

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4001**

BY DELEGATES LINVILLE, PACK, HOLSTEIN, TONEY,

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ROWAN, AND NESTOR

[Originating in the Committee on Finance; February

25, 2022]



1 A BILL to amend and reenact §31G-1A-7 of the Code of the West Virginia, 1931, as amended; to  
2 amend said code by adding thereto a new section, designated §31G-3-5; to amend said  
3 code by adding thereto a new section, designated §31G-4-2a; to amend said code by  
4 adding thereto a new article, designated §31G-7-1, §31G-7-2, §31G-7-3, §31G-7-4 and  
5 §31G-7-5; and to amend said code by adding thereto a new article, designated §31G-8-  
6 1, §31G-8-2 §31G-8-3 and §31G-8-4, all relating to certain provisions relating to  
7 broadband; creating a process for the mapping of disturbances in rights of way; creating  
8 utility pole rights of way and easement mapping initiative; creating existing customer  
9 protections for the Office of the Attorney General in coordination with the Office of  
10 Broadband and Department of Economic Development; establishing fees; providing for  
11 competitive access infrastructure; providing for credits; defining modems and other  
12 connection devices; defining competitive access infrastructure; defining eligible  
13 telecommunications carriers; defining the status of such; and providing for penalties where  
14 misrepresentation of eligible telecommunications carrier status occurs.

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

**ARTICLE 1A. OFFICE OF BROADBAND.**

**§31G-1A-7. Broadband Development Fund.**

1 (a) The Broadband Development Fund is hereby created in the State Treasury. The fund  
2 shall be administered by the Secretary of the Department of Economic Development and shall  
3 consist of all moneys made available for the purposes of this article from any source, including,  
4 but not limited to, all gifts, grants, bequests or transfers from any source, any moneys that may  
5 be appropriated to the fund by the Legislature, and all interest or other return earned from  
6 investment of the fund. Expenditures from the fund shall be for the purposes set forth in subsection  
7 (b) of this section and are not authorized from collections but are to be made only in accordance  
8 with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of  
9 this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq.* of this code:

10 *Provided*, That for the fiscal year ending June 30, 2022, expenditures are authorized from  
11 collections rather than pursuant to an explicit appropriation by the Legislature. Any balance,  
12 including accrued interest and other returns, remaining in the fund at the end of each fiscal year  
13 shall not revert to the General Revenue Fund but shall remain in the fund and be expended as  
14 provided by this section.

15 (b) Monies of the Broadband Development Fund may only be expended for the following  
16 purposes:

17 (1) Expenses for the administration of the Office of Broadband;

18 (2) Line extension advancement and development projects, including expansion of  
19 existing fiber and cable networks;

20 (3) Major broadband project strategies, including new networks or major expansions of  
21 existing networks;

22 (4) GigReady incentive projects, including a state incentive for ISP and local governments  
23 and organizations to pool some of their federal American Rescue Plan Act allocations or other  
24 local funding;

25 And

26 (5) Wireless Internet Networks, including expansions or upgrades of existing fixed wireless  
27 networks.

28 (c) Except funds expended for the administration of the Office of Broadband, monies of  
29 the Broadband Development Fund may only be expended for projects authorized by subsection  
30 (b) of this section that have been certified to the Joint Committee on Government and Finance by  
31 the Director of the Office of Broadband or the Secretary of the Department of Economic  
32 Development prior to making the expenditures.

33 (d) The Legislature of the State of West Virginia finds and declares that competition in any  
34 market, more especially in the delivery of broadband internet services is eminently desirable. The  
35 Legislature further finds that a competitive market, rather than a rate-regulated monopoly or

36 duopoly will promote and perpetuate improvement in customer service, technical service, terms,  
37 conditions, and pricing. Accordingly, all agencies of state government are hereby directed to first  
38 support expansion and enhancement of broadband internet services to unserved homes and  
39 businesses and second to support expansion and enhancement of competition.

40 (e) Telecommunications facilities purchased, installed, or funded by any grant program  
41 offered by this state shall be subject to:

42 (1) The provisions of 2 CFR 200 governing equipment and capital assets and any other  
43 applicable federal law, rule, or regulation; and

44 (2) Any state law, rule, or regulation governing the sale of government or grant-funded  
45 assets not in conflict with applicable federal law, rule, or regulation.

### **ARTICLE 3. CONDUIT INSTALLATION; MICROTRENCHING.**

#### **§31G-3-5. Mapping of Disturbances in Rights of Way.**

1 (a) Beginning July 1, 2022, every agency of state government, every Public Service  
2 District, and every County Commission or other political subdivision must furnish to the  
3 Department of Economic Development, in a timely manner, all information relating to:

4 (1) any maps which they have; or

5 (2) descriptions of routes (if maps are not available) which they have  
6 for any underground disturbances in state rights of way or easements.

7 (b) This requirement shall not constitute a new duty to create or maintain maps for any  
8 agency of state government, Public Service District, County Commission or other political  
9 subdivision, or any regulated public utilities or any other entity with facilities in the rights of way of  
10 this state but does require any such information in their possession to be submitted to the  
11 Department of Economic Development.

12 (c) If any such information in subsections (a) or (b) of this section has been previously  
13 mapped by another Department, Division, agency, office, or commission, such information shall

14 not be required to be submitted by that Public Service District, County Commission, or other  
15 political subdivision again.

16 (d) The Department of Economic Development shall map those disturbances and limit  
17 access to any map or related data to only those entities or persons that have signed a valid  
18 confidentiality or non-disclosure agreement. Such mapping or data shall only be accessed or  
19 reviewed for the limited purposes of:

20 (1) Considering possible routes for installation of telecommunications facilities or other  
21 utilities;

22 (2) Engineering routes for installation of telecommunications facilities or other utilities;

23 (3) Study of existing telecommunications facilities or other utilities; or

24 (4) Improving, expanding, enhancing, and attaching to telecommunications facilities or  
25 other utilities.

**ARTICLE 4. MAKE-READY POLE ACCESS.**

**§31G-4-2a. Utility Pole Rights of Way and Easement Mapping Initiative.**

1 (a) Beginning July 1, 2022, every Pole Owner must furnish to the Department of Economic  
2 Development, in a timely manner, all information which they have required to be furnished by  
3 Attachers, since January 1, 2018, or from such time as necessary and available, to accurately  
4 map the locations, class, number of attachments, weight, and such other information as the  
5 Department of Economic Development deems necessary to accurately map and present the data,  
6 including but not limited to all engineering reports or other documentation.

7 (b) The Department of Economic Development is hereby required to utilize this information  
8 to produce a map, which is to include information, where available, delineating the following:

9 (1) Class of poles;

10 (2) Age of utility poles;

11 (3) Distance between poles;

12 (4) Weight between those spans; and

13 (5) What is attached in the communications space on those poles.

14 (c) A Pole Owner shall not be required to disclose the details of any electrical facilities  
15 attached to the utility pole and the Department of Economic Development shall not publish  
16 information related there to, except any information in the aggregate for that pole or the spans  
17 between multiple poles related to weight thereon.

18 (d) This map is to be made available by the Department of Economic Development at no  
19 cost to afford potential Attachers considering projects to quickly gain information to determine  
20 feasibility of a project. The Department of Economic Development shall require a confidentiality  
21 or non-disclosure agreement to access any data mapped relating to the Utility Pole Rights of Way  
22 and Easement Mapping Initiative. The Department of Economic Development shall limit access  
23 to such maps to only those persons or entities interested in or engaging in the installation of  
24 telecommunications facilities, their vendors, engineers, consultants, or other persons a potential  
25 Attacher reasonably needs to review such information.

26 (e) If a pole owner furnishes to a requesting telecommunications entity who has requested  
27 to the Pole Owner to potentially attach to its poles,

28 (1) the latitude and longitude of all poles within the requested geographic area,

29 (2) in an electronic file or other format,

30 (3) at no cost; and

31 (4) once a non-disclosure agreement is entered into between pole owner and the  
32 requesting telecommunications entity. The information thus provided by the pole owners can then  
33 be used by the requesting entity to produce a map.

34 If a pole owner certifies in a sworn affidavit to the Department of Economic Development  
35 that the owner has produced and made available to Attachers such a map as described in this  
36 section with at least the same information included and without cost to access, then the pole  
37 owner shall not be required to share this information with the state and the Department shall not  
38 be required to map those utility poles. The Department of Economic Development shall review

39 any such map a pole owner claims meets these requirements annually, and if the map produced  
40 by the pole owner is materially deficient and has not met the requirements set-forth herein, the  
41 pole owner will once again be required to provide the foregoing information to the Department to  
42 be mapped.

**ARTICLE 7. CONSUMER PROTECTIONS.**

**§31G-7-1. Existing Consumer Protections.**

1 The Consumer Protection Division of the Office of the Attorney General is responsible for  
2 effectuating and enforcing the following consumer protections in coordination with and the  
3 assistance of the Office of Broadband and the Department of Economic Development:

4 (a) If a broadband service to a subscriber is interrupted for more than 24 continuous  
5 hours, such subscriber shall, upon request, receive a credit or refund from the broadband operator  
6 in an amount that represents the proportionate share of such service not received in a billing  
7 period, provided such interruption is not caused by the subscriber or power outages and other  
8 causes for outages beyond the control of the provider;

9 (b) A broadband operator may not deny service, deny access, or otherwise discriminate  
10 against subscribers, channel users, or any other citizens on the basis of age, race, religion, sex,  
11 physical handicap, political affiliation, political views, or exercise of other speech protected by the  
12 1st Amendment to the United States Constitution, or country of natural origin;

13 (c) A broadband operator shall provide subscribers 30 days advance written notice of any  
14 changes to rates or charges, including the expiration of any promotion or special pricing that would  
15 result in an increase in the subscribers billing or cost of service; and

16 (d) A broadband system operator shall inform subscribers and provide written notice to  
17 subscribers that disputes regarding interrupted or substandard service or billing issues, which are  
18 unresolved to satisfaction of the subscriber, can be filed as a complaint with the consumer  
19 protection division of the WV Attorney General's Office.



**§31G-7-2. Fees.**

1           (a) (1) No telecommunications provider may impose any fee, additional to the cost of  
2 service, on fixed broadband internet services which is not an election of the customer or required  
3 to be charged or assessed per connection by a government of competent jurisdiction.

4           (2) No telecommunications provider may require an individual customer to pay his or her  
5 pro rata share of the corporation's tax burden as an enumerate portions of their bill.

6           (b) No telecommunications provider may impose a fee for a residential customer to receive  
7 a paper bill or invoice for fixed broadband or cable television service.

**§31G-7-3. Modems and other connection devices.**

1           (a) (1) No telecommunications provider may impose any mandate that residential  
2 customers be required to rent a modem from that provider.

3           (2) All residential customers are to be permitted to utilize or furnish their own modem, if the  
4 network is built upon a non-proprietary, industry standard communication protocol.

5           (b) If there are not commercially available modems or devices to interface with the Wide  
6 Area Network, the provider must offer the ability for a residential customer to purchase, rather  
7 than rent, that hardware.

**§31G-7-4. Competitive Access Infrastructure.**

1           (a) Competitive Access Infrastructure is that infrastructure and related facilities which:

2           (1) Offer non-discriminatory, non-exclusive access to independent service providers and  
3 other entities with reasonable costs comparable to that of the owner; and

4           (2) On reasonable and equal terms, including location, pricing, applicable tariffs, terms  
5 and conditions.

6           (b) An assertion of Competitive Access telecommunications facilities may be  
7 demonstrated by filing with the Public Service Commission of West Virginia that documentation  
8 necessary to demonstrate the elements of a Competitive Access Infrastructure defined in  
9 subsection (a) of this section.

10 (c) Where referenced elsewhere in the Code of West Virginia, 1931 as amended, the  
11 phrase “open-access networks” shall have the same meaning as “Competitive Access  
12 Infrastructure”, as defined by this section.

**§31G-7-5. Credits due to a customer.**

1 Any and all credits due to a customer for any reason are due to the customer at the time  
2 the condition giving rise to them commences and shall be applied to the customer’s bill as soon  
3 as is practicable. Once notified, the customer has no further duty to seek credit after the condition  
4 giving rise to such a credit is resolved.

**ARTICLE 8. ELIGIBLE TELECOMMUNICATIONS CARRIERS.**

**§31G-8-1. Legislative Findings.**

1 The Legislature of the State of West Virginia finds and declares that:

2 (1) The certification of Eligible Telecommunications Carriers is a responsibility primarily  
3 delegated to the states.

4 (2) The proper utilization and oversight of disbursement of funds from the Universal  
5 Service Fund established by the federal government and managed by the Federal  
6 Communications Commission is in the public interest, convenience, and necessity.

7 (3) Failure to perform any obligations imposed upon an Eligible Telecommunications  
8 Carrier in connection with disbursement of funding from the Universal Service Fund is detrimental  
9 to the public interest, convenience, and necessity.

10 (4) Proper oversight and certification of compliance are necessary and proper for the  
11 continuing issuance of Eligible Telecommunications Status and are in the public interest.

**§31G-8-2. Definition.**

1 “Eligible Telecommunications Carrier” means the status for a telecommunications carrier  
2 to be eligible for Universal Service Fund support pursuant to 47 CFR § 54.201.

**§31G-8-3. Eligible Telecommunications Carriers Status.**

1 Notwithstanding any other provision of this code to the contrary, eligible  
2 Telecommunications Carriers Status shall be issued by the Public Service Commission. Issuance

3 thereof shall not be unreasonably withheld, considering the recommendation of the Attorney  
4 General, and only if the applicant for Eligible Telecommunications Carrier status is in compliance  
5 with the following:

6 (a) The Attorney General shall check the Universal Service Administrative Company HUB  
7 for any commitments, assertions, and/or obligations of Eligible Telecommunications Carriers in  
8 the state of West Virginia.

9 (b) The Attorney General shall require certification of completion thereof and ongoing  
10 compliance therewith, under penalty of perjury prior to making a favorable recommendation to the  
11 Public Service Commission of the application to be an Eligible Telecommunications Carrier. The  
12 Attorney General shall transmit all such recommendations to the Public Service Commission.

**§31G-8-4. Misrepresentation in Certification for Eligible Telecommunications Carrier**  
**Status, penalty.**

1 (a) If the Attorney General finds evidence that an Eligible Telecommunications Carrier has  
2 materially misrepresented compliance in their certification referenced in §31G-8-3 of this code,  
3 notification of such misrepresentation shall be transmitted to the West Virginia Public Service  
4 Commission. The Public Service Commission shall conduct a hearing on the merits thereof and  
5 if the Eligible Telecommunications Carrier is found to be non-compliant, the Public Service  
6 Commission shall assess a fine equal to the amount of any subsidization received for which the  
7 commitment, assertion or obligation was established. Any such fine shall be limited to such  
8 proportional amount as that which was awarded to the Eligible Telecommunications Carrier for a  
9 particular area or act to be performed and shall not be construed to include all amounts awarded  
10 statewide. The Public Service Commission or Attorney General shall seek enforcement of any  
11 fine and any court of competent jurisdiction in this state shall order payment and compliance with  
12 the order of the Public Service Commission associated herewith. Funds from any fine shall be  
13 deposited into the Broadband Development Fund, less any reasonable expenses and costs of  
14 the Public Service Commission in connection therewith.

15           (b) When such determination has been made, the Attorney General, and any other  
16 Department, office, bureau, or agency and any political subdivision of this state, shall cause any  
17 Eligible Telecommunications Carrier and its subsidiaries found to be non-compliant under  
18 subsection (a) of this section or failing to make the certification required thereunder, to no longer  
19 be certified as an Eligible Telecommunications Carrier and to be ineligible for any state grants,  
20 awards, procurement, leasing, licensing other than a business license issued by the Secretary of  
21 State or any business license by a political subdivision of this state, easement, right-of-way  
22 access, or purchase until such material misrepresentation is cured: *Provided*, That nothing in this  
23 section shall be construed to prevent the installation, repair, maintenance or other required work  
24 for any Carrier of Last Resort required to provide telephone service in this state: *Provided*  
25 *however*, That nothing in this section shall be construed to prevent an internet service provider  
26 from repairing or replacing telecommunications facilities in rights-of-way or easements that  
27 internet service provider currently has facilities situated within.