

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 488

(By Senators Williams, Prezioso
and Stollings)

[Originating in the Committee on
Government Organization;
reported February 26, 2015.]

A BILL 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 modifying Broadband Deployment Council.

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That §31-15C-10, §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended, be repealed; and that §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7 and §31-15C-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 15C. Broadband Deployment.

§31-15C-2. Definitions.

1 For the purposes of this article:

2 (1) "Broadband" or "broadband service" means any service providing advanced
3 telecommunications capability with the same downstream data rate and upstream data rate as is
4 specified by the Federal Communications Commission and that does not require the end-user to dial
5 up a connection that has the capacity to always be on, and for which the transmission speeds are based
6 on regular available bandwidth rates, not sporadic or burstable rates, with latency suitable for real-time
7 applications and services such as voice-over Internet protocol and video conferencing, and with monthly
8 usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban

1 areas: *Provided*, That as the Federal Communications Commission updates the downstream data rate
2 and the upstream data rate the council will publish the revised data rates in the State Register within
3 sixty days of the federal update.

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

6 (3) "Broadband deployment project" means a project to provide broadband services in ~~a type~~
7 ~~2 or type 3 unserved area~~ areas as defined in section six of this article.

8 (4) "Council" means the Broadband Deployment Council.

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

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

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

14 **§31-15C-3. Broadband Deployment Council reestablished; members of council; administrative**
15 **support.**

16 (a) The Broadband Deployment Council is hereby ~~established~~ reestablished. The council is a
17 governmental instrumentality of the state. The exercise by the council of the powers conferred by this
18 article and the carrying out of its purpose and duties are considered and held to be, and are hereby
19 determined to be, essential governmental functions and for a public purpose. The council is created
20 under the Department of Commerce for administrative, personnel and technical support services only.

21 (b) The council shall consist of ~~fifteen~~ nine voting members, designated as follows:

22 (1) The Secretary of Commerce or his or her designee, who shall serve as the chair of the council
23 ;

24 (2) The Secretary of Administration or his or her designee;

25 ~~(4) The Director of Homeland Security and Emergency Management or his or her designee;~~

1 ~~(5)~~ (3) The State Superintendent of Schools or his or her designee; and

2 ~~(6)~~ (4) ~~Ten~~ Six public members that serve at the will and pleasure of the Governor and are
3 appointed by the Governor with the advice and consent of the Senate, as follows:

4 (i) One member representing ~~employees of communications and cable providers who is a~~
5 ~~member or representative of a union representing communications workers~~ users of large amounts of
6 broadband services in this state;

7 (ii) One member representing ~~the interests of the business community in this state~~ rural business
8 users in the state;

9 (iii) One member representing ~~incumbent local exchange carriers who provide broadband~~
10 ~~services in this state~~ rural residential users in this state;

11 (iv) One member representing ~~cable operators who provide broadband services in this state~~
12 urban business users in this state;

13 (v) One member representing ~~competitive local exchange carriers who provide broadband~~
14 ~~services in this state~~ urban residential users in this state; and

15 (vi) ~~One member representing broadband equipment or device manufacturers;~~ The Director of
16 WVNET.

17 ~~(vii) One member representing higher education or secondary education; and~~

18 ~~(viii) Three members representing the general public who are residents of the state, one of whom~~
19 ~~shall represent rural communities, and who may not reside in the same congressional district.~~

20 ~~(7)~~ (5) In addition to the ~~fifteen~~ nine voting members of the council, the President of the Senate
21 shall name two senators from the West Virginia Senate, one from each party, and the Speaker of the
22 House shall name two delegates from the West Virginia House of Delegates, one from each party, each
23 to serve in the capacity of an ex officio, nonvoting advisory member of the council.

24 ~~(c) The Secretary of Commerce or his or her designee shall chair the council and appoint one~~
25 ~~of the other council members to serve as vice chair. In the absence of the Secretary of Commerce or his~~

1 or her designee, the vice chair shall serve as chair. The council shall appoint a secretary-treasurer who
2 need not be a member of the council and who, among other tasks or functions designated by the council,
3 shall keep records of its proceedings.

4 (6) In addition, the council may appoint six members who shall serve as nonvoting advisory
5 members from incumbent local exchange carriers who provide broadband services in this state, cable
6 operators who provide broadband services in this state, competitive local exchange carriers who provide
7 broadband services in this state and/or broadband equipment or device manufacturers.

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

11 ~~(e)~~(d) Eight Five voting members of the council constitute a quorum and the affirmative vote
12 of at least the majority of those members present is necessary for any action taken by vote of the
13 council.

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

23 ~~(g)~~ (f) No member of the council who serves by virtue of his or her office receives any
24 compensation or reimbursement of expenses for serving as a member. The public members and
25 members of any committees or subcommittees are entitled to be reimbursed for actual and necessary

1 expenses incurred for each day or portion thereof engaged in the discharge of his or her official duties
2 in a manner consistent with the guidelines of the Travel Management Office of the Department of
3 Administration.

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

5 (a) The council shall:

6 (1) Explore any and all ways to expand access to broadband services, including, but not limited
7 to, middle mile, last mile and wireless applications.

8 ~~(1)~~ (2) Explore the potential for increased use of broadband service for the purposes of
9 education, career readiness, workforce preparation and alternative career training;

10 ~~(2)~~ (3) Explore ways for encouraging state and municipal agencies to expand the development
11 and use of broadband services for the purpose of better serving the public, including audio and video
12 streaming, voice-over Internet protocol, teleconferencing and wireless networking; and

13 ~~(3)~~ (4) Cooperate and assist in the expansion of electronic instruction and distance education
14 services, ~~by July 2014.~~

15 (b) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has
16 and may exercise all powers necessary or appropriate to carry out and effectuate the purpose and intent
17 of this article. The council shall have the power and capacity to:

18 (1) Provide consultation services to project sponsors in connection with the planning,
19 acquisition, improvement, construction or development of any broadband deployment project;

20 (2) Promote awareness of public facilities that have community broadband access that can be
21 used for distance education and workforce development;

22 (3) Advise on deployment of e-government portals such that all public bodies and political
23 subdivisions have homepages, encourage one-stop government access and that all public entities stream
24 audio and video of all public meetings;

25 (4) To make and execute contracts, commitments and other agreements necessary or convenient

1 for the exercise of its powers, including, but not limited to, the hiring of consultants to assist in the
2 mapping of the state; and categorization of areas within the state ~~and evaluation of project applications:~~
3 ~~Provided, That the provisions of article three, chapter five-a of this code do not apply to the agreements~~
4 ~~and contracts executed under the provisions of this article;~~

5 (5) Acquire by gift or purchase, hold or dispose of real property and personal property in the
6 exercise of its powers and performance of its duties as set forth in this article;

7 (6) Receive and dispense funds appropriated for its use by the Legislature or other funding
8 sources or solicit, apply for and receive any funds, property or services from any person, governmental
9 agency or organization to carry out its statutory duties; and

10 (7) Perform any and all other activities in furtherance of its purpose.

11 (c) The council shall exercise its powers and authority to ~~bring~~ advise the Legislature on
12 bringing broadband service to unserved and underserved areas. ~~The council may not duplicate or~~
13 ~~displace broadband service in areas already served or where private industry feasibly can be expected~~
14 ~~to offer services in the reasonably foreseeable future. In providing governmental funding for broadband~~
15 ~~deployment projects, the council shall give priority to funding for projects in areas without access to~~
16 ~~broadband service of any type or any speed before providing governmental funding for projects in areas~~
17 ~~with existing broadband service below the minimum speeds specified in section two of this article.~~

18 (d) The council shall report to the Joint Committee on Government and Finance on or before
19 January 1 of each year. The report shall include the action that was taken by the council during the
20 previous year in carrying out the provisions of this article. The council shall also make any other reports
21 as may be required by the Legislature or the Governor.

22 **§31-15C-5. Creation of the Broadband Deployment Fund.**

23 All moneys collected by the council, which may, in addition to appropriations, include gifts,
24 bequests or donations, shall be deposited in a special revenue account in the State Treasury known as
25 the Broadband Deployment Fund. The fund shall be administered by and under the control of the

1 ~~council~~ Secretary of the Department of Commerce. Expenditures from the fund shall be for the purposes
2 set forth in this article and are not authorized from collections but are to be made only in accordance
3 with appropriation by the Legislature and in accordance with the provisions of article two, chapter
4 eleven-b of this code: Provided, That any funds remaining in the fund of the former Broadband
5 Development Council shall be transferred to the Department of Commerce by June 30, 2015.

6 **§31-15C-7. Retention of outside expert consultant.**

7 In order to assist the council with the highly technical task of categorizing the areas of the state
8 and evaluating and prioritizing projects, the council may retain an outside expert consultant or
9 consultants qualified to map the state on the basis of broadband availability, to evaluate, categorize and
10 prioritize projects, to assist in public outreach and education in order to stimulate demand, ~~to advise the~~
11 ~~council on the granting or denying of funding to projects~~, and to provide other support and assistance
12 as necessary to accomplish the purposes of this article. ~~The provisions of article three, chapter five-a~~
13 ~~of this code, shall not apply to the retention of an outside expert consultant pursuant to this section.~~
14 ~~Provided, that the council shall select the expert or experts by a competitive selection process.~~

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

17 In order to implement and carry out the intent of this article, the Secretary of the Department of
18 Commerce, with the advice and recommendation of the council, may propose rules for legislative
19 approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code.