

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 295**

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

(BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on Government

Organization; reported on February 17, 2021]



1 A BILL to amend and reenact §12-6C-11 of the Code of West Virginia, 1931, as amended; to  
2 amend said code by adding thereto a new section, designated §12-6C-11a; to amend and  
3 reenact §31-15-8 of said code; and to amend said code by adding thereto a new section,  
4 designated §31-15-8a, all relating generally to economic development loans and loan  
5 insurance issued by the state; clarifying provision stating that the Board of Treasury  
6 Investments has no fiduciary duty with regard to economic development loans  
7 administered by the Economic Development Authority; providing that the Board of  
8 Treasury Investments may inspect and copy, upon written notice, all records related to  
9 loans made available by the board to the Economic Development Authority and providing  
10 that such records shall not be considered public records and shall be exempt from  
11 disclosure pursuant to the provisions of chapter 29B of the code; defining terms; limiting  
12 the total amount of loan moneys that the board shall make available to the authority for  
13 the Broadband Loan Insurance Program to \$80 million; establishing requirements that  
14 must be met before broadband loan insurance moneys will be made available to the  
15 authority; providing that the board shall maintain broadband loan insurance loan moneys  
16 in a separate account in the Consolidated Fund; providing that broadband loan insurance  
17 moneys may only be drawn upon in the event of a broadband provider default on an  
18 insured debt or security instrument; limiting the amount of loan insurance that the authority  
19 may award in a single year to a single broadband provider to \$20 million; clarifying that  
20 the authority may not deduct administrative or operational costs from broadband loan  
21 insurance loan moneys; setting forth requirements that must be met before the authority  
22 may draw on broadband loan insurance moneys in the event of a broadband provider's  
23 default; requiring the authority to submit quarterly reports to the Joint Committee on  
24 Government and Finance and to the Governor containing certain information related to its  
25 loan insurance program; requiring the authority to make application forms for broadband  
26 loan insurance publicly available on its website; establishing the minimum information an

27 applicant for broadband loan insurance shall be required to submit to the authority;  
28 establishing minimum criteria that the authority must consider in its broadband loan  
29 insurance application review process; establishing that the authority may provide loan  
30 insurance for eligible broadband providers pursuant to awards made by federally funded  
31 broadband expansion programs; providing that the authority may not issue loan insurance  
32 to a broadband provider that has previously defaulted on any debt or security instrument  
33 insured by the authority; requiring the authority to post certain information regarding loan  
34 insurance agreements on its website; requiring the authority to adhere to certain  
35 accounting and record-keeping practices; requiring the authority to submit quarterly  
36 reports to the Board of Treasury Investments, the Joint Committee on Government and  
37 Finance, and the Governor containing certain information on insured loans and broadband  
38 projects financed by insured loans; requiring a biennial legislative audit of the Broadband  
39 Loan Insurance Program; removing obsolete language; and making technical corrections.

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

## **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.**

1 (a) The Legislature finds and declares that the citizens of the state benefit from the creation  
2 of jobs and businesses within the state; that business and industrial development loan programs  
3 provide for economic growth and stimulation within the state; that loans from pools established in  
4 the Consolidated Fund will assist in providing the needed capital to assist business and industrial  
5 development; and that time constraints relating to business and industrial development projects  
6 prohibit duplicative review by both the board and West Virginia Economic Development Authority  
7 Board. ~~The Legislature further finds and declares that an investment in the West Virginia~~

8 ~~Enterprise Capital Fund, LLC, of moneys in the Consolidated Fund as hereinafter provided will~~  
9 ~~assist in creating jobs and businesses within the state and provide the needed risk capital to assist~~  
10 ~~business and industrial development. This section is enacted in view of these findings~~

11 (b) The West Virginia Board of Treasury Investments shall make available, subject to a  
12 liquidity determination, in the form of a revolving loan, up to \$175 million from the Consolidated  
13 Fund to loan the West Virginia Economic Development Authority for business or industrial  
14 development projects authorized by §31-15-7 of this code and to consolidate existing loans  
15 authorized to be made to the West Virginia Economic Development Authority pursuant to this  
16 section and pursuant to §31-15-2 of this code which authorizes a \$175 million revolving loan and  
17 §31-18B-1 *et seq.* of this code which authorizes a \$50 million investment pool: *Provided*, That the  
18 West Virginia Economic Development Authority may not loan more than \$15 million for any one  
19 business or industrial development project. The revolving loan authorized by this subsection shall  
20 be secured by one note at a variable interest rate equal to the 12-month average of the board's  
21 yield on its ~~cash liquidity~~ West Virginia Money Market pool. The rate shall be set on July 1 and  
22 adjusted annually on the same date. The maximum annual adjustment may not exceed one  
23 percent. Monthly payments made by the West Virginia Economic Development Authority to the  
24 board shall be calculated on a 120-month amortization. The revolving loan is secured by a security  
25 interest that pledges and assigns the cash proceeds of collateral from all loans under this  
26 revolving loan pool. The West Virginia Economic Development Authority may also pledge as  
27 collateral certain revenue streams from other revolving loan pools which source of funds does not  
28 originate from federal sources or from the board.

29 (c) The outstanding principal balance of the revolving loan from the board to the West  
30 Virginia Economic Development Authority may at no time exceed 103 percent of the aggregate  
31 outstanding principal balance of the business and industrial loans from the West Virginia  
32 Economic Development Authority to economic development projects funded from this revolving

33 loan pool. The independent audit of the West Virginia Economic Development Authority financial  
34 records shall annually certify that 103 percent requirement.

35 (d) The interest rates and maturity dates on the loans made by the West Virginia Economic  
36 Development Authority for business and industrial development projects authorized by §31-15-7  
37 of this code shall be at competitive rates and maturities as determined by the West Virginia  
38 Economic Development Authority Board.

39 (e) Any and all outstanding loans made by the West Virginia Board of Treasury  
40 Investments, or any predecessor entity, to the West Virginia Economic Development Authority  
41 are refundable by proceeds of the revolving loan contained in this section and the board shall  
42 make no loans to the West Virginia Economic Development Authority pursuant to §31-15-20 of  
43 this code or §31-18B-1 *et seq.* of this code.

44 (f) The directors of the ~~board~~ West Virginia Board of Treasury Investments shall bear no  
45 fiduciary responsibility with regard to any of the loans contemplated in this section.

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

~~59 and advances under the loan shall be made at times and in amounts requested or directed by the  
60 West Virginia Economic Development Authority, upon reasonable notice to the board. The loan  
61 authorized by this subsection is not subject to or included in the limitations set forth in subsection  
62 (b) of this section with respect to the \$15 million limitation for any one business or industrial  
63 development project and limitation of 103% of outstanding loans, and may not be included in the  
64 revolving fund loan principal balance for purposes of calculating the loan amortization in  
65 subsection (b) of this section. The loan authorized by this subsection to the West Virginia  
66 Economic Development Authority shall be classified by the board as a long term fixed income  
67 investment, shall bear interest on the outstanding principal balance of the loan at the rate of three  
68 percent per annum payable annually on or before June 30 of each year, and the principal of which  
69 shall be repaid no later than June 30, 2022, in annual installments due on or before June 30 of  
70 each year. The annual installments, which need not be equal shall commence no later than June  
71 30, 2005, in annual principal amounts agreed upon between the board and the West Virginia  
72 Economic Development Authority. The loan authorized by this subsection shall be nonrecourse  
73 and shall be payable by the West Virginia Economic Development Authority solely from amounts  
74 or returns received by the West Virginia Economic Development Authority in respect of the loan  
75 authorized by this subsection to the West Virginia Enterprise Advancement Corporation, whether  
76 in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of  
77 which the board shall have a security interest to secure repayment of the loan to the West Virginia  
78 Economic Development Authority authorized by this subsection. Any and all loans from the West  
79 Virginia Enterprise Advancement Corporation made pursuant to this subsection shall also bear  
80 interest on the outstanding principal balance of the loan at the rate of three percent per annum  
81 payable annually on or before June 30 of each year, shall be nonrecourse and shall be payable  
82 by the West Virginia Enterprise Advancement Corporation solely from amounts of returns  
83 received by the West Virginia Enterprise Advancement Corporation in respect to its investment in  
84 the West Virginia Enterprise Capital Fund, LLC, whether in the form of interest, dividends, realized~~

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

98 ~~(h) Notwithstanding any provision in this code to the contrary, subject to a liquidity~~  
99 ~~determination and cash availability, the board shall make available to the West Virginia Economic~~  
100 ~~Development Authority, from the Consolidated Fund, in the form of a nonrecourse revolving loan,~~  
101 ~~\$50 million, for the purpose of insuring the payment or repayment of all or any part of the principal,~~  
102 ~~the redemption or prepayment premiums or penalties on, and interest on any form of debt~~  
103 ~~instrument entered into by an enterprise, public body or authority of the state with a financial~~  
104 ~~institution, including, but not limited to, banks, insurance companies and other institutions in the~~  
105 ~~business of lending money, as authorized and as set forth in section eight, article fifteen, chapter~~  
106 ~~thirty-one of this code, but only for the purpose of providing insurance on such debt instruments~~  
107 ~~relating solely to the deployment of broadband under said section: *Provided*, That the West~~  
108 ~~Virginia Economic Development Authority may not insure more than \$10 million for any one~~  
109 ~~enterprise, public body or authority of the state in any single calendar year. The loan authorized~~  
110 ~~by this subsection may not be included in the revolving fund loan principal balance for purposes~~



111 ~~of calculating the loan amortization in subsection (b) of this section. The loan authorized by this~~  
112 ~~subsection shall be classified by the board as a long-term fixed income investment, and shall bear~~  
113 ~~interest on the outstanding principal balance of the loan at a variable interest rate equal to the~~  
114 ~~twelve-month average of the board's yield on its cash liquidity pool. The rate shall be set on July~~  
115 ~~1, 2017 and adjusted quarterly during each year thereafter. The maximum annual adjustment may~~  
116 ~~not exceed one percent. Quarterly, the West Virginia Economic Development Authority shall make~~  
117 ~~a payment sufficient to pay in full all accrued interests on the loan for the prior quarter. The loan~~  
118 ~~authorized by this subsection is nonrecourse and is payable by the West Virginia Economic~~  
119 ~~Development Authority solely from moneys received by the West Virginia Economic Development~~  
120 ~~Authority in respect to insured debt instruments relating to providing broadband service under~~  
121 ~~section eight, article fifteen, chapter thirty-one of this code. Upon payment in full of any said~~  
122 ~~insured debt instruments, the West Virginia Economic Development Authority shall reduce the~~  
123 ~~outstanding balance of the loan by a like amount. Additionally, quarterly, the West Virginia~~  
124 ~~Economic Development Authority shall determine the outstanding balance of all such insured debt~~  
125 ~~instruments and shall accordingly adjust the outstanding balance of the loan to equal the~~  
126 ~~outstanding obligations of the West Virginia Economic Development Authority for all said insured~~  
127 ~~debt instruments. The loan is hereby secured by a security interest that pledges and assigns the~~  
128 ~~cash proceeds of all collateral securing all insurance agreements entered into by the authority~~  
129 ~~respecting debt instruments relating to the deployment of broadband under said section. In the~~  
130 ~~event moneys received by the West Virginia Economic Development Authority respecting any~~  
131 ~~individual insured debt instrument relating to providing broadband service under said section is~~  
132 ~~insufficient to pay when due the principal or interest installments, or both, with respect to the loan~~  
133 ~~authorized by this subsection by the board to the authority, the principal or interest, or both, as~~  
134 ~~the case may be, due on the loan made to the authority pursuant to this subsection shall be~~  
135 ~~deferred and any and all past due principal and interest payments shall promptly be paid to the~~  
136 ~~fullest extent possible upon receipt by the authority of all moneys respecting said debt s. The~~

137 ~~directors of the board bear no fiduciary responsibility as provided in section thirteen of this article~~  
138 ~~with regard to the loan authorized by this subsection.~~

139 (g) Inspection of records. — Within 30 days of receiving a written request from the board,  
140 the authority shall provide the board with the opportunity to inspect and copy any records in the  
141 custody of the authority related to any loan issued by the board to the authority or any loan from  
142 the authority to a third party funded by a loan issued by the board. Records to be made available  
143 pursuant to this subsection include, but are not limited to, accounting records, loan applications,  
144 loan agreements, board minutes, audit reports, and transaction records. Records of the authority  
145 that may be held from time to time by the board pursuant to this subsection shall not be considered  
146 public records and shall be exempt from disclosure pursuant to the provisions of §29B-1-1 et seq.  
147 of this code.

**§12-6C-11a. Broadband Loan Insurance Program; requirements.**

1 (a) Definitions. — For the purposes of this section, the following terms have the following  
2 meanings:

3 (1) “Authority” refers to the West Virginia Economic Development Authority.

4 (2) “Board” refers to the West Virginia Board of Treasury Investments.

5 (3) “Broadband Loan Insurance Program” or the “program” refers to the program through  
6 which the authority issues loan insurance, as authorized by §31-15-8a of this code.

7 (4) “Debt instrument” means any note, loan agreement, or any other form of indebtedness  
8 whatsoever and shall expressly include a letter of credit or other agreement relating to a letter of  
9 credit.

10 (5) “Eligible broadband provider” has the same meaning provided in §31-15-8a of this  
11 code.

12 (6) “Financial institution” means the bank, insurance company, or other institution in the  
13 business of lending money, that conditions issuance of a debt or security instrument on loan  
14 insurance by the authority, as described in §31-15-8a(b)(2) of this code.

15 (b) Loan for broadband deployment. —

16 (1) Subject to a liquidity determination and cash availability, the board shall provide a  
17 nonrecourse revolving loan to the authority, from the Consolidated Fund, in an amount not to  
18 exceed \$80 million. The loan may be used by the authority only as expressly authorized in §31-  
19 15-8a of this code.

20 (2) The board shall make the loan moneys available upon receipt of the following:

21 (A) A written request by the authority that the board deposit a specific amount of loan  
22 moneys, subject to the limitations provided in this section, into a separate account within the  
23 Consolidated Fund for the purpose of funding the program; and

24 (B) A written statement by the authority certifying that the authority is in full compliance  
25 with all applicable provisions of federal and state law, as well as any agreements entered into with  
26 the board.

27 (3) The board shall maintain the loan moneys made available to the authority in a separate  
28 account within the Consolidated Fund. The board shall transfer loan moneys to the authority only  
29 as authorized in subsection (d) of this section.

30 (4) The authority may not award an amount of the loan moneys exceeding \$20 million, in  
31 any single calendar year, to insure the debt or security instruments, or costs related thereto, of  
32 any one broadband provider.

33 (5) The authority may not deduct or use any amount of loan moneys transferred pursuant  
34 to this subsection to pay for the authority's operating or administrative expenses.

35 (c) Loan terms and requirements. —

36 (1) The loan authorized by this subsection shall be classified by the board as a long-term  
37 fixed income investment and shall bear interest on the outstanding principal balance of the loan  
38 at a variable interest rate equal to the 12-month average of the board's yield on its West Virginia  
39 Money Market pool. The rate shall be set on July 1, 2017, and adjusted quarterly during each  
40 year thereafter. The maximum annual adjustment may not exceed one percent.

41           (2) The loan authorized by this section is nonrecourse and may be used by the authority  
42 only as authorized by §31-15-8a of this code. Upon payment in full of any said insured debt  
43 instruments or release in full of any security instruments, the authority shall reduce the  
44 outstanding balance of the loan by a like amount. Additionally, quarterly, the authority shall  
45 determine the outstanding balance of all such insured debt and security instruments and shall  
46 accordingly adjust the outstanding balance of the loan to equal the outstanding obligations of the  
47 authority for all said insured debt and security instruments. The authority shall notify the board, in  
48 writing, of any such adjustment.

49           (3) The loan is secured by a security interest that pledges and assigns the cash proceeds  
50 of all collateral securing all insurance agreements entered into by the authority pursuant to §31-  
51 15-8a of this code. In the event moneys received by the authority respecting any individual insured  
52 debt or security instrument relating to providing broadband service under §31-15-8a of this code  
53 is insufficient to pay when due the principal or interest installments, or both, with respect to the  
54 loan authorized by this section by the board to the authority, the principal or interest, or both, as  
55 the case may be, due on the loan made to the authority pursuant to this section shall be deferred  
56 and any and all past-due principal and interest payments shall promptly be paid to the fullest  
57 extent possible upon receipt by the authority of all moneys respecting said debt instruments.

58           (d) *Transfer of moneys in event of default.* — The Board of Treasury Investments shall  
59 transfer, within a reasonable amount of time, loan moneys to the authority in the amount  
60 requested by the authority, upon receipt of the following:

61           (1) Written certification from the authority that a broadband provider has defaulted on a  
62 debt instrument or security interest insured by the authority, pursuant to §31-15-8a of this code,  
63 and that the broadband provider does not have the option to enter into a forbearance agreement  
64 with the financial institution;

65           (2) Written certification from the authority that the authority has pursued or will pursue any  
66 reasonable remedies to recoup the costs to the state resulting from the default, including, but not

67 limited to, instituting a legal action to seize the collateral described in subdivision (3), subsection  
68 (c) of this section; and  
69 (3) A draw certificate, in good order, signed on behalf of the authority.  
70 (e) Inspection of records. – Within 30 days of receiving a written request from the board,  
71 the authority shall provide the board with the opportunity to inspect and copy any records in the  
72 custody of the authority related to the Broadband Loan Insurance Program. Records to be made  
73 available pursuant to this subsection include, but are not limited to, accounting records, loan  
74 insurance applications, loan insurance agreements, board minutes, audit reports, and transaction  
75 records. Records of the authority that may be held from time to time by the board pursuant to this  
76 subsection shall not be considered public records and shall be exempt from disclosure pursuant  
77 to the provisions of §29B-1-1 et seq. of this code.

## **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 chair, 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 this article or under the Industrial Development and Commercial Development Bond Act, the West  
28 Virginia Hospital Finance Authority Act or, with respect to health care facilities only, §8-33-1 *et*  
29 *seq.* 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 this article or  
33 under the Industrial Development and Commercial Development Bond Act, the West Virginia  
34 Hospital Finance Authority Act or, with respect to health care facilities only, §8-33-1 *et seq.* of this  
35 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;

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

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

51 (ii) (B) 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; and

55 (6) To insure, for up to 20 years, the payment or repayment of all or any part of the principal  
56 of and interest on any form of debt instrument entered into by an ~~enterprise, public body, or~~  
57 ~~authority of the state~~ eligible broadband provider with a financial institution, including, but not  
58 limited to, banks, insurance companies, and other institutions in the business of lending money,  
59 which debt instruments are to be solely for capital costs relating to the purposes authorized in  
60 §31-15-8a of this code: *Provided*, That beginning on the effective date of the amendments made

61 to this section during the regular session of the Legislature, 2021, loan moneys shall not be  
62 transferred to the fund except as authorized by §12-6C-11a of this code.

63 ~~(i) Providing broadband service, as defined in §31G-1-1 of this code, to a household or~~  
64 ~~business located in an unserved area, as defined in §31G-1-2 of this code, or in an area with~~  
65 ~~access to Internet service, by wireline or fixed wireless technology, but that 15% or more of~~  
66 ~~households and businesses in the area are served by Internet service with an actual downstream~~  
67 ~~data rate less than 10 megabits per second and an upstream data rate less than one megabit per~~  
68 ~~second, and no part of the area has three or more wireline or fixed wireless broadband service~~  
69 ~~providers; or~~

70 ~~(ii) Building a segment of a telecommunications network that links a network operator's~~  
71 ~~core network to a local network plant that serves either an unserved area, as defined in §31G-1-~~  
72 ~~2 of this code, or an area in which no more than two wireline providers are operating.~~

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

80 ~~Upon the filing of an application for loan insurance under this subsection, the broadband~~  
81 ~~provider shall cause to be published as a Class II legal advertisement in compliance with §59-3-~~  
82 ~~1 *et seq.* of this code, notice of the filing of the application and that the authority may approve the~~  
83 ~~same unless within 10 business days after completion of publication a written objection is received~~  
84 ~~by the authority from a person or persons challenging that the proposed broadband project does~~  
85 ~~not satisfy the provisions of this subsection. The publication area for such notice is to be the~~  
86 ~~county or counties in which any portion of the proposed broadband project is to be constructed.~~



87 ~~The notice shall be in such form as the authority shall direct and shall include a map of the area~~  
88 ~~or areas to be served by the proposed broadband project. The applicant shall also cause to be~~  
89 ~~mailed by first class, on or before the first day of publication of the notice, a copy of the notice to~~  
90 ~~all known current providers of broadband service within the area proposed to be served. If a~~  
91 ~~challenge under this paragraph is timely received by the authority, the authority shall advise the~~  
92 ~~Broadband Enhancement Council, established in §31G-1-1 *et seq.* of this code, in writing within~~  
93 ~~five business days. The council shall set the matter for hearing on a date within 30 days of receipt~~  
94 ~~of notice from the authority. The Broadband Enhancement Council shall issue a decision on~~  
95 ~~whether the proposed project satisfies the requirements of this subsection or not within 30 days~~  
96 ~~of completion of such hearing. Any party participating in said hearing may appeal the council's~~  
97 ~~decision within thirty days of the issuance of said decision to the Circuit Court of Kanawha County.~~  
98 ~~This provision shall apply to all applicants except to those broadband providers that plan on~~  
99 ~~providing a downstream data rate of at least one gigabyte per second to the end user~~

100 (c) 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) through (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 chair or his or her designee to approve the form of any  
115 such agreement. Any payment by the authority under an agreement entered into by the authority  
116 under this section shall be made at the time and in the manner that the authority, in its sole and  
117 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.

123 (h) By October 30, 2021, and on or before the 30th day of January, April, July, and October  
124 of each year thereafter, the director shall prepare and submit to the Joint Committee on  
125 Government and Finance and the Governor a quarterly report which shall include, at a minimum:

- 126 (A) The aggregate outstanding amount of insurance issued from the insurance fund; and  
127 (B) For each agreement to insure a debt or security instrument, the name of the parties to  
128 the agreement; the lending financial institution to which any insured debt or security instrument is  
129 owed; the total value of any insured debt or security interest; the maturity date of the insured debt  
130 or security instrument; and the status of the insured debt or security instrument, including whether  
131 the party to the insurance agreement is delinquent or in default on any insured debt or security  
132 instrument.

**§31-15-8a. Broadband Loan Insurance Program; requirements.**

1 (a) Definitions. – For the purposes of this section:

2 (1) “Broadband Enhancement Council” or “council” refers to the governmental  
3 instrumentality established by §31G-1-3 of this code.

4 (2) “Broadband Loan Insurance Program” or the “program” refers to the program through  
5 which the authority issues loan insurance, as authorized by this section.

6 (3) “Broadband provider” or “provider” means a business or enterprise providing  
7 broadband service, as defined in §31G-1-2 of this code.

8 (4) “Debt instrument” means any note, loan agreement, or any other form of indebtedness  
9 whatsoever and shall expressly include a letter of credit or other agreement relating to a letter of  
10 credit.

11 (5) “Eligible broadband provider” means a business or enterprise certified, in writing, by  
12 the Broadband Enhancement Council to the authority to be a broadband provider, and that is not  
13 disqualified from participating in the Broadband Loan Insurance Program according to subdivision  
14 (4), subsection (c) of this section, as certified, in writing, by the authority.

15 (6) “Federally funded broadband expansion program” means the Rural Digital Opportunity  
16 Fund of the Federal Communications Commission, the Broadband ReConnect Program of the  
17 United States Department of Agriculture, or any other federally funded broadband expansion or  
18 enhancement program that Congress may from time to time establish.

19 (7) “Financial institution” means the bank, insurance company, or other institution in the  
20 business of lending money, that conditions issuance of a debt or security instrument on loan  
21 insurance by the authority, as provided in subdivision (2), subsection (b) of this section.

22 (8) “Loan insurance” refers to an agreement to insure the payment or repayment of all or  
23 any part of the principal of and interest on a debt or security instrument.

24 *(b) Insurance of certain debt or security instruments authorized. –*

25 (1) The authority is authorized to insure, for up to 20 years, the payment or repayment of  
26 all or any part of the principal of and interest on any form of debt or security instrument entered  
27 into by an eligible broadband provider with a financial institution, which debt or security  
28 instruments are to be solely for capital costs relating to:

29 (A) A project which has as its principal purpose providing broadband service, as defined  
30 in §31G-1-1 of this code, to a household or business located in an unserved area, as defined in  
31 §31G-1-2 of this code, or to an underserved area meeting the following criteria:

32           (i) Access to internet service is only available by wireline or fixed wireless technology;  
33           (ii) Access to internet service in which 15 percent or more of households and businesses  
34 cannot obtain internet service with an actual downstream or upstream data rate equivalent to or  
35 faster than the current definition of broadband service as defined by the Federal Communications  
36 Commission and further certified by the council.

37           (B) A project which has as its principal purpose building a segment of a  
38 telecommunications network that links a network operator's core network to a local network plant  
39 that serves either an unserved area, as defined in §31G-1-2 of this code, or an area in which no  
40 more than two wireline providers are operating.

41           (2) The authority may not issue loan insurance to a provider, unless the participating  
42 financial institution provides written certification to the authority that, but for the authority's insuring  
43 the debt instrument, the financial institution would not otherwise make the loan based solely on  
44 the creditworthiness of the loan applicant: *Provided*, That nothing contained in this section or any  
45 other provision of this article may be construed as permitting the authority to insure the refinancing  
46 of existing debt.

47           (3) The authority may make the provision of loan insurance authorized by this section  
48 contingent upon the eligible broadband provider receiving an award under a federally funded  
49 broadband expansion program.

50           (4) To fund the loan insurance authorized by this section, the authority shall request a loan  
51 from the West Virginia Board of Treasury Investments, according to the requirements of §12-6C-  
52 11a of this code.

53           (c) *Insurance application requirements.* –

54           (1) An eligible provider may apply to the authority for loan insurance. The authority shall  
55 make the application form or forms available to the public on its website.

56           (2) The application for loan insurance shall, at a minimum, require the applicant to submit:

57           (A) Proof of business ownership and other business registration information;

58 (B) Detailed information regarding all current, previous, and pending business debt,  
59 including any past instances of loan delinquency or default or any breach of a borrower covenant;

60 (C) Detailed records of the provider's financial history, including, but not limited to, tax  
61 returns and financial statements detailing the provider's income, cash flow, and account balances  
62 for the past five years;

63 (D) The number of persons employed by the provider and the names and contact  
64 information for all managers of the project to be insured;

65 (E) Detailed information regarding assets being presented as collateral, including, but not  
66 limited to, serial or identification numbers for all large value machinery, equipment, furniture and  
67 fixtures, inventory records, and accounts receivable;

68 (F) Detailed business plans, financial plans, and financial projections related to the  
69 broadband deployment project for which the applicant is requesting loan insurance; and

70 (G) Any additional information that is relevant to the provider's eligibility to receive loan  
71 insurance and the provider's ability to deploy broadband in the state, including, but not limited to,  
72 any required authorizations or determinations by any applicable regulatory bodies.

73 (3) The authority shall ensure that applicants are eligible to receive loan insurance and  
74 shall select applicants who demonstrate a minimal risk of default on any debt or security  
75 instrument to be insured through the program. At a minimum, the authority shall consider the  
76 following criteria in determining whether to approve a loan insurance application:

77 (A) The financial ability of the applicant to complete the insured project and repay the loan;

78 (B) The credit history of the provider;

79 (C) The past earnings and projected cash flow of the provider;

80 (D) The provider's past performance as a participant in any previous economic  
81 development program of this state or of any other state;

82 (E) The provider's experience with broadband service deployment in the state or any other  
83 state; and

84 (F) The nature and value of the collateral being offered for the loan insurance.

85 (4) The authority may not issue loan insurance to a provider if the provider, or a parent  
86 company of the provider, has previously defaulted on a debt or security instrument insured by the  
87 authority.

88 (5) The requirements of this subsection do not apply to applications received by the  
89 authority for broadband loan insurance or debt instrument insurance prior to the effective date of  
90 this section for such applications.

91 (d) Public notice by applicant. –

92 (1) Upon the filing of an application for loan insurance under this section, the broadband  
93 provider shall cause to be published as a Class II legal advertisement in compliance with §59-3-  
94 1 et seq. of this code notice of the filing of the application and that the authority may approve the  
95 same unless within 10 business days after completion of publication a written objection is received  
96 by the authority from a person or persons alleging that the proposed broadband project does not  
97 satisfy the provisions of this section.

98 (2) The publication area for such notice is to be the county or counties in which any portion  
99 of the proposed broadband project is to be constructed. The notice shall be in such form as the  
100 authority shall direct and shall include a map of the area or areas to be served by the proposed  
101 broadband project. The applicant shall also cause to be mailed by first class, on or before the first  
102 day of publication of the notice, a copy of the notice to all known current providers of broadband  
103 service within the area proposed to be served.

104 (3) If an objection under this subsection is timely received by the authority, the authority  
105 shall advise the council within five business days. The council shall set the matter for hearing  
106 within 30 days of receipt of notice from the authority. The council may establish procedural rules  
107 governing such hearings by legislative rule, or the council may follow the Rules of Practice and  
108 Procedure of the Public Service Commission. The council shall issue a decision on whether the  
109 proposed project satisfies the requirements of this section or not within 30 days of completion of

110 the hearing. Any party participating in the hearing may appeal the council's decision within 30  
111 days of the issuance of the council's decision to the Circuit Court of Kanawha County.

112 (4) This provision shall apply to all applicants except to those broadband providers that  
113 plan on providing a downstream data rate of at least one gigabyte per second to the end user or  
114 applicants that have been preliminarily determined to be eligible for a federally funded broadband  
115 expansion program.

116 (5) The requirements of this subsection do not apply to applications received by the  
117 authority for broadband loan insurance or debt instrument insurance prior to the effective date of  
118 this section for such applications.

119 (e) Information to be posted by the authority. — The authority shall make the following  
120 information, pertaining to all loan insurance agreements, available on its website:

121 (1) The name of the insured provider;

122 (2) The location or locations of the project;

123 (3) The amount of the authority loan or financial assistance provided by the insurance  
124 fund;

125 (4) The purpose of the loan or financial assistance;

126 (5) The term, rate, and interest of the loan; and

127 (6) The fixed assets that serve as security for the loan or insurance provided.

128 (f) Internal controls and accounting. — The authority shall keep itemized records of all  
129 transactions and agreements entered into in furtherance of the program. In administering the  
130 program, the authority shall adopt appropriate accounting practices and develop internal controls,  
131 including, but not limited to, strict compliance with the requirements of §5A-8-9 of this code.

132 (g) Quarterly reports and annual legislative audit. —

133 (1) By October 30, 2021, and on or before the 30th day of January, April, July, and October  
134 of each year thereafter, the authority shall prepare and submit to the Joint Committee on

135 Government and Finance, the Governor, and the West Virginia Board of Treasury Investments a  
136 quarterly report which shall include, at a minimum:

137 (A) For each insured project, the provider name; the lending financial institution; the total  
138 value of the loan; the total amount of the loan that is insured pursuant to this section; the maturity  
139 date of the loan; the balance of loan moneys outstanding with the authority; and the status of the  
140 loan, including whether the loan is in delinquent or in default status.

141 (B) For loans not in good standing with the financial institution, the reason for the  
142 delinquent or default status of the loan; the provider's plans to address the delinquency or default;  
143 the availability of loan collateral that may be seized by the state; the expected outcome of the  
144 delinquency or default; and the estimated loss to any state funds that will result from the  
145 delinquency or default.

146 (2) Beginning in 2022, and during each year in which a loan insurance agreement entered  
147 into pursuant to this section remains in effect, the authority shall prepare and submit to the Joint  
148 Committee on Government and Finance, the Governor, and the board an annual report  
149 addressing the status of each project that is insured, pursuant to this section. The report shall, at  
150 a minimum, provide project-specific data addressing the broadband service levels being provided  
151 by the project, the geographic area to which different broadband service levels are being provided  
152 by the project, and the number of households actively receiving broadband service from the  
153 project.

154 (3) Beginning in 2022, and every other year thereafter so long as a loan insurance  
155 agreement entered into pursuant to this section remains in effect, the Legislative Auditor shall  
156 audit the procedures, accounting practices, and internal controls of the authority for compliance  
157 with this section and §12-6C-11a of this code and report the findings of the audit to the Joint  
158 Committee on Government and Finance.