

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 488

(Senators Williams, Prezioso
and Stollings, *original sponsors*)

[Passed March 13, 2015; in effect ninety days from passage.]

AN ACT to repeal §31-15C-10, §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7 and §31-15C-9 of said code, all relating to creation of Broadband Enhancement Council; modifying definitions; establishing membership; outlining powers and duties; establishing Broadband Enhancement Fund; requiring Secretary of the Department of Commerce to administer and control the Broadband Enhancement Fund; transferring funds from Broadband Deployment Fund to Department of Commerce; modifying requirements for retention of outside expert consultant; and granting legislative rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §31-15C-10, §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended, be repealed; and that §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7 and §31-15C-9 of said code be amended and reenacted, all to read as follows:

1 **ARTICLE 15C. Broadband enhancement.**

2 **§31-15C-2. Definitions.**

3 For the purposes of this article:

4 (1) "Broadband" or "broadband service" means any service providing advanced
5 telecommunications capability with the same downstream data rate and upstream data rate as is

1 specified by the Federal Communications Commission and that does not require the end-user to dial
2 up a connection that has the capacity to always be on, and for which the transmission speeds are
3 based on regular available bandwidth rates, not sporadic or burstable rates, with latency suitable for
4 real-time applications and services such as voice-over Internet protocol and video conferencing, and
5 with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband
6 offerings in urban areas: *Provided*, That as the Federal Communications Commission updates the
7 downstream data rate and the upstream data rate the council will publish the revised data rates in the
8 State Register within sixty days of the federal update.

9 (2) "Broadband demand promotion project" means a statewide or regional project to
10 undertake activities to promote demand for broadband services and broadband applications.

11 (3) "Broadband deployment project" means a project to provide broadband services in areas
12 as defined in section six of this article.

13 (4) "Council" means the Broadband Enhancement Council.

14 (5) "Downstream data rate" means the transmission speed from the service provider source
15 to the end-user.

16 (6) "Upstream data rate" means the transmission speed from the end-user to the service
17 provider source.

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

19 **§31-15C-3. Broadband Enhancement Council; members of council; administrative support.**

20 (a) The Broadband Enhancement Council is hereby established. The council is a
21 governmental instrumentality of the state. The exercise by the council of the powers conferred by
22 this article and the carrying out of its purpose and duties are considered and held to be, and are
23 hereby determined to be, essential governmental functions and for a public purpose. The council is
24 created under the Department of Commerce for administrative, personnel and technical support
25 services only.

26 (b) The council shall consist of thirteen voting members, designated as follows:

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(1) The Secretary of Commerce or his or her designee;

(2) The Department of Administration Chief Technology Officer or his or her designee; and

(3) The Vice Chancellor for Administration of the Higher Education Policy Commission or his or her designee;

(4) The State Superintendent of Schools or his or her designee; and

(5) Nine public members that serve at the will and pleasure of the Governor and are appointed by the Governor with the advice and consent of the Senate, as follows:

(i) One member representing users of large amounts of broadband services in this state;

(ii) One member from each congressional district representing rural business users in this state;

(iii) One member from each congressional district representing rural residential users in this state;

(iv) One member representing urban business users in this state; and

(v) One member representing urban residential users in this state.

(6) In addition to the thirteen voting members of the council, the President of the Senate shall name two senators from the West Virginia Senate, one from each party, and the Speaker of the House shall name two delegates from the West Virginia House of Delegates, one from each party, each to serve in the capacity of an ex officio, nonvoting advisory member of the council.

(c) The Secretary of Commerce shall chair the first meeting at which time a chair and vice chair shall be elected from the members of the council. In the absence of the chair, the vice chair shall serve as chair. The council shall appoint a secretary-treasurer who need not be a member of the council and who, among other tasks or functions designated by the council, shall keep records of its proceedings.

(d) The council may appoint committees or subcommittees to investigate and make recommendations to the full council. Members of these committees or subcommittees need not be

1 members of the council.

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

4 (f) The council is part time. Public members appointed by the Governor may pursue and
5 engage in another business or occupation or gainful employment. Any person employed by, owning
6 an interest in or otherwise associated with a broadband deployment project, project sponsor or
7 project participant may serve as a council member and is not disqualified from serving as a council
8 member because of a conflict of interest prohibited under section five, article two, chapter six-b of
9 this code and is not subject to prosecution for violation of said section when the violation is created
10 solely as a result of his or her relationship with the broadband deployment project, project sponsor
11 or project participant so long as the member recuses himself or herself from board participation
12 regarding the conflicting issue in the manner set forth in legislative rules promulgated by the West
13 Virginia Ethics Commission.

14 (g) No member of the council who serves by virtue of his or her office receives any
15 compensation or reimbursement of expenses for serving as a member. The public members and
16 members of any committees or subcommittees are entitled to be reimbursed for actual and necessary
17 expenses incurred for each day or portion thereof engaged in the discharge of his or her official
18 duties in a manner consistent with the guidelines of the Travel Management Office of the
19 Department of Administration.

20 **§31-15C-4. Powers and duties of the council generally.**

21 (a) The council shall:

22 (1) Explore any and all ways to expand access to broadband services, including, but not
23 limited to, middle mile, last mile and wireless applications;

24 (2) Gather data regarding the various speeds provided to consumers in comparison to what
25 is advertised. The council may request the assistance of the Legislative Auditor in gathering this
26 data;

- 1 (3) Explore the potential for increased use of broadband service for the purposes of
2 education, career readiness, workforce preparation and alternative career training;
- 3 (4) Explore ways for encouraging state and municipal agencies to expand the development
4 and use of broadband services for the purpose of better serving the public, including audio and video
5 streaming, voice-over Internet protocol, teleconferencing and wireless networking; and
- 6 (5) Cooperate and assist in the expansion of electronic instruction and distance education
7 services.
- 8 (b) In addition to the powers set forth elsewhere in this article, the council is hereby granted,
9 has and may exercise all powers necessary or appropriate to carry out and effectuate the purpose and
10 intent of this article. The council shall have the power and capacity to:
- 11 (1) Provide consultation services to project sponsors in connection with the planning,
12 acquisition, improvement, construction or development of any broadband deployment project;
- 13 (2) Promote awareness of public facilities that have community broadband access that can
14 be used for distance education and workforce development;
- 15 (3) Advise on deployment of e-government portals such that all public bodies and political
16 subdivisions have homepages, encourage one-stop government access and that all public entities
17 stream audio and video of all public meetings;
- 18 (4) To make and execute contracts, commitments and other agreements necessary or
19 convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to
20 assist in the mapping of the state and categorization of areas within the state;
- 21 (5) Acquire by gift or purchase, hold or dispose of real property and personal property in the
22 exercise of its powers and performance of its duties as set forth in this article;
- 23 (6) Receive and dispense funds appropriated for its use by the Legislature or other funding
24 sources or solicit, apply for and receive any funds, property or services from any person,
25 governmental agency or organization to carry out its statutory duties; and
- 26 (7) Perform any and all other activities in furtherance of its purpose.

1 (c) The council shall exercise its powers and authority to advise the Legislature on bringing
2 broadband service to unserved and underserved areas.

3 (d) The council shall report to the Joint Committee on Government and Finance on or before
4 January 1 of each year. The report shall include the action that was taken by the council during the
5 previous year in carrying out the provisions of this article. To the extent the report addresses data
6 gathered in connection with subdivision (2), subsection a, section four of this article, a copy of the
7 report shall be provided to the Attorney General. The council shall also make any other reports as
8 may be required by the Legislature or the Governor.

9 **§31-15C-5. Creation of the Broadband Enhancement Fund.**

10 All moneys collected by the council, which may, in addition to appropriations, include gifts,
11 bequests or donations, shall be deposited in a special revenue account in the State Treasury known
12 as the Broadband Enhancement Fund. The fund shall be administered by and under the control of
13 the Secretary of the Department of Commerce. Expenditures from the fund shall be for the purposes
14 set forth in this article and are not authorized from collections but are to be made only in accordance
15 with appropriation by the Legislature and in accordance with the provisions of article two, chapter
16 eleven-b of this code: *Provided*, That any funds remaining in the fund of the former Broadband
17 Development Council shall be transferred to the Department of Commerce by June 30, 2015.

18 **§31-15C-7. Retention of outside expert consultant.**

19 In order to assist the council with the highly technical task of categorizing the areas of the
20 state and evaluating and prioritizing projects, the council may retain an outside expert consultant or
21 consultants qualified to map the state on the basis of broadband availability, to evaluate, categorize
22 and prioritize projects, to assist in public outreach and education in order to stimulate demand and
23 to provide other support and assistance as necessary to accomplish the purposes of this article.

24 **§31-15C-9. Development of guidelines and application for funding assistance; legislative
25 rule-making authority.**

26 (a) In order to implement and carry out the intent of this article, the Secretary of the

- 1 Department of Commerce, with the advice and recommendation of the council, shall propose rules
- 2 for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code.