

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2998

**FISCAL
NOTE**

BY DELEGATE HANSHAW AND CAPITO

[Introduced March 4, 2017; referred
to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5, §11-
 3 13DD-6 and §11-13DD-7; to amend and reenact §12-6C-11 of said code; and to amend
 4 and reenact §31-15-8 of said code, all relating generally to the expansion of broadband
 5 service to unserved areas of West Virginia; providing tax credits for providing broadband
 6 service and wireless broadband service to unserved areas; requiring Tax Commissioner
 7 to propose rules for legislative approval to administer such tax credits; providing
 8 definitions; specifying amount, application, restrictions, timing and cap on tax credit;
 9 permitting a carryover of credit to subsequent tax year; providing loan insurance for
 10 commercial loans used for the expansion of broadband service to unserved or
 11 underserved areas.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5, §11-
 3 13DD-6 and §11-13DD-7; that §12-6C-11 of said code be amended and reenacted; and that §31-
 4 15-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

**ARTICLE 13DD. TAX CREDIT FOR PROVIDING BROADBAND TO UNSERVED AND
 UNDERSERVED AREAS.**

§11-13DD-1. Legislative purpose.

1 The Legislature finds that encouraging the deployment of broadband in all parts of West
 2 Virginia, including those areas where the cost to provide broadband service is not economically
 3 feasible, is in the public interest and promotes the general welfare of the state. In order to help
 4 offset the high cost of providing broadband service to locations within unserved and underserved
 5 areas in the state, there is hereby provided a tax credit for broadband providers that make

6 broadband service available to locations within unserved and underserved areas in West Virginia.
7 Broadband providers seeking the benefit of the tax credits provided by this article must follow the
8 procedures outlined herein and as subsequently adopted by the Tax Commissioner.

§11-13DD-2. Definitions.

1 (a) General. – When used in this article, or in the administration of this article, terms
2 defined in subsection (b) of this section have the meanings ascribed to them by this section,
3 unless a different meaning is clearly required by either the context in which the term is used, or
4 by specific definition, in this article.

5 (b) Terms defined. –

6 (1) "Broadband" or "broadband service" means any Internet access service, enabled by
7 any technology, with the same downstream data rate, upstream data rate, and other technical
8 functionalities as are specified by the Federal Communications Commission at 47 C.F.R. §
9 54.309(a) (2015).

10 (2) "Broadband provider" means any individual, corporation, limited liability company,
11 partnership or association that provides broadband service or wireless broadband service to end
12 users.

13 (3) "Commissioner" and "Tax Commissioner" are used interchangeably herein and mean
14 the Tax Commissioner of the State of West Virginia or his or her designee.

15 (4) "Eligible taxpayer" means a broadband provider that has made broadband service
16 available to locations in unserved and underserved areas within West Virginia as defined in this
17 article.

18 (5) "Location" means a household or business located within an unserved and
19 underserved area.

20 (6) "Tier 1 underserved area" means an area within West Virginia with access to Internet
21 service, by wireline or fixed wireless technology, but that fifteen percent or more of households
22 and businesses in the area are served by Internet service with an actual downstream data rate

23 less than ten megabits per second and an upstream data rate less than one megabit per second,
24 and no part of the area has three or more wireline or fixed wireless broadband service providers.

25 (7) "Tier 2 underserved area" means an area within West Virginia with access to Internet
26 service, by wireline or fixed wireless technology, but that fifteen percent or more of households
27 and businesses in the area are served by Internet service with an actual downstream data rate
28 greater than ten megabits per second but less than twenty-five megabits per second, and an
29 upstream data rate greater than one megabit per second but less than three megabits per second,
30 and no part of the area has three or more wireline or fixed wireless broadband service providers.

31 (6) "Unserved area" means an area within West Virginia that does not have any Internet
32 access service available.

§11-13DD-3. Amount of credit.

1 (1) There shall be allowed to any eligible taxpayer a credit against the eligible taxpayer's
2 state net income tax liability for providing broadband service, as defined in subsection (1), section
3 two, article fifteen-c, chapter thirty-one of this code, to locations in unserved and underserved
4 areas in the following amounts:

5 (a) Five hundred dollars for each location in an unserved area to which the eligible
6 taxpayer has made broadband service available;

7 (b) Three hundred thirty dollars for each location in a tier 1 underserved area to which the
8 eligible taxpayer has made broadband service available;

9 (c) One hundred sixty-five dollars for each location in a tier 2 underserved area to which
10 the eligible taxpayer has made broadband service available.

11 (2) Any tax credits available under this article may not reduce the tax liability of any eligible
12 taxpayer below zero;

13 (3) The tax credit for each location to which an eligible taxpayer has made broadband
14 service available shall be reduced by all amounts the eligible taxpayer has received or is expected
15 to receive through any other state or federal funding for that location; and

16 (4) The amount of tax credit allowed by this article may not exceed \$1 million in any one
17 tax year for all eligible taxpayers in the aggregate.

18 (5) When the total amount of otherwise approved tax credits applied for by all eligible
19 taxpayers in aggregate would exceed \$1 million in any one tax year, the tax credits available
20 under this article for that tax year shall be reduced to a proportional amount such as would total
21 \$1 million for all approved locations for all eligible broadband service providers for that tax year.

22 (6) When the eligible taxpayer is a pass-through entity treated like a partnership for federal
23 and state income tax purposes, the credit allowed under this article for the year shall flow through
24 to the equity owners of the pass-through entity in any manner that such equity owners see fit and
25 is not required to flow through such equity owners in the same manner as distributive share flows
26 through to the equity owners and in accordance with any legislative rule the Tax Commissioner
27 may propose for legislative approval in accordance with article three, chapter twenty-nine-a of this
28 code to administer this section.

29 (7) No credit allowed by this article may be applied against employer withholding taxes
30 imposed by article twenty-one of this chapter.

§11-13DD-4. Procedures for applying for credit.

1 Any eligible taxpayer seeking the benefit of the tax credits provided under this article shall
2 provide the following information to the Tax Commissioner:

3 (a) A certification of the number of end users within each underserved area in the state
4 to which the eligible taxpayer has deployed broadband service during the preceding calendar year
5 together with a description of each underserved area and that the area meets the definition of
6 underserved area in subdivision (6), subsection (b), section two of this article;

7 (b) A certification that the taxpayer has not received any other state or federal funding for
8 locations for which a credit is claimed or, if such funding was received or is expected to be
9 received, the amount of such funding; and

10 (c) Any other information required by the Tax Commissioner pursuant to a rule adopted
11 pursuant to this article and article three, chapter twenty-nine-a of this code.

§11-13DD-5. When credit may be taken.

1 An eligible taxpayer may claim a credit allowed under this article against its tax liability
2 under article for the taxable year for which it receives approval from the Tax Commissioner of its
3 application for tax credits pursuant to this article.

§11-13DD-6. Application of credit.

1 If any portion of the tax credit which the eligible taxpayer may be due is not used during
2 the taxable year for which the eligible taxpayer receives approval of the tax credit from the Tax
3 Commissioner pursuant to this article, the unused tax credit may be carried forward to the
4 subsequent year as a tax credit as allowed by section three of this article and shall be applied as
5 a credit before any other credits for the subsequent year are applied until tax credits have been
6 taken.

§11-13DD-7. Rule-making authority.

1 The Tax Commissioner shall propose rules for legislative approval in accordance with
2 article three, chapter twenty-nine-a of this code, that the Tax Commissioner considers necessary
3 to administer this article.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.

4 (a) The Legislature finds and declares that the citizens of the state benefit from the creation
5 of jobs and businesses within the state; that business and industrial development loan programs
6 provide for economic growth and stimulation within the state; that loans from pools established in
7 the Consolidated Fund will assist in providing the needed capital to assist business and industrial

8 development; and that time constraints relating to business and industrial development projects
9 prohibit duplicative review by both the board and West Virginia Economic Development Authority
10 Board. The Legislature further finds and declares that an investment in the West Virginia
11 Enterprise Capital Fund, LLC, of moneys in the Consolidated Fund as hereinafter provided will
12 assist in creating jobs and businesses within the state and provide the needed risk capital to assist
13 business and industrial development. This section is enacted in view of these findings.

14 (b) The West Virginia Board of Treasury Investments shall make available, subject to a
15 liquidity determination, in the form of a revolving loan, up to \$175,000,000 from the Consolidated
16 Fund to loan the West Virginia Economic Development Authority for business or industrial
17 development projects authorized by section seven, article fifteen, chapter thirty-one of this code
18 and to consolidate existing loans authorized to be made to the West Virginia Economic
19 Development Authority pursuant to this section and pursuant to section twenty, article fifteen,
20 chapter thirty-one of this code which authorizes a \$175,000,000 revolving loan and article
21 eighteen-b, chapter thirty-one of this code which authorizes a \$50,000,000 investment pool:
22 *Provided*, That the West Virginia Economic Development Authority may not loan more than
23 \$15,000,000 for any one business or industrial development project. The revolving loan
24 authorized by this subsection shall be secured by one note at a variable interest rate equal to the
25 twelve-month average of the board's yield on its cash liquidity pool. The rate shall be set on the
26 first day of July and adjusted annually on the same date. The maximum annual adjustment may
27 not exceed one percent. Monthly payments made by the West Virginia Economic Development
28 Authority to the board shall be calculated on a one hundred twenty-month amortization. The
29 revolving loan is secured by a security interest that pledges and assigns the cash proceeds of
30 collateral from all loans under this revolving loan pool. The West Virginia Economic Development
31 Authority may also pledge as collateral certain revenue streams from other revolving loan pools
32 which source of funds does not originate from federal sources or from the board.

33 (c) The outstanding principal balance of the revolving loan from the board to the West

34 Virginia Economic Development Authority may at no time exceed one hundred three percent of
35 the aggregate outstanding principal balance of the business and industrial loans from the West
36 Virginia Economic Development Authority to economic development projects funded from this
37 revolving loan pool. The independent audit of the West Virginia Economic Development Authority
38 financial records shall annually certify that one hundred three percent requirement.

39 (d) The interest rates and maturity dates on the loans made by the West Virginia Economic
40 Development Authority for business and industrial development projects authorized by section
41 seven, article fifteen, chapter thirty-one of this code shall be at competitive rates and maturities
42 as determined by the West Virginia Economic Development Authority Board.

43 (e) Any and all outstanding loans made by the West Virginia Board of Treasury
44 Investments, or any predecessor entity, to the West Virginia Economic Development Authority
45 are refundable by proceeds of the revolving loan contained in this section and the board shall
46 make no loans to the West Virginia Economic Development Authority pursuant to section twenty,
47 article fifteen, chapter thirty-one of this code or article eighteen-b of said chapter.

48 (f) The Directors of the board shall bear no fiduciary responsibility with regard to any of
49 the loans contemplated in this section.

50 (g) Subject to cash availability, the board shall make available to the West Virginia
51 Economic Development Authority, from the Consolidated Fund, a ~~nonresource~~ nonrecourse loan
52 in an amount up to \$25,000,000, for the purpose of the West Virginia Economic Development
53 Authority making a loan or loans from time to time to the West Virginia Enterprise Advancement
54 Corporation, an affiliated nonprofit corporation of the West Virginia Economic Development
55 Authority. The respective loans authorized by this ~~subsection~~ subsection by the board to the West
56 Virginia Economic Development Authority to the West Virginia Enterprise Advancement
57 Corporation shall each be evidenced by one note and shall each bear interest at the rate of three
58 percent per annum. The proceeds of any and all loans made by the West Virginia Economic
59 Development Authority to the West Virginia Enterprise Advancement Corporation pursuant to this

60 subsection shall be invested by the West Virginia Enterprise Corporation in the West Virginia
61 Enterprise Capital Fund, LLC, the manager of which is the West Virginia Enterprise Advancement
62 Corporation. The loan to West Virginia Economic Development Authority authorized by this
63 subsection shall be nonrevolving, and advances under the loan shall be made at times and in
64 amounts requested or directed by the West Virginia Economic Development Authority, upon
65 reasonable notice to the board. The loan authorized by this subsection is not subject to or included
66 in the limitations set forth in subsection (b) of this section with respect to the \$15 million limitation
67 for any one business or industrial development project and limitation of one hundred three percent
68 of outstanding loans, and may not be included in the revolving fund loan principal balance for
69 purposes of calculating the loan amortization in subsection (b) of this section. The loan authorized
70 by this subsection to the West Virginia Economic Development Authority shall be classified by the
71 board as a long-term fixed income investment, shall bear interest on the outstanding principal
72 balance of the loan at the rate of three percent per annum payable annually on or before the
73 thirtieth day of June of each year, and the principal of which shall be repaid no later than June 30,
74 2022, in annual installments due on or before June 30 of each year. The annual installments,
75 which need not be equal shall commence no later than June 30, 2005, in annual principal amounts
76 agreed upon between the board and the West Virginia Economic Development Authority. The
77 loan authorized by this subsection shall be nonrecourse and shall be payable by the West Virginia
78 Economic Development Authority solely from amounts or returns received by the West Virginia
79 Economic Development Authority in respect of the loan authorized by this subsection to the West
80 Virginia Enterprise Advancement Corporation, whether in the form of interest, dividends, realized
81 capital gains, return of capital or otherwise, in all of which the board shall have a security interest
82 to secure repayment of the loan to the West Virginia Economic Development Authority authorized
83 by this subsection. Any and all loans from the West Virginia Enterprise Advancement Corporation
84 made pursuant to this subsection shall also bear interest on the outstanding principal balance of
85 the loan at the rate of three percent per annum payable annually on or before the thirtieth day of

86 June of each year, shall be nonrecourse and shall be payable by the West Virginia Enterprise
87 Advancement Corporation solely from amounts of returns received by the West Virginia
88 Enterprise Advancement Corporation in respect to its investment in the West Virginia Enterprise
89 Capital Fund, LLC, whether in the form of interest, dividends, realized capital gains, return of
90 capital or otherwise, in all of which that Board shall have a security interest to secure repayment
91 of the loan to the West Virginia Economic Development Authority authorized by this subsection.
92 In the event the amounts or returns received by the West Virginia Enterprise Corporation in
93 respect to its investment in the West Virginia Enterprise Capital Fund, LLC, are not adequate to
94 pay when due the principal or interest installments, or both, with respect to the loan authorized by
95 this subsection by the board to the West Virginia Economic Development Authority, the principal
96 or interest, or both, as the case may be, due on the loan made to the West Virginia Economic
97 Development Authority pursuant to this subsection shall be deferred and any and all past-due
98 principal and interest payments shall promptly be paid to the fullest extent possible upon receipt
99 by the West Virginia Enterprise Advancement Corporation of moneys in respect to its investments
100 in the West Virginia Enterprise Capital Fund, LLC. The Directors or the board shall bear no
101 fiduciary responsibility as provided in section thirteen of this article with regard to the loan
102 authorized by this subsection.

103 (h) Notwithstanding anything in this code to the contrary, subject to a liquidity
104 determination and cash availability, the board shall make available to the West Virginia Economic
105 Development Authority, from the Consolidated Fund, in the form of a nonrecourse revolving loan,
106 \$50 million, for the purpose of insuring the payment or repayment of all or any part of the principal
107 of, redemption or prepayment premiums or penalties on, and interest on any form of debt
108 instrument entered into by an enterprise, public body or authority of the state with a financial
109 institution, including, but not limited to, banks, insurance companies and other institutions in the
110 business of lending money, as authorized and as set forth in section eight, article fifteen, chapter
111 thirty-one of this code, but only for the purpose of providing insurance on such debt instruments

112 relating solely to the deployment of broadband under the provisions of section eight, article fifteen,
113 chapter thirty-one of this code: Provided, That the West Virginia Economic Development Authority
114 may not insure more than \$10 million for any one enterprise, public body or authority of the state
115 in any single calendar year. The loan authorized by this subsection shall not be included in the
116 revolving fund loan principal balance for purposes of calculating the loan amortization in
117 subsection (b) of this section. The loan authorized by this subsection shall be classified by the
118 board as a long-term fixed income investment, shall bear interest on the outstanding principal
119 balance of the loan at a variable interest rate equal to the twelve-month average of the board's
120 yield on its cash liquidity pool. The rate shall be set on July 1, and adjusted annually on the same
121 date. The maximum annual adjustment may not exceed one percent. Monthly payments made
122 by the West Virginia Economic Development Authority shall be calculated on a one hundred
123 eighty month amortization for any moneys borrowed by the West Virginia Economic Development
124 Authority under this subsection to insure any debt instrument relating to providing broadband
125 service to a household or business located in an unserved or underserved area and a four
126 hundred eight month amortization for any moneys borrowed by the West Virginia Economic
127 Development Authority under this subsection to insure any debt instrument relating to building
128 a segment of a telecommunications network that links a network operator's core network to a local
129 network plant that serves an unserved or underserved area. The loan authorized by this
130 subsection shall be nonrecourse and shall be payable by the West Virginia Economic
131 Development Authority solely from premiums and fees received by the West Virginia Economic
132 Development Authority in respect of insuring debt instruments relating solely to the deployment
133 of broadband under the provisions of section eight, article fifteen, chapter thirty-one of this code,
134 in all of which the board shall have a security interest to secure repayment of the loan to the West
135 Virginia Economic Development Authority authorized by this subsection. The loan is hereby
136 secured by a security interest that pledges and assigns the cash proceeds of all collateral securing
137 all insurance agreements entered into by the West Virginia Economic Development Authority

138 respecting debt instruments relating to the deployment broadband under the provisions of section
139 eight, article fifteen, chapter thirty-one of this code. In the event the premiums and fees received
140 by the West Virginia Economic Development Authority in respect to insuring the debt instruments
141 relating solely to the deployment of broadband under the provisions of section eight, article fifteen,
142 chapter thirty-one of this code, are not adequate to pay when due the principal or interest
143 installments, or both, with respect to the loan authorized by this subsection by the board to the
144 West Virginia Economic Development Authority, the principal or interest, or both, as the case may
145 be, due on the loan made to the West Virginia Economic Development Authority pursuant to this
146 subsection shall be deferred and any and all past-due principal and interest payments shall
147 promptly be paid to the fullest extent possible upon receipt by the West Virginia Economic
148 Development Authority of premiums and fees respecting said debt instruments. The directors of
149 the board shall bear no fiduciary responsibility as provided in section thirteen of this article with
150 regard to the loan authorized by this subsection.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-8. Insurance fund.

1 (a) There is hereby created an insurance fund which shall be a continuing, nonlapsing,
2 revolving fund that consists of:

3 (1) Moneys appropriated by the state to the insurance fund;

4 (2) Premiums, fees, and any other amounts received by the authority with respect to
5 financial assistance provided by the authority from the insurance fund;

6 (3) Upon the satisfaction of any indebtedness or other obligation owed on any property
7 held or acquired by the authority, such proceeds as designated by the authority from the sale,
8 lease, or other disposition of such property;

9 (4) Income from investments made from moneys in the insurance fund; and

10 (5) Any other moneys transferred to the insurance fund or made available to it for the
11 purposes described under this section, under this article or pursuant to any other provisions of
12 this code.

13 Subject to the provisions of any outstanding insurance agreements entered into by the
14 authority under this section, the authority may enter into covenants or agreements with respect to
15 the insurance fund, and establish accounts within the insurance fund which may be used to
16 implement the purposes of this article. If the authority elects to establish separate accounts within
17 the insurance fund, the authority may allocate its revenues and receipts among the respective
18 accounts in any manner the authority considers appropriate.

19 If the authority at any time finds that more money is needed to keep the reserves of the
20 insurance fund at an adequate level, the authority, with the consent of the chairman, shall send a
21 written request to the Legislature for additional funds.

22 (b) The insurance fund shall be used for the following purposes by the authority to
23 financially assist projects so long as such financial assistance will, as determined by the authority,
24 fulfill the public purposes of this article:

25 (1) To insure the payment or repayment of all or any part of the principal of, redemption
26 or prepayment premiums or penalties on, and interest on bonds or notes whether issued under
27 the provisions of this article or under the Industrial Development and Commercial Development
28 Bond Act, the West Virginia Hospital Finance Authority Act or, with respect to health care facilities
29 only, article thirty-three, chapter eight of this code;

30 (2) To insure the payment or repayment of all or any part of the principal of, redemption
31 or prepayment premiums or penalties on, and interest on any instrument executed, obtained, or
32 delivered in connection with the issuance and sale of bonds or notes whether under the provisions
33 of this article or under the Industrial Development and Commercial Development Bond Act, the
34 West Virginia Hospital Finance Authority Act or, with respect to health care facilities only, article
35 thirty-three, chapter eight of this code;

36 (3) To insure the payment or repayment of all or any part of the principal of, prepayment
37 premiums or penalties on, and interest on any form of debt instrument entered into by an
38 enterprise, public body or authority of the state with a financial institution, including, but not limited
39 to, banks, insurance companies and other institutions in the business of lending money, which
40 debt instruments shall include, but not be limited to, instruments relating to loans for working
41 capital and to the refinancing of existing debt: *Provided*, That nothing contained in this subsection
42 or any other provision of this article shall be construed as permitting the authority to insure the
43 refinancing of existing debt except when such insurance will result in the expansion of the
44 enterprise whose debt is to be refinanced or in the creation of new jobs;

45 (4) To pay or insure the payment of any fees or premiums necessary to obtain insurance,
46 guarantees, letters of credit or other credit support from any person or financial institution in
47 connection with financial assistance provided by the authority under this section; and

48 (5) To pay any and all expenses of the authority, including, but not limited to:

49 (i) Any and all expenses for administrative, legal, actuarial, and other services related to
50 the operation of the insurance fund; and

51 (ii) All costs, charges, fees, and expenses of the authority related to the authorizing,
52 preparing, printing, selling, issuing, and insuring of bonds or notes (including, by way of example,
53 bonds or notes, the proceeds of which are used to refund outstanding bonds or notes) and the
54 funding of reserves.

55 (6) To insure, for up to fifteen years for projects under subdivision (i) of this subsection
56 and up to forty years for projects under subdivision (ii) of this subsection, the payment or
57 repayment of all or any part of the principal of and interest on any form of debt instrument entered
58 into by an enterprise, public body or authority of the state with a financial institution, including, but
59 not limited to, banks, insurance companies and other institutions in the business of lending
60 money, which debt instruments shall be solely for capital costs relating to:

61 (i) Providing broadband service, as defined in subsection (1), section two, article fifteen-c,

62 chapter thirty-one of this code, to a household or business located in an area within West Virginia
63 that does not have any Internet access service available or in an area in with access to Internet
64 service, by wireline or fixed wireless technology, but that fifteen percent or more of households
65 and businesses in the area are served by Internet service with an actual downstream data rate
66 less than ten megabits per second and an upstream data rate less than one megabit per second,
67 and no part of the area has three or more wireline or fixed wireless broadband service providers;
68 or

69 (ii) To build a segment of a telecommunications network that links a network operator's
70 core network to a local network plant that serves an area within West Virginia that does not have
71 any Internet access service available or in an area in which fifteen percent or more of households
72 and business has access to Internet service by wireline or fixed wireless technology, but with a
73 downstream data rate less than ten megabits per second and an upstream data rate less than
74 one megabit per section.

75 The authority may not insure the payment or repayment of any part of the principal of and
76 interest on any form of debt instrument under this subdivision unless the participating financial
77 institution provide written certification to the authority that but for the authority's insuring the debt
78 instrument, the financial institution would not otherwise make the loan based solely on the
79 creditworthiness of the loan applicant: *Provided*, That nothing contained in this subsection or any
80 other provision of this article shall be construed as permitting the authority to insure the refinancing
81 of existing debt.

82 Upon the filing of an application for loan insurance under this subsection, the broadband
83 provider shall cause to be published as a class II legal advertisement in compliance with the
84 provisions of article three, chapter fifty-nine of this code, notice of the filing of the application and
85 that the authority may approve the same unless within ten business days after completion of
86 publication a written objection is received by the authority from a person or persons challenging
87 that the proposed broadband project does not satisfy the provisions of this subsection. The

88 publication area for such notice is to be the county or counties in which any portion of the proposed
89 broadband project is to be constructed. The notice shall be in such form as the authority shall
90 direct, and shall include a map of the area or areas to be served by the proposed broadband
91 project. The applicant shall also cause to be mailed by first class, on or before the first day of
92 publication of the notice, mail a copy of the notice to all known current providers of broadband
93 service within the area proposed to be served. If a challenge under this paragraph is timely
94 received by the authority, the authority shall set the matter for hearing at the next regularly
95 scheduled authority board meeting. The authority shall issue a decision on whether the proposed
96 project satisfies the requirements of this subsection by no later than the following authority board
97 meeting. Any party participating in said hearing may appeal the authority's decision within fifteen
98 business days of the issuance of said decision to the circuit court of Kanawha County, West
99 Virginia.

100 (c) ~~The~~ Except as relating to insured portions of debt instruments under subdivision (6),
101 subsection (b) of this section, the total aggregate amount of insurance from the insurance fund
102 with respect to the insured portions of principal of bonds or notes or other instruments may not
103 exceed at any time an amount equal to five times the balance in the insurance fund.

104 (d) The authority may, in its sole and absolute discretion, set the premiums and fees to be
105 paid to it for providing financial assistance under this section. The premiums and fees set by the
106 authority shall be payable in the amounts, at the time, and in the manner that the authority, in its
107 sole and absolute discretion, requires. The premiums and fees need not be uniform among
108 transactions, and may vary in amount: (1) among transactions, and (2) at different stages during
109 the terms of transactions.

110 (e) The authority may, in its sole and absolute discretion, require the security it believes
111 sufficient in connection with its insuring of the payment or repayment of any bonds, notes, debt
112 or other instruments described in subdivisions (1), (2), (3) and (4), subsection (b) of this section.

113 (f) The authority may itself approve the form of any insurance agreement entered into

114 under this section or may authorize the chairman or his or her designee to approve the form of
115 any such agreement. Any payment by the authority under an agreement entered into by the
116 authority under this section shall be made at the time and in the manner that the authority, in its
117 sole and absolute discretion, determines.

118 (g) The obligations of the authority under any insurance agreement entered into pursuant
119 to this article shall not constitute a debt or a pledge of the faith and credit or taxing powers of this
120 state or of any county, municipality or any political subdivision of this state for the payment of any
121 amount due thereunder or pursuant thereto, but the obligations evidenced by such insurance
122 agreement shall be payable solely from the funds pledged for their payment. All such insurance
123 agreements shall contain on the face thereof a statement to the effect that such agreements and
124 the obligations evidenced thereby are not debts of the state or any county, municipality or political
125 subdivision thereof but are payable solely from funds pledged for their payment.

NOTE: The purpose of this bill is to provide a tax credit and a loan insurance program for providing broadband to unserved and underserved areas of West Virginia. The bill requires the Tax Commissioner to propose rules for legislative approval to administer the tax credit provisions of the bill. It also provides definitions; determines the amount of tax credit; provides how the tax credit is taken and its application, including an annual cap on the tax credit and prohibition against a carryover or carryback to subsequent or previous tax years. The bill also provides for a loan to be made by the West Virginia Board of Treasury Investments to the West Virginia Economic Development to establish a loan insurance program to insure repayment of debt obligations by broadband providers in West Virginia to provide broadband service to underserved areas of the state.

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