost of placing any
19 project in operation; and all other costs and expenses of any kind or nature incurred or to be incurred
20 by the project sponsor developing the project that are reasonable and necessary for carrying out all
21 works and undertakings necessary or incident to the accomplishment of any project: *Provided*, That
22 costs ~~shall~~ may not include any amounts related to the ongoing operations of the owner or operator,

1 depreciation thereof or any other cost which the council, WVNET or the Water Development
2 Authority has not determined to be consistent with the purposes and objectives of this article;

3 ~~(d)~~ (8) “Council” means the West Virginia infrastructure and jobs development council
4 created in section three of this article;

5 (9) “Department of Administration” means the Department of Administration established
6 under article one, chapter five-a of this code, or any successor to all or any substantial part of its
7 powers and duties;

8 ~~(e)~~ (10) “~~Division~~ Department of Environmental Protection” means the ~~Division~~ Department
9 of Environmental Protection established under article one, chapter twenty-two of this code, or any
10 successor to all or any substantial part of its powers and duties;

11 ~~(f)~~ (11) “Division of Health” means the Division of Health created in article one, chapter
12 sixteen of this code, or any successor to all or any substantial part of its powers and duties;

13 ~~(g)~~ (12) “Economic development authority” means the economic development authority
14 established under article fifteen, chapter thirty-one of the code, or any successor to all or any
15 substantial part of its powers and duties;

16 ~~(h)~~ (13) “Emergency project” means a project which the council has determined: (1) Is
17 essential to the immediate economic development of an area of the state; and (2) will not likely be
18 developed in that area if construction of the project is not commenced immediately;

19 ~~(i)~~ (14) “Governmental agency” means any county; municipality; watershed improvement
20 district; assessment district; soil conservation district; sanitary district; public service district; drainage
21 district; regional governmental authority and any other state governmental agency, entity, political
22 subdivision or public corporation or agency authorized to acquire, construct or operate water or

1 wastewater facilities or infrastructure projects or broadband middle mile infrastructure projects;

2 ~~(j)~~ (15) “Housing Development Fund” means the West Virginia Housing Development Fund
3 established under article eighteen of this chapter, or any successor to all or any substantial part of its
4 powers and duties;

5 (16) “Includes” and “including”, when used in this article, do not exclude other things
6 otherwise within the definition or the sentence in which the term is used;

7 ~~(k)~~ (17) “Infrastructure Fund” means the West Virginia Infrastructure Fund created and
8 established in section nine of this article;

9 ~~(l)~~ (18) “Infrastructure project” means a project in the state which the council or WVNET
10 determines is likely to foster and enhance economic growth and development in the area of the state
11 in which the project is developed, for commercial, industrial, community improvement or
12 preservation or other proper purposes, including, without limitation, tourism and recreational housing,
13 land, air or water transportation facilities and bridges, industrial or commercial projects and facilities,
14 mail order, warehouses, wholesale and retail sales facilities, and other real and personal properties,
15 including facilities owned or leased by this state or any other project sponsor, and includes, without
16 limitation: (1) The process of acquiring, holding, operating, planning, financing, demolition,
17 construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any
18 part thereof or interest therein; and (2) preparing land for construction and making, installing or
19 constructing improvements on the land, including water or wastewater facilities or any part thereof,
20 steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges,
21 railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and
22 flood control facilities, whether on or off the site;

1 ~~(m)~~ (19) “Infrastructure revenue” means all amounts appropriated by the Legislature; all
2 amounts deposited into the infrastructure fund; any amounts received, directly or indirectly, from any
3 source for the use of all or any part of any project completed pursuant to this article; and any other
4 amounts received by the State Treasurer, council, WVNET or the Water Development Authority for
5 the purposes of this article: Provided, That funds for water and sewer infrastructure projects and
6 funds for broadband middle mile infrastructure projects shall be kept separate;

7 (20) “Middle mile” when used in the context of broadband means any wired or wireless
8 facilities, or portions thereof, which facilitate transport service for service providers or carriers, and
9 provides connectivity between communities, community access points, network access points and
10 carrier access points, but does not include any last mile facilities or portions thereof that provide
11 connectivity to end-users.

12 (21) “Middle mile fiber threshold” means a fiber optic cable containing no less than one
13 hundred forty-four individual strands of fiber with minimum performance characteristics consistent
14 with nonzero dispersion shifted single mode optical fiber cable as defined by the International
15 Telecommunication Union standard ITU-T G.655;

16 ~~(n)~~ (22) “Need of the project sponsors” means there is a public need for a project. The council
17 shall, for water and sewer projects, construe a population increase evidenced by the last two decennial
18 censuses in a county in which a project is proposed, as a factor supporting the conclusion that a need
19 exists for projects in that county;

20 (23) “Network access point” when used in the context of broadband means a direct connection
21 to carriers that provide core interstate TCP/IP backbone networks that comprise or make up primary
22 portions of the national Internet backbone system and which provide direct connectivity on a national

1 scale throughout the United States in addition to direct or indirect connectivity to international
2 networks throughout the world;

3 (24) “Open access” when used in the context of broadband means the equitable and
4 nondiscriminatory use of the lines by all broadband service providers including the grant of
5 indefeasible rights to use particular strands if the rights can be granted in an equitable and
6 nondiscriminatory manner, subject to such appropriate limitations and restrictions as WVNET may
7 determine.

8 (25) “Person” means any individual, corporation, partnership, firm, association, limited
9 liability company or any other form of business organization or other legal entity.

10 ~~(t)~~ (26) “Project” means any wastewater facility, water facility project or any combination
11 thereof, constructed or operated or to be constructed or operated by a project sponsor;

12 ~~(p)~~ (27) “Project sponsor” means any service provider governmental agency or person, or any
13 combination thereof, including, but not limited to, any public utility which intends to plan, acquire,
14 construct, improve or otherwise develop a project;

15 ~~(q)~~ (28) “Public Service Commission” means the Public Service Commission of West
16 Virginia created and established under section three, article one, chapter twenty-four of this code, or
17 any successor to all or any substantial part of its powers and duties;

18 ~~(r)~~ “Person” means any individual, corporation, partnership, association, limited liability
19 company or any other form of business organization;

20 ~~(s)~~ (29) “Public utility” means any person or persons, or association of persons, however
21 associated, whether incorporated or not, including, without limitation, any governmental agency,
22 operating a wastewater facility or water facility as a public service, which is regulated by the Public

1 Service Commission as a public utility under chapter twenty-four of this code or which is required
2 to file its tariff with the Public Service Commission;

3 (30) “Service provider” when used in the context of broadband means any service provider
4 that provides broadband service and is certified to provide services in accordance with state and
5 federal regulations;

6 ~~(t)~~ (31) “State Development Office” means the West Virginia Development Office established
7 under article two, chapter five-b of this code, or any successor to all or any substantial part of its
8 powers and duties;

9 ~~(u)~~ (32) “State infrastructure agency” means the Division of Health, ~~Division~~ Department of
10 Environmental Protection, Housing Development Fund, Public Service Commission, State
11 Development Office, Water Development Authority, Economic Development Authority, and any
12 other state agency, division, body, authority, commission, instrumentality or entity which now or in
13 the future receives applications for the funding of, and provides funding or technical assistance to,
14 the planning, acquisition, construction or improvement of a project;

15 (33) “Transport service” when used in the context of broadband means any service that
16 provides a service provider or carrier with the ability to transport high-capacity voice, data, graphics
17 or video between communities, community access points, network access points and carrier access
18 points. Transport services do not include any last mile broadband services or other services provided
19 directly to end-users;

20 ~~(v)~~ (34) “Wastewater facility” means all facilities, land and equipment used for or in
21 connection with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding
22 wastewater, including, without limitation, facilities for the treatment and disposal of sewage,

1 industrial wastes or other wastes, wastewater, and the residue thereof; facilities for the temporary or
2 permanent impoundment of wastewater, both surface and underground; and sanitary sewers or other
3 collection systems, whether on the surface or underground, designed to transport wastewater together
4 with the equipment and furnishings therefor or thereof and their appurtenances and systems, whether
5 on the surface or underground including force mains and pumping facilities therefor;

6 ~~(w)~~ (35) “Water Development Authority” means the West Virginia Water Development
7 Authority continued pursuant to ~~the provisions of~~ article one, chapter twenty-two-c of this code, or
8 any successor to all or any substantial part of its powers and duties; ~~and~~

9 ~~(x)~~ (36) “Water facility” means all facilities, land and equipment used for or in connection
10 with the collection and/or storage of water, both surface and underground, transportation of water,
11 storage of water, treatment of water and distribution of water all for the purpose of providing potable,
12 sanitary water suitable for human consumption and use;

13 (37) “WVNET” means the West Virginia Network for Educational Telecomputing, the
14 network managed by the vice chancellor for administration of the Higher Education Policy
15 Commission as provided in section two, article four, chapter eighteen-b of this code; and

16 (38) “Zone” means a predetermined section of the West Virginia broadband middle mile
17 established by WVNET.

18 **§31-15A-8. Exemption of certain emergency projects from certificate of public convenience**
19 **and necessity requirements; review of certain emergency projects by Public**
20 **Service Commission; and exemption for North Fork Hughes River**
21 **watershed project.**

22 (a) If the council determines a project to be an emergency and the emergency project will be

1 funded solely with grant money for the extension of an existing certificated water facility or
2 wastewater facility, and if the council finds in its recommendation that the construction and
3 acquisition of the emergency project will have no effect on the public utility's customer rates and will
4 have no significant effect on its operational costs as a result of the project cost, then the emergency
5 project is exempt from the requirement to obtain a certificate of public convenience and necessity
6 under section eleven, article two, chapter twenty-four of this code. If the public utility is a public
7 service district, it is exempt from the approval of the Public Service Commission required under
8 section twenty-five, article thirteen-a, chapter sixteen of this code.

9 (b) Any public utility, and any other entity that will operate as a public utility, must obtain a
10 certificate of public convenience and necessity pursuant to section eleven, article two, chapter twenty-
11 four of this code for any emergency project that is not exempt under subsection (a) of this section.
12 The Public Service Commission shall render its final decision on any application for a certificate
13 within one hundred twenty days of the filing of the application: *Provided*, That the thirty-day
14 prefiling requirement is not required. If the project sponsor is a public service district, then the
15 project will be exempted from the approval requirements of section twenty-five, article thirteen-a,
16 chapter sixteen of this code.

17 (c) Projects that are not emergency projects are subject to the requirements of section eleven,
18 article two, chapter twenty-four of this code to the extent they would be otherwise.

19 (d) The North Fork Hughes River watershed project, proposed to enhance economic growth
20 and development through tourism as provided in subdivision (18), subsection ~~(h)~~ (b), section two of
21 this article and to include a water facility project as defined in subdivision (37), subsection ~~(n)~~ (b),
22 section two of this article, is hereby specifically exempted from any requirement imposed by this

1 article, except that the provisions of subsection (a) of this section are specifically made applicable to
2 the project. The project is hereby specifically authorized and the public land corporation shall have
3 and may exercise the power of eminent domain and all authority otherwise prescribed by law to
4 acquire necessary land and rights-of-way, to include approximately four hundred seventy-eight acres,
5 in connection with the project. Funding for the project shall be provided by the federal government
6 from the Appalachian regional commission through the United States soil conservation service. Upon
7 completion of the project, the property acquired shall be transferred to the state park system. The
8 commissioner of the Division of Tourism and parks or the successor to the commissioner's powers
9 and duties is directed to expand the boundaries of North Bend state park to include the project area
10 and to operate the expanded park property, including improved recreational facilities, from funds
11 appropriated for that purpose.

12 **§31-15A-9a. Infrastructure Fund for Broadband Middle Mile Development; deposits in fund;**
13 **use of funds for projects.**

14 (a) The Water Development Authority shall create and establish a special revolving fund of
15 moneys made available by appropriation, grant, contribution or loan to be known as the "West
16 Virginia Infrastructure Fund for Broadband Middle Mile Development". This fund shall be governed,
17 administered and accounted for by the Water Development Authority as a special purpose account
18 separate and distinct from any other moneys, funds or funds owned and managed by the authority for
19 broadband middle mile development. This fund shall consist of subaccounts, as deemed necessary
20 by the authority, for the deposit of:

21 (1) Infrastructure revenues for broadband middle mile deployment;

22 (2) Any appropriations, grants, gifts, contributions, loan proceeds or other revenues received

1 by the West Virginia Infrastructure Fund for Broadband Middle Mile Development from any source,
2 public or private;

3 (3) All proceeds derived from the sale of bonds issued pursuant to this article for broadband
4 middle mile infrastructure development;

5 (4) Insurance proceeds payable to WVNET or the West Virginia Infrastructure Fund for
6 Broadband Middle Mile Development in connection with any broadband middle mile infrastructure
7 project; and

8 (5) All income earned on moneys held in the West Virginia Infrastructure Fund for
9 Broadband Middle Mile Development.

10 (b) Any money collected pursuant to this section shall be paid into the West Virginia
11 Infrastructure Fund for Broadband Middle Mile Development by the state agent or entity charged with
12 the collection of the same, credited to that fund, and used only for purposes set forth in this article for
13 broadband middle mile development.

14 (c) Amounts in the West Virginia Infrastructure Fund for Broadband Middle Mile
15 Development shall be segregated and administered by the Water Development Authority separate and
16 apart from its other assets and programs. Amounts in the West Virginia Infrastructure Fund for
17 Broadband Middle Mile Development may not be transferred to any other fund or account or used,
18 other than indirectly, for the purposes of any other program of the Water Development Authority.

19 (d) Notwithstanding any provision of this code to the contrary, amounts in the West Virginia
20 Infrastructure Fund for Broadband Middle Mile Development shall be deposited by the Water
21 Development Authority in one or more banking institutions: *Provided*, That any moneys so deposited
22 shall be deposited in a banking institution located in this state. The banking institution shall be

1 selected by the Water Development Authority by competitive bid. Pending the disbursement of any
2 money from the West Virginia Infrastructure Fund for Broadband Middle Mile Development as
3 authorized under this section, the Water Development Authority shall invest and reinvest the moneys
4 subject to the limitations set forth in section twelve, article six, chapter twelve of this code.

5 **§31-15A-9b. West Virginia Network for Educational Telecomputing to serve as advisory body**
6 **on broadband middle mile matters; all state areas considered unserved.**

7 WVNET shall serve as an advisory body to make recommendations to the Water
8 Development Authority on matters pertaining to the construction and operation of the West Virginia
9 broadband middle mile. For all purposes relating to West Virginia Broadband Middle Mile
10 Infrastructure, all areas of the state are “unserved areas” as described in subdivision seven, section
11 two, article fifteen-c of this chapter.

12 **§31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for**
13 **engineering assistance.**

14 (a) To further accomplish the purpose and intent of this article, the Water Development
15 Authority shall use the moneys in the infrastructure fund created pursuant to section nine of this
16 article, upon receipt of one or more recommendations from the council pursuant to section five of this
17 article, to make loans, with or without interest, loan guarantees or grants and to provide other
18 assistance, financial, technical or otherwise, to finance all or part of the costs of infrastructure projects
19 or projects to be undertaken by a project sponsor: *Provided*, That any moneys disbursed from the
20 infrastructure fund in the form of grants shall not exceed twenty percent of the total funds available
21 for the funding of projects. No loan, loan guarantee, grant or other assistance shall be made or
22 provided except upon a determination by the council that the loan, loan guarantee, grant or other

1 assistance and the manner in which it will be provided are necessary or appropriate to accomplish the
2 purposes and intent of this article, based upon an application submitted to the council: *Provided,*
3 *however,* That no grant shall be made to a project sponsor that is not a governmental agency or a not
4 for profit corporation under the provisions of section 501(c) of the Internal Revenue Code of 1986,
5 as amended. Applications for loans, loan guarantees, grants or other assistance may be submitted by
6 a project sponsor for one or more infrastructure projects on preliminary application forms prepared
7 by the council pursuant to section four of this article. Any recommendation of the council approving
8 a loan, loan guarantee, grant or other assistance shall include a finding and determination by the
9 council that the requirements of this section have been met. The council shall base any decisions to
10 loan money for projects to project sponsors pursuant to this article solely on the need of the project
11 sponsors.

12 (b) The council has the authority in its sole discretion to make grants to project sponsors if it
13 finds that: (1) The level of rates for the users would otherwise be an unreasonable burden given the
14 users' likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of the
15 project except through grants: *Provided,* That no project sponsor shall receive infrastructure grant
16 money in an amount in excess of fifty percent of the total cost of the project. Therefore, the council
17 may consider the economic or financial conditions of the area to be served. As a condition for receipt
18 of a grant under this subsection, the council may require, in addition to any other conditions, that the
19 applicant pursue other state or federal grant or loan programs. Upon a recommendation by the
20 council, the Water Development Authority shall provide the grant in accordance with the
21 recommendation. The council shall develop criteria to be considered in making grants to project
22 sponsors which shall require consideration of the economic or financial conditions of the area to be

1 served and the availability of other funding sources. The council shall adopt procedural rules
2 regarding the manner in which grants will be awarded in conformity with this section. The procedural
3 rules shall be adopted pursuant to article three, chapter twenty-nine-a of this code.

4 (c) Notwithstanding any other provision of this article to the contrary, the council shall apply
5 a mandatory minimum end user utility rate that must be met by the project sponsor before funding
6 assistance may be awarded. The mandatory minimum end utility rate shall be based upon a uniform
7 statewide percentage of the median household income in a particular geographic area and said rate
8 shall not exceed six tenths of one percent: *Provided*, That funding assistance made from the proceeds
9 of any general obligation bonds and revenue bonds issued after March 15, 1998, after transfers
10 required to make the state match for the water and wastewater revolving loan programs pursuant to
11 article two, chapter twenty-two-c and article thirteen-c, chapter sixteen of this code, shall be provided
12 by the council on a pro rata basis divided equally among the congressional districts of this state as
13 delineated in accordance with section three, article two, chapter one of this code: *Provided, however*,
14 That infrastructure projects as defined in subdivision (18), subsection ~~(f)~~ (b), section two of this article
15 shall not be subject to pro rata distribution. When determining median household income of a
16 geographic area of the project to be served, the council shall consider any surveys of the income of
17 the households that will be served by the project.

18 (d) No loan or grant funds may be made available for a project if the project to be funded will
19 provide subsidized services to certain users in the service area of the project.

20 (e) Notwithstanding any other provision of this article to the contrary, engineering studies and
21 requirements imposed by the council for preliminary applications shall not exceed those engineering
22 studies and requirements which are necessary for the council to determine the economic feasibility

1 of the project. If the council determines that the engineering studies and requirements for the
2 preapplication would impose an undue hardship on any project sponsor, the council may provide
3 funding assistance to project sponsors to defray the expenses of the preapplication process from
4 moneys available in the infrastructure fund for making loans: *Provided*, That the council may only
5 provide funding assistance in an amount equal to \$5,000 or fifty percent of the total preapplication
6 cost of the project, whichever amount is greater. If the project is ultimately approved for a loan by
7 the council, the amount of funding assistance provided to the project sponsor for the preapplication
8 process shall be included in the total amount of the loan to be repaid by the project sponsor. If the
9 project is not ultimately approved by the council, then the amount of funding assistance provided to
10 the project sponsor will be considered a grant by the council and the total amount of the assistance
11 shall be forgiven. In no event may the amount of funding assistance provided to all project sponsors
12 exceed, in the aggregate, \$100,000 annually.

13 (f) The council shall report to the Governor, the Speaker of the House of Delegates and the
14 President of the Senate during each regular and interim session of the Legislature, on its activities and
15 decisions relating to distribution or planned distribution of grants and loans under the criteria to be
16 developed pursuant to this article.

17 **§31-15A-10a. Middle mile characteristics; open access guaranteed; business and residential**
18 **service required; zones; rights may be granted; existing infrastructure may**
19 **be purchased; reports.**

20 (a) The West Virginia Broadband Middle Mile Infrastructure, to include more than two
21 thousand miles of fiber optic cable, shall be owned and operated by the State of West Virginia. The
22 network provided or enhanced by the broadband middle mile infrastructure project shall be open

1 access. Existing broadband infrastructure which meets the required specifications of middle mile fiber
2 threshold with a minimum of one hundred forty-four strands of fiber may be purchased as part of the
3 middle mile infrastructure project. Internet services provided through the broadband middle mile shall
4 be available to both business and residential users as well as to governmental agencies. The cost for
5 access to the middle mile will be the cost of constructing, maintaining and administering the middle
6 mile network as determined by WVNET. The network shall provide free broadband, data and phone
7 to schools, universities and government buildings in the state. Notwithstanding the open access
8 requirement, WVNET shall reserve at least eight strands of fiber for exclusive use by the state, its
9 instrumentalities and political subdivisions.

10 (b) WVNET shall establish zones in the broadband middle mile infrastructure. Each zone of
11 the middle mile infrastructure shall be let for bid separately, to encourage participation by multiple
12 project sponsors. A project sponsor may bid to construct part or all of a zone of the middle mile
13 infrastructure project. As a condition of a contract, a project sponsor may be granted infeasible
14 rights to use up to twenty percent of the fibers in any number of zones of the broadband middle mile,
15 but may not use more than twenty percent of the fibers in any one zone.

16 (c) WVNET shall report to the Governor, the Legislative Manager, the Speaker of the House
17 of Delegates and the President of the Senate during each regular session of the Legislature on the
18 status of the broadband middle mile project and, to the extent known, the economic activity and jobs
19 created as a result of the broadband middle mile infrastructure project.

20 **§31-15A-11. Reservation of funds for projects and infrastructure projects.**

21 Eighty percent of the funds deposited in the West Virginia infrastructure fund shall be
22 dedicated for the purpose of providing funding for the cost of projects as defined in subdivision (26),

1 subsection ~~(n)~~ (b), section two of this article. Twenty percent of the funds deposited in the West
2 Virginia infrastructure fund shall be dedicated for the purpose of providing funding for costs of
3 infrastructure projects as defined in subdivision (18), subsection ~~(n)~~ (b), section two of this article.
4 Project sponsors of infrastructure projects shall follow the application process as established by this
5 article: *Provided*, That notwithstanding any provision of this article to the contrary, all applications
6 for any infrastructure project shall be submitted to the executive director of the West Virginia
7 Development Office for review, recommendation and approval regarding infrastructure project
8 funding.

9 **§31-15A-11a. Reservation of funds for broadband middle mile infrastructure projects.**

10 (a) Funds deposited in the West Virginia Infrastructure Fund for Broadband Middle Mile
11 Development shall be dedicated for the purpose of providing funding for the cost of broadband
12 middle mile infrastructure projects as defined in section two of this article.

13 (b) No bonds may be issued under this article for broadband infrastructure projects until such
14 time as the Legislature has provided for sufficient revenue to meet debt service on the bonds:
15 *Provided*, That bonds may be issued if WVNET is able to identify a repayment source for the bonds,
16 including income from operation of the broadband middle mile.

17 **§31-15A-12a. Additional powers of Water Development Authority relating to broadband**
18 **middle mile infrastructure projects.**

19 To accomplish the purpose and intent of this article, the Water Development Authority, upon
20 approval of WVNET, is hereby empowered, in addition to all other powers granted to it under this
21 code to:

22 (1) Enter into agreements or other transactions with any federal or state agency in connection

1 with any broadband middle mile infrastructure project;

2 (2) Receive or administer on behalf of any federal or state agency grants, subsidies or other
3 payments to be applied to the costs of any broadband middle mile infrastructure project financed, in
4 whole or in part, or otherwise assisted by WVNET, including, but not limited to, payments to be
5 applied to operating costs and debt service or obligations of any project sponsor;

6 (3) Receive and accept aid or contributions from any source of money, property, labor or other
7 things of value, to be held, used and applied only for the purposes for which such grants and
8 contributions are made; and

9 (4) Do all things which are necessary to further the purposes and intent of this article. The
10 Water Development Authority may propose rules for legislative approval pursuant to article three,
11 chapter twenty-nine-a of this code, and may promulgate emergency rules pursuant to the provisions
12 of section fifteen, article three, chapter twenty-nine-a of this code.

13 **§31-15A-13a. Prohibition on funds inuring to the benefit of or being distributable to Water**
14 **Development Board; transactions between the Water Development Board**
15 **and officers having certain interests in such transactions.**

16 No part of the West Virginia Infrastructure Fund for Broadband Middle Mile Development
17 or the West Virginia Broadband Middle Mile Infrastructure Revenue Debt Service Fund inures to the
18 benefit of or is distributable to the Water Development Board directors or officers of the Water
19 Development Authority except that the Water Development Authority is authorized and empowered
20 to pay reasonable compensation, other than to members of the Water Development Board, including
21 the chairman, vice chairman and secretary-treasurer, for services rendered and to make loans and
22 exercise its other powers as previously specified in furtherance of its corporate purpose: *Provided,*

1 That no loans may be made, and no property may be purchased or leased from, or sold, leased or
2 otherwise disposed of, to any Water Development Board member or officer of the Water
3 Development Authority.

4 **§31-15A-14a. Disposition of Infrastructure Fund for Broadband Development upon**
5 **termination or dissolution of authority.**

6 Upon the termination or dissolution of the Water Development Authority, all rights and
7 properties of the authority with respect to the West Virginia Infrastructure Fund for Broadband
8 Middle Mile Development shall pass to and be vested in the state, subject to the rights of lien holders
9 and other creditors.

10 **§31-15A-15a. Broadband middle mile projects not to be considered public improvements for**
11 **financing; competitive bid requirements.**

12 (a) No broadband middle mile infrastructure project acquired, constructed or maintained or
13 financed, in whole or in part, by the Water Development Authority is a “public improvement” within
14 the meaning of article five-a, chapter twenty-one of this code for purposes of the financing of the
15 project.

16 (b) The state and its subdivisions shall, except as provided in subsection (c) of this section,
17 solicit competitive bids and require the payment of prevailing wage rates as provided in article five-a,
18 chapter twenty-one of this code for the construction of every broadband middle mile infrastructure
19 project funded pursuant to this article exceeding \$25,000 in total cost. Following the solicitation of
20 the bids, a construction contract shall be awarded to the lowest qualified responsible bidder, who shall
21 furnish a sufficient performance and payment bond: *Provided*, That the state and its subdivisions may
22 reject all bids and solicit new bids on the project.

1 (c) This section does not:

2 (1) Apply to work performed on construction or repair projects not exceeding a total cost of
3 \$50,000 by regular full-time employees of the state or its subdivisions: *Provided*, That no more than
4 \$50,000 shall be expended on an individual project in a single location in a twelve-month period;

5 (2) Prevent students enrolled in vocational educational schools from being used in the
6 construction or repair projects when such use is a part of the students' training program;

7 (3) Apply to emergency repairs: *Provided*, That the term "emergency repairs" means repairs
8 that, if not made immediately, will seriously impair the use of the infrastructure or broadband service;
9 or

10 (4) Apply to any situation where the state or a subdivision of the state comes to an agreement
11 with volunteers, or a volunteer group, by which the governmental body will provide construction or
12 repair materials, architectural, engineering, technical or any other professional services and the
13 volunteers will provide the necessary labor without charge to, or liability upon, the governmental
14 body: *Provided*, That the total cost of the construction or repair projects does not exceed \$50,000.

15 (d) Subsection (b) of this section does not apply to privately owned broadband middle mile
16 infrastructure projects.

17 **§31-15A-17. Water development authority empowered to issue infrastructure revenue bonds**
18 **and refunding bonds; creation of infrastructure revenue debt service fund;**
19 **funding of infrastructure revenue debt service fund; requirements and**
20 **manner of such issuance.**

21 (a) To accomplish the purpose and intent of this article, the Water Development Authority is
22 hereby empowered at the written request of the council to issue from time to time infrastructure

1 revenue bonds of the state in such principal amounts as the council deems necessary to make loans
2 and loan guarantees and other forms of financial assistance to project sponsors for one or more
3 projects or infrastructure projects: *Provided*, That the Water Development Authority may not issue
4 any such bonds, other than refunding bonds, unless the council by resolution determines that the
5 aggregate cost of the projects or infrastructure projects expected to be constructed during any annual
6 period exceeds (1) the projected annual infrastructure revenues for the same period, and (2) the
7 principal and interest payments not otherwise pledged to the infrastructure revenue debt service fund
8 that are due the Water Development Authority on all outstanding loans previously made by the Water
9 Development Authority pursuant to the provisions of this article.

10 (b) The proceeds of infrastructure revenue bonds shall be used solely for the purpose of
11 making loans and loan guarantees and other forms of financial assistance to sponsors of one or more
12 projects or infrastructure projects, and shall be deposited in one or more special accounts with the
13 trustee under the trust agreement securing such bonds and disbursed from time to time for projects
14 or infrastructure projects in accordance with this article: *Provided*, That notwithstanding any
15 provision of this code to the contrary, twenty percent of the funds deposited in the special account
16 shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined
17 in subdivision (18), subsection ~~(a)~~ (b), section two; of this article.

18 (c) The Water Development Authority may not authorize the disbursement of any proceeds
19 of infrastructure revenue bonds unless it has received documentation from the council pursuant to the
20 provisions of section ten of this article.

21 (d) There is hereby created in the Water Development Authority a special fund which shall
22 be designated and known as the “West Virginia Infrastructure Revenue Debt Service Fund,” into

1 which shall be transferred solely from the loan repayments deposited in the infrastructure fund the
2 amounts certified by the director of the Water Development Authority as necessary to pay the
3 principal, premium, if any, and interest on infrastructure revenue bonds and any reserve requirements,
4 subject to the terms of any agreement with the holders of the infrastructure revenue bonds. All
5 amounts deposited in the West Virginia infrastructure revenue debt service fund shall be pledged to
6 the repayment of the principal, interest and redemption premium, if any, on any infrastructure revenue
7 bonds authorized by this article: *Provided*, That amounts on deposit in the fund may be used to
8 establish or maintain reserves created for the purposes of securing such infrastructure revenue bonds.
9 The pledge shall be valid and binding from the time the pledge is made, and the West Virginia
10 infrastructure revenue debt service fund so pledged shall immediately be subject to the lien of the
11 pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be
12 valid and binding as against all parties having claims of any kind in tort, contract or otherwise against
13 the Water Development Authority irrespective of whether the parties have notice thereof.

14 (e) Except as may otherwise be expressly provided in this article or by resolution of the Water
15 Development Authority, every issue of infrastructure revenue bonds shall be special obligations of
16 the Water Development Authority payable solely from amounts in the West Virginia infrastructure
17 revenue debt service fund, and the reserves created for this purpose by the Water Development
18 Authority, without preference or priority among the bonds regardless of when issued, subject only to
19 any agreements with the holders of any bonds to the contrary. All such bonds are hereby declared
20 to be negotiable instruments.

21 (f) Infrastructure revenue bonds shall be authorized by resolution of the Water Development
22 Authority. These bonds shall bear such dates and shall mature at such times, in case of any note or

1 renewal thereof not exceeding five years from the date of issue of the original note, and in the case
2 of any bond not exceeding fifty years from the date of issue, as the resolution may provide.
3 Infrastructure revenue bonds shall bear interest at a rate or rates, including variable rates, shall be
4 taxable or tax-exempt, shall be in the denominations, shall be in registered form, shall carry the
5 registration privileges, shall be payable in the medium and place of payment, and shall be subject to
6 the terms of redemption as the Water Development Authority may authorize. Infrastructure revenue
7 bonds may be sold by the Water Development Authority at public or private sale at the price the
8 Water Development Authority determines in consultation with the council. Infrastructure revenue
9 bonds shall be executed by the chairman and the vice chairman of the Water Development Authority,
10 either or both of whom may use a facsimile signature. The official seal of the Water Development
11 Authority or a facsimile thereof shall be affixed thereto or printed thereon and attested by manual or
12 facsimile signature by the secretary-treasurer of the Water Development Authority. If any officer
13 whose signature, or a facsimile of whose signature appears on any infrastructure revenue bond ceases
14 to be such officer before delivery of such bond, such signature or facsimile is nevertheless sufficient
15 for all purposes to the same extent as if he or she had remained in office until such delivery, and if
16 the seal of the Water Development Authority has been changed after a facsimile has been imprinted
17 on such bond, the facsimile will continue to be sufficient for all purposes.

18 (g) Any resolution authorizing any infrastructure revenue bonds may contain provisions,
19 subject to any agreement with bondholders or noteholders which may then exist, which agreements
20 shall be part of the contract with the holder thereof, with respect to the pledge of or other use and
21 disposition of amounts in the infrastructure revenue debt service fund; the setting aside of reserve
22 funds; the disposition of any assets of the Water Development Authority; limitations on the purpose

1 to which the proceeds of sale of bonds may be applied; the authorization of notes issued in
2 anticipation of the issuance of bonds; an agreement of the Water Development Authority to do all
3 things necessary for the authorization, issuance and sale of such bonds in such amounts as may be
4 necessary for the timely retirement of such notes; limitations on the issuance of additional bonds; the
5 terms upon which additional bonds may be issued and secured; the refunding of outstanding bonds
6 and the renewal of outstanding notes; the procedures, if any, by which the terms of any contract with
7 bondholders or noteholders may be amended or abrogated; the amount of bonds the holders of which
8 must consent thereto and the manner in which such consent may be given; and any other matter which
9 in any way affects the security for or protection of the bonds.

10 (h) In the event that the sum of all reserves pledged to the payment of the bonds is less than
11 the minimum reserve requirements established in any resolution or resolutions authorizing the
12 issuance of the bonds, the chairman or the director of the Water Development Authority shall certify,
13 on or before December 1, of each year, the amount of such deficiency to the Governor of the state for
14 inclusion, if the Governor shall so elect, of the amount of such deficiency in the budget to be
15 submitted to the next session of the Legislature for appropriation to the Water Development Authority
16 to be pledged for payment of such bonds: *Provided*, That the Legislature shall not be required to
17 make any appropriations so requested, and the amount of such deficiencies shall not constitute a debt
18 or liability of the state.

19 (i) Neither the officers or board members of the Water Development Authority, nor any person
20 executing the infrastructure revenue bonds, shall be liable personally on the bonds or be subject to
21 any personal liability or accountability by reason of the issuance thereof.

22 **§31-15A-17c. Water Development Authority empowered to issue broadband middle mile**

1 **infrastructure revenue bonds and refunding bonds; creation of Broadband**
2 **Middle Mile Infrastructure Revenue Debt Service Fund; funding of**
3 **Broadband Middle Mile Infrastructure Revenue Debt Service Fund;**
4 **requirements and manner of such issuance.**

5 (a) To accomplish the purpose and intent of this article, the Water Development Authority,
6 upon consent from WVNET, is hereby empowered to issue from time to time broadband middle mile
7 infrastructure revenue bonds of the state in such principal amounts as WVNET deems necessary to
8 pay for expected broadband middle mile construction projects.

9 (b) The proceeds of broadband middle mile infrastructure revenue bonds may be used only
10 for the purposes of related administrative expenses, paying for construction projects awarded through
11 the bidding process, and for purchase of existing broadband infrastructure that meets the
12 specifications established by WVNET and minimum performance characteristics consistent with
13 nonzero dispersion shifted single mode optical fiber cable as defined by the International
14 Telecommunication Union standard ITU-T G.655. The proceeds shall be deposited in one or more
15 special accounts with the trustee under the trust agreement securing the bonds and shall be disbursed
16 from time to time for broadband middle mile infrastructure projects in accordance with this article.

17 (c) There is hereby created in the Water Development Authority a special fund which shall
18 be designated and known as the “West Virginia Broadband Middle Mile Infrastructure Revenue Debt
19 Service Fund,” into which shall be transferred solely from income from operation of the broadband
20 middle mile, and deposited in the West Virginia Infrastructure Fund for Broadband Middle Mile
21 Development, the amounts certified by the authority as necessary to pay the principal, premium, if
22 any, and interest on broadband middle mile infrastructure revenue bonds and any reserve

1 requirements, subject to the terms of any agreement with the holders of the broadband middle mile
2 infrastructure revenue bonds. All amounts deposited in the West Virginia Broadband Middle Mile
3 Infrastructure Revenue Debt Service Fund shall be pledged to the repayment of the principal, interest
4 and redemption premium, if any, on any broadband middle mile infrastructure revenue bonds
5 authorized by this article: *Provided*, That amounts on deposit in the fund may be used to establish or
6 maintain reserves created for the purposes of securing the broadband middle mile infrastructure
7 revenue bonds. The pledge is valid and binding from the time the pledge is made, and the West
8 Virginia Broadband Middle Mile Infrastructure Revenue Debt Service Fund so pledged is
9 immediately subject to the lien of the pledge without any physical delivery thereof or further act, and
10 the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort,
11 contract or otherwise against the Water Development Authority irrespective of whether the parties
12 have notice thereof.

13 (d) Except as may otherwise be expressly provided in this article or by resolution of the Water
14 Development Authority, every issue of broadband middle mile infrastructure revenue bonds are
15 special obligations of the Water Development Authority payable solely from amounts in the West
16 Virginia Broadband Middle Mile Infrastructure Revenue Debt Service Fund, and the reserves created
17 for this purpose by the Water Development Authority, without preference or priority among the bonds
18 regardless of when issued, subject only to any agreements with the holders of any bonds to the
19 contrary. All such bonds are hereby declared to be negotiable instruments.

20 (e) Broadband middle mile infrastructure revenue bonds shall be authorized by resolution of
21 the Water Development Authority. These bonds shall bear such dates and shall mature at such times,
22 in case of any note or renewal thereof not exceeding five years from the date of issue of the original

1 note, and in the case of any bond not exceeding fifty years from the date of issue, as the resolution
2 may provide. Broadband middle mile infrastructure revenue bonds shall bear interest at a rate or rates,
3 including variable rates, shall be taxable or tax-exempt, shall be in the denominations, shall be in
4 registered form, shall carry the registration privileges, shall be payable in the medium and place of
5 payment, and shall be subject to the terms of redemption as the Water Development Authority may
6 authorize. Broadband middle mile infrastructure revenue bonds may be sold by Water Development
7 Authority at public or private sale at the price the authority determines after consultation with
8 WVNET. Broadband middle mile infrastructure revenue bonds shall be executed by the chairman and
9 the vice chairman of the Water Development Authority, either or both of whom may use a facsimile
10 signature. The official seal of the Water Development Authority or a facsimile thereof shall be affixed
11 thereto or printed thereon and attested by manual or facsimile signature by the secretary-treasurer of
12 the Water Development Authority. If any officer whose signature, or a facsimile of whose signature
13 appears on any broadband infrastructure revenue bond ceases to be such officer before delivery of
14 such bond, such signature or facsimile is nevertheless sufficient for all purposes to the same extent
15 as if he or she had remained in office until such delivery, and if the seal of the Water Development
16 Authority has been changed after a facsimile has been imprinted on such bond, the facsimile will
17 continue to be sufficient for all purposes.

18 (f) Any resolution authorizing any broadband infrastructure revenue bonds may contain
19 provisions, subject to any agreement with bondholders or noteholders which may then exist, which
20 agreements shall be part of the contract with the holder thereof, with respect to the pledge of or other
21 use and disposition of amounts in the West Virginia Broadband Middle Mile Infrastructure Revenue
22 Debt Service Fund; the setting aside of reserve funds; the disposition of any assets of the Water

1 Development Authority; limitations on the purpose to which the proceeds of sale of bonds may be
2 applied; the authorization of notes issued in anticipation of the issuance of bonds; an agreement of
3 the Water Development Authority to do all things necessary for the authorization, issuance and sale
4 of such bonds in such amounts as may be necessary for the timely retirement of such notes;
5 limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued
6 and secured; the refunding of outstanding bonds and the renewal of outstanding notes; the procedures,
7 if any, by which the terms of any contract with bondholders or noteholders may be amended or
8 abrogated; the amount of bonds the holders of which must consent thereto and the manner in which
9 such consent may be given; and any other matter which in any way affects the security for or
10 protection of the bonds.

11 (g) In the event that the sum of all reserves pledged to the payment of the bonds is less than
12 the minimum reserve requirements established in any resolution or resolutions authorizing the
13 issuance of the bonds, the chairman of the Water Development Authority shall certify, on or before
14 December 1 of each year, the amount of such deficiency to the Governor of the state for inclusion,
15 if the Governor shall so elect, of the amount of such deficiency in the budget to be submitted to the
16 next session of the Legislature for appropriation to be pledged for payment of such bonds: *Provided,*
17 That the Legislature shall not be required to make any appropriations so requested, and the amount
18 of the deficiencies does not constitute a debt or liability of the state.

19 (h) Neither the officers or board members of the Water Development Authority or WVNET,
20 nor any person executing the broadband middle mile infrastructure revenue bonds, are liable
21 personally on the bonds or be subject to any personal liability or accountability by reason of the
22 issuance thereof.

1 **§31-15A-18a. Trustee for holders of broadband middle mile infrastructure revenue bonds;**
2 **contents of trust agreement.**

3 (a) Any broadband middle mile infrastructure revenue bonds issued by the Water
4 Development Authority under this article shall be secured by a trust agreement between the Water
5 Development Authority and a corporate trustee, which trustee may be any trust company or banking
6 institution having the powers of a trust company within this state.

7 (b) Any trust agreement may pledge or assign the West Virginia Broadband Middle Mile
8 Infrastructure Revenue Debt Service Fund. Any trust agreement or any resolution providing for the
9 issuance of such bonds may contain such provisions for protecting and enforcing the rights and
10 remedies of the bondholders or noteholders as are reasonable and proper and not in violation of law,
11 including section seventeen-a of this article, and covenants setting forth the duties of the Water
12 Development Authority in respect to the payment of the principal of and interest, charges and fees
13 on loans made to, or bond purchases from, governmental agencies from the proceeds of the bonds,
14 and the custody, safeguarding and application of all moneys. Any banking institution or trust company
15 incorporated under the laws of this state which may act as depository of the proceeds of bonds or of
16 the West Virginia Broadband Middle Mile Infrastructure Revenue Debt Service Fund shall furnish
17 such indemnifying bonds or pledge securities as are required by the Water Development Authority.
18 The trust agreement may set forth the rights and remedies of the bondholders and noteholders and of
19 the trustee and may restrict individual rights of action by bondholders and noteholders as customarily
20 provided in trust agreements or trust indentures securing similar bonds and notes. The trust agreement
21 may contain such other provisions as the Water Development Authority deems reasonable and proper
22 for the security of the bondholders or noteholders. All expenses incurred in carrying out the

1 provisions of any such trust agreement may be treated as part of the cost of the construction,
2 renovation, repair, improvement or acquisition of a project or infrastructure project.

3 **§31-15A-19a. Legal remedies of broadband middle mile infrastructure revenue bondholders**
4 **or noteholders and trustees.**

5 Any holder of broadband middle mile infrastructure revenue bonds issued pursuant to this
6 article and the trustee under any trust agreement, except to the extent the rights given by this article
7 may be restricted by the applicable resolution or trust agreement, may by civil action, mandamus or
8 other proceedings protect and enforce any rights granted under the laws of this state or granted under
9 this article, by the trust agreement or by the resolution in the issuance of the bonds, and may enforce
10 and compel the performance of all duties required by this article, pursuant to the trust agreement or
11 resolution, to be performed by the Water Development Authority or any officer thereof.

12 **§31-15A-20a. Broadband middle mile infrastructure revenue bonds lawful investments.**

13 All broadband middle mile infrastructure revenue bonds issued pursuant to this article are
14 lawful investments for banking institutions, societies for savings, building and loan associations,
15 savings and loan associations, deposit guarantee associations, trust companies, and insurance
16 companies, including domestic for life and domestic not for life insurance companies.

17 **§31-15A-21a. Purchase and cancellation of broadband middle mile infrastructure revenue**
18 **bonds.**

19 (a) The Water Development Authority, subject to such agreements with noteholders or
20 bondholders as may then exist, shall have the power, from any funds available therefor, to purchase
21 or redeem broadband middle mile infrastructure revenue bonds.

22 (b) If the broadband middle mile infrastructure revenue bonds are then redeemable, the price

1 of the purchase may not exceed the redemption price then applicable, plus accrued interest to the next
2 interest payment date thereon. If the broadband middle mile infrastructure revenue bonds are not then
3 redeemable, the price of the purchase may not exceed the redemption price applicable on the first date
4 after the purchase upon which the bonds become subject to redemption, plus accrued interest to such
5 date. Upon purchase or redemption, the bonds shall be canceled.

6 **§31-15A-22a. Refunding broadband middle mile revenue bonds.**

7 Any broadband middle mile infrastructure revenue bonds issued pursuant to this article and
8 at any time outstanding may at any time and from time to time be refunded by the Water Development
9 Authority by the issuance of its refunding revenue bonds in an amount it deems necessary to refund
10 the principal of the bonds to be refunded, together with any unpaid interest thereon, to provide
11 additional funds for the Water Development Authority to, in its discretion, issue additional revenue
12 bonds, and to pay any premiums and commissions necessary to be paid in connection therewith. Any
13 refunding may be effected whether the broadband middle mile infrastructure revenue bonds to be
14 refunded shall have then matured or shall thereafter mature: *Provided*, That the holders of any
15 broadband middle mile infrastructure revenue bonds so to be refunded may not be compelled without
16 their consent to surrender their broadband middle mile infrastructure revenue bonds for payment or
17 exchange prior to the date on which they are payable or, if they are called for redemption, prior to the
18 date on which they are by their terms subject to redemption. Any refunding revenue bonds issued
19 pursuant to this article are payable from the West Virginia Broadband Middle Mile Infrastructure
20 Revenue Debt Service Fund, and are subject to section seventeen-c of this article, and shall be secured
21 in accordance with sections seventeen-c and eighteen-a of this article.

22 **§31-15A-23a. Broadband middle mile infrastructure revenue bonds not debt of state, county,**

1 **municipality or any political subdivision.**

2 Broadband middle mile infrastructure revenue bonds issued pursuant to this article do not
3 constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county,
4 municipality or any other political subdivision of this state. The holders or owners thereof have no
5 right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any
6 other political subdivision of this state for the payment of the principal thereof or interest thereon. The
7 broadband middle mile revenue bonds are payable solely from the revenues and funds pledged for
8 their payment as authorized by this article. All such bonds shall contain on the face thereof a
9 statement to the effect that the bonds, as to both principal and interest, are not debts of the state or any
10 county, municipality or political subdivision thereof, but are payable solely from revenues and funds
11 pledged for their payment.

12 **§31-15A-24a. Broadband middle mile infrastructure revenue bonds exempt from state**
13 **taxation.**

14 The exercise of the powers granted to the Water Development Authority by this article will
15 be in all respects for the benefit of the people of the state, for the improvement of their health, safety,
16 convenience and welfare and for the enhancement of their residential, agricultural, recreational,
17 economic, commercial and industrial opportunities and is for a public purpose. As the construction,
18 acquisition, repair or renovation of broadband middle mile infrastructure projects will constitute the
19 performance of essential governmental functions, the Water Development Authority may not be
20 required to pay any taxes or assessments upon any project or upon any property acquired or used by
21 the Water Development Authority or upon the income therefrom. The broadband middle mile
22 infrastructure revenue bonds and all interest and income thereon are exempt from all taxation by this

1 state, or any county, municipality, political subdivision or agency thereof, except estate taxes.

NOTE: This bill provides for the construction of a state-wide, fiber optic broadband infrastructure network, known as broadband middle mile, to be purchased and owned by the state. The bill adds and defines new terms and creates a separate infrastructure fund for broadband middle mile infrastructure projects. The bill provides additional powers to the West Virginia Network for Educational Telecomputing (WVNET) and Water Development Authority and creates the West Virginia Broadband Middle Mile Infrastructure Revenue Debt Service Fund. The bill authorizes the issuance of broadband middle mile revenue bonds, provides for contents of trust agreement and trustee for bonds, and specifies remedies available to bondholders, noteholders and trustees. The bill makes broadband middle mile infrastructure revenue bonds lawful investments and provides for purchase, cancellation and refunding of bonds. The bill declares that the bonds are not state debts and are exempt from state taxation.

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

§31-15A-9a, §31-15A-9b, §31-15A-10a, §31-15A-11a, §31-15A-12a, §31-15A-13a, §31-15A-14a, §31-15A-15a, §31-15A-17c, §31-15A-18a, §31-15A-19a, §31-15A-20a, §31-15A-21a, §31-15A-22a, §31-15A-23a and §31-15A-24a are new; therefore, underscoring has been omitted.