

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Senate Bill 542

BY SENATORS MAYNARD, SWOPE, SYPOLT, ROBERTS,

AND PLYMALE

[Passed March 7, 2022; in effect from passage]

1 AN ACT to amend and reenact §31G-1-3 of the Code of West Virginia, 1931, as amended, relating
2 to transferring the Broadband Enhancement Council from the Department of Commerce
3 to the Department of Economic Development; removing the Secretary of Commerce from
4 the Broadband Enhancement Council; designating the Secretary of the Department of
5 Economic Development as a voting member; and removing archaic language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

§31G-1-3. Broadband Enhancement Council; members of council; administrative support.

1 (a) The Broadband Enhancement Council is hereby continued. The current members,
2 funds, and personnel shall continue in effect and be wholly transferred from the Department of
3 Commerce to the Department of Economic Development; except as may be hereinafter provided.
4 With regard to the terms of the public members appointed under subdivision five, subsection (c)
5 of this section, at the next regular meeting of the council following July 1, 2017, the currently
6 serving public members shall draw by lot for the length of their terms, three members to serve for
7 one additional year, three members to serve for two additional years and the last three members
8 to serve for three additional years, with all public members in future to serve for the duration of
9 the term described below.

10 (b) The council is a governmental instrumentality of the state. The exercise by the council
11 of the powers conferred by this article and the carrying out of its purpose and duties are
12 considered and held to be, and are hereby determined to be, essential governmental functions
13 and for a public purpose. The council shall be situated within the Department of Economic
14 Development for administrative, personnel, and technical support services only.

15 (c) The council shall consist of 13 voting members, designated as follows:

- 16 (1) The Secretary of the Department of Economic Development or his or her designee;
17 (2) The Chief Information Officer or his or her designee;

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

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

21 (5) Nine public members that shall serve no more than three consecutive three-year terms
22 from the date of their appointment and are appointed by and serve at the will and pleasure of the
23 Governor with the advice and consent of the Senate, as follows:

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

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

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

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

30 (v) One member representing urban residential users in this state; and

31 (6) Additionally, the President of the Senate shall name two Senators from the West
32 Virginia Senate, one from each party, and the Speaker of the House shall name two Delegates
33 from the West Virginia House of Delegates, one from each party, each to serve in the capacity of
34 ex officio, nonvoting advisory members of the council.

35 (d) A chair and vice chair shall be elected from the members of the council for a term of
36 two years: *Provided*, That a chair or vice-chair may not serve more than two consecutive full or
37 partial terms in that capacity. In the absence of the chair, the vice chair shall serve as chair. The
38 council shall appoint a secretary-treasurer who need not be a member of the council and who,
39 among other tasks or functions designated by the council, shall keep records of its proceedings.

40 (e) The council may appoint committees or subcommittees to investigate and make
41 recommendations to the full council. Members of these committees or subcommittees need not
42 be members of the council.

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

45 (g) The gubernatorial appointed members shall be deemed part-time public officials, and
46 may pursue and engage in another business or occupation or gainful employment. Any person
47 employed by, owning an interest in, or otherwise associated with a broadband deployment project,
48 project sponsor, or project participant may serve as a council member and is not disqualified from
49 serving as a council member because of a conflict of interest prohibited under §6B-2-5 of this
50 code and is not subject to prosecution for violation of that section when the violation is created
51 solely as a result of his or her relationship with the broadband deployment project, project sponsor,
52 or project participant so long as the member recuses himself or herself from board participation
53 regarding the conflicting issue in the manner set forth in §6B-2-5 of this code and the legislative
54 rules promulgated by the West Virginia Ethics Commission.

55 (h) No member of the council who serves by virtue of his or her office may receive any
56 compensation or reimbursement of expenses for serving as a member. The public members and
57 members of any committees or subcommittees are entitled to be reimbursed for actual and
58 necessary expenses incurred for each day or portion thereof engaged in the discharge of his or
59 her official duties in a manner consistent with the guidelines of the Travel Management Office of
60 the Department of Administration.

61 (i) No person is subject to antitrust or unfair competition liability based on membership or
62 participation in the council, which provides an essential governmental function and enjoys state
63 action immunity.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2022.

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Governor