

WEST VIRGINIA LEGISLATURE

2024 SECOND EXTRAORDINARY SESSION

Enrolled

Senate Bill 2035

By Senators Blair (Mr. President) and Woelfel

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage]

1 AN ACT to amend and reenact §31-15-8, §31-15-8a, and §31-15-23a of the Code of West Virginia,
2 1931, as amended, all relating generally to funding for certain broadband expansion
3 programs administered by the Economic Development Authority; permitting the authority
4 to use certain moneys transferred to the Insurance Fund to finance the Broadband Loan
5 Insurance Program; permitting the authority to use the Economic Development Project
6 Fund to finance certain federally supported broadband expansion programs; permitting the
7 authority to transfer moneys from the authority's Economic Development Project Fund to
8 the Insurance Fund to finance the Broadband Loan Insurance Program; and requiring
9 certain annual audits by the Legislative Auditor.

Be it enacted by the Legislature of West Virginia:

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 this
12 code.

13 (b) 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 (c) 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 (d) 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 or
26 prepayment premiums or penalties on, and interest on bonds or notes whether issued under this
27 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 seq.*
29 of this code;

30 (2) To insure the payment or repayment of all or any part of the principal of, redemption or
31 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 (A) Any and all expenses for administrative, legal, actuarial, and other services related to
50 the operation of the insurance fund; and

51 (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 eligible broadband provider with a
57 financial institution, including, but not limited to, banks, insurance companies, and other
58 institutions in the business of lending money, which debt instruments are to be solely for capital
59 costs relating to the purposes authorized in §31-15-8a of this code: *Provided*, That loan moneys
60 shall not be transferred to the fund except as authorized by §12-6C-11a or §31-15-23a of this
61 code. All moneys transferred to the fund for the purpose of issuing broadband loan insurance shall
62 be held in accounts that are separate and segregated from other moneys in the fund. Moneys
63 transferred to the fund pursuant to §31-15-23a of this code which are no longer required for

64 outstanding loan insurance obligations may be returned to the Economic Development Project
65 Fund, along with any interest or earnings accruing to the account in which said moneys are held.

66 (e) Except as relating to insured portions of debt instruments under subdivision (6),
67 subsection (d) of this section the total aggregate amount of insurance from the insurance fund with
68 respect to the insured portions of principal of bonds or notes or other instruments may not exceed
69 at any time an amount equal to five times the balance in the insurance fund.

70 (f) The authority may, in its sole and absolute discretion, set the premiums and fees to be
71 paid to it for providing financial assistance under this section. The premiums and fees set by the
72 authority shall be payable in the amounts, at the time, and in the manner that the authority, in its
73 sole and absolute discretion, requires. The premiums and fees need not be uniform among
74 transactions and may vary in amount: (1) Among transactions; and (2) at different stages during
75 the terms of transactions.

76 (g) The authority may, in its sole and absolute discretion, require the security it believes
77 sufficient in connection with its insuring of the payment or repayment of any bonds, notes, debt, or
78 other instruments described in subdivisions (1) through (4), subsection (d) of this section.

79 (h) The authority may itself approve the form of any insurance agreement entered into
80 under this section or may authorize the chair or his or her designee to approve the form of any
81 such agreement. Any payment by the authority under an agreement entered into by the authority
82 under this section shall be made at the time and in the manner that the authority, in its sole and
83 absolute discretion, determines.

84 (i) The obligations of the authority under any insurance agreement entered into pursuant
85 to this article shall not constitute a debt or a pledge of the faith and credit or taxing powers of this
86 state or of any county, municipality, or any political subdivision of this state for the payment of any
87 amount due thereunder or pursuant thereto, but the obligations evidenced by such insurance
88 agreement shall be payable solely from the funds pledged for their payment.

(j) On or before the 30th day of January, April, July, and October of each year, the authority shall prepare and submit to the Joint Committee on Government and Finance and the Governor a quarterly report which shall include, at a minimum:

(1) The aggregate outstanding amount of insurance issued from the insurance fund; and

(2) For each agreement to insure a debt or security instrument, the name of the parties to the agreement; the lending financial institution to which any insured debt or security instrument is owed; the total value of any insured debt or security interest; the maturity date of the insured debt or security instrument; and the status of the insured debt or security instrument, including whether the party to the insurance agreement is delinquent or in default on any insured debt or security instrument.

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

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

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

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

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

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

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

(6) "Federally funded broadband expansion program" means the Rural Digital Opportunity Fund of the Federal Communications Commission; the Broadband ReConnect Program of the United States Department of Agriculture; the Broadband Equity, Access, and Deployment Program of the National Telecommunications and Information Administration; or any other federally funded broadband expansion or enhancement program that Congress may from time to time establish.

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

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

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

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

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

(i) Access to internet service is only available by wireline or fixed wireless technology; and

(ii) Access to internet service in which 15 percent or more of households and businesses cannot obtain internet service with an actual downstream or upstream data rate equivalent to or faster than the current definition of broadband service as defined by the Federal Communications Commission and further certified by the council; or

(B) A project which has as its principal purpose building a segment of a

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

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

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

(4) To fund the loan insurance authorized by this section, the authority shall request a loan from the West Virginia Board of Treasury Investments, according to the requirements of §12-6C-11a of this code, or utilize funds in the Insurance Fund transferred pursuant to §31-15-23a(d)(5) of this code.

(5) The authority may not award an amount of loan insurance exceeding \$50 million, in any single calendar year, to insure the debt or security instruments, or costs related thereto, of any one broadband provider.

(c) Insurance application requirements. –

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

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

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

(B) Detailed information regarding all current, previous, and pending business debt,

including any past instances of loan delinquency or default or any breach of a borrower covenant;

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

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

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

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

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

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

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

(B) The credit history of the provider;

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

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

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

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

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

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

(d) *Public notice by applicant.* –

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

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

(3) If an objection under this subsection is timely received by the authority, the authority shall advise the council within five business days. The council shall set the matter for hearing within 30 days of receipt of notice from the authority. The council may establish procedural rules governing such hearings by legislative rule, or the council may follow the Rules of Practice and Procedure of the Public Service Commission. The council shall issue a decision on whether the

proposed project satisfies the requirements of this section or not within 30 days of completion of the hearing. Any party participating in the hearing may appeal the council's decision within 30 days of the issuance of the council's decision to the Circuit Court of Kanawha County.

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

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

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

(1) The name of the insured provider;

(2) The location or locations of the project;

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

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

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

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

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

(g) *Quarterly reports and annual legislative audits.* —

(1) On or before the 30th day of January, April, July, and October of each year, the authority shall prepare and submit to the Joint Committee on Government and Finance, the Governor, and

140 the West Virginia Board of Treasury Investments a quarterly report which shall include, at a
141 minimum:

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

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

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

158 (3) During each year in which a loan insurance agreement entered into pursuant to this
159 section remains in effect, the Legislative Auditor shall audit the procedures, accounting practices,
160 and internal controls of the authority for compliance with this section and §12-6C-11a of this code
161 and report the findings of the audit to the Joint Committee on Government and Finance.

§31-15-23a. Economic Development Project Fund.

1 (a) For the purposes of this section:

2 "Eligible broadband provider" has the meaning provided in §31-15-8a of this code.

3 "Federally funded broadband expansion program" has the meaning provided in §31-15-8a
4 of this code.

5 "High impact development project" means a project meeting the following criteria,
6 according to a resolution adopted by the authority:

7 (A) The Governor has requested, in writing, that the project be approved for financing by
8 the authority in an amount of \$50 million or greater;

9 (B) The industrial development agency or enterprise undertaking the project will privately
10 invest an amount of \$50 million or greater in the project; and

11 (C) The project meets or exceeds the loan per job ratio criteria for high-impact
12 development projects that may be established, in consultation with the Secretary of the
13 Department of Economic Development, by the board of directors.

14 (b) There is hereby created a special revenue fund in the State Treasury known as the
15 Economic Development Project Fund. The fund shall consist of all moneys appropriated to the
16 authority during the regular session of the Legislature, 2022, from available revenue surplus funds;
17 transfers from the Industrial Development Loans Fund; gifts, grants, and contributions to the fund;
18 any earnings or interest accruing to said fund; and any other moneys appropriated to said fund by
19 the Legislature. The authority may invest and reinvest moneys in the fund with the West Virginia
20 Investment Management Board or the Board of Treasury Investments.

21 (c) The authority may transfer funds in the Industrial Development Loans fund to the
22 Economic Development Project Fund created by this section and any loan repayments or other
23 amounts that would otherwise have been paid into the Industrial Development Loans fund may be
24 paid into the Economic Development Project Fund created by this section.

25 (d) The authority may use moneys in the Economic Development Project Fund to offer
26 incentives for business formation or expansion and provide assistance with site development or
27 other concerns to industrial development agencies or enterprises according to the requirements of

this article as set forth in this subsection.

(1) *High impact development projects.* — In addition to any powers granted to the authority under any other section of this code, the authority may finance any high impact development project under this section by offering incentives for business formation or expansion to industrial development agencies or enterprises in this state in the form of loans, grants, or other offers of financial assistance or aid upon such terms as the Governor may request and the authority shall deem appropriate: *Provided*, That moneys available to fund such high impact development projects may not exceed \$300 million dollars annually, unless otherwise appropriated by the Legislature or increased by interest payments received pursuant to this subsection. Funds which are paid back to the authority as principal pursuant to this subsection may be utilized and reloaned by the authority for the same purpose. Any interest accruing shall be retained and made available for high impact projects as set forth in this subsection and shall not revert to the General Revenue Fund.

(2) *Traditional loans.* — The authority may finance any economic development project under this section by offering incentives for business formation or expansion to industrial development agencies or enterprises in this state in the form of loans, which shall be repaid to provide financing for subsequent borrowers: *Provided*, That moneys available to fund such traditional loans may not exceed \$250 million dollars annually, on a rolling basis, unless otherwise appropriated by the Legislature or increased by interest payments received pursuant to this subsection. Funds which are paid back to the authority as principal pursuant to this subsection may be utilized and reloaned by the authority for the same purpose. Any interest accruing shall be retained and made available for traditional loans as set forth in this subsection and shall not revert to the General Revenue Fund.

(3) *Business retention projects.* — The authority may finance any economic development project under this section by offering incentives for business development and expansion to

53 industrial development agencies or enterprises already existing and operating in the State of West
54 Virginia in the form of loans, which shall be repaid to provide financing for subsequent borrowers:
55 *Provided*, That moneys available to fund such business retention loans may not exceed \$50
56 million dollars annually, on a rolling basis, unless otherwise appropriated by the Legislature or
57 increased by interest payments received pursuant to this subsection. Funds which are paid back
58 to the authority as principal pursuant to this subsection may be utilized and reloaned by the
59 authority for the same purpose. Any interest accruing shall be retained and made available for
60 business retention projects as set forth in this subsection and shall not revert to the General
61 Revenue Fund.

62 (4) *Federal broadband expansion projects.* – The authority may use moneys in the fund to
63 provide incentives for eligible broadband providers to participate in federally funded broadband
64 expansion programs: *Provided*, That the moneys available for such incentives may not exceed
65 \$25 million annually, on a rolling basis, unless otherwise appropriated by the Legislature or
66 increased by interest payments or investment earnings on said moneys.

67 (5) *Broadband loan insurance.* – The authority may transfer moneys from the fund to the
68 Insurance Fund, created in §31-15-8 of this code, in amounts necessary to issue loan insurance to
69 eligible broadband providers: *Provided*, That the moneys available for transfer pursuant to this
70 subdivision may not exceed \$125 million annually, on a rolling basis, unless otherwise
71 appropriated by the Legislature or increased by interest payments or investment earnings on said
72 moneys. With regard to any loan insurance issued using the moneys transferred pursuant to this
73 subdivision, the authority shall follow the requirements of §31-15-8a of this code.

74 (e) The authority shall keep itemized records of all fund transactions and agreements
75 entered into in furtherance of the Economic Development Project Fund expenditures. In
76 administering the fund, the authority shall adopt appropriate accounting practices and internal
77 controls, including, but not limited to, strict compliance with the requirements of §5A-8-9 of this

code. Fund transactions shall be subject to an annual audit by an independent firm of certified public accountants.

(f) The authority shall prepare and submit to the Joint Committee on Government and Finance and the Governor an annual report addressing the status of each project with outstanding financing issued pursuant to this section. The report shall, at a minimum, provide project-specific data addressing:

(1) The outstanding amount of authority financing for each project;

(2) The total amount of private investment in each project;

(3) The number of jobs created by each project since the project's inception; and

(4) The number of jobs maintained by each project.

(g) Except for the records and audit required under subsection (e) of this section and the annual reports required under subsection (f) of this section, any documentary material, data, or other writing made or received by the authority relating to high impact development projects under this section, shall be exempt from §29B-1-1 *et seq.* of this code: *Provided*, That any agreement or resolution entered into or signed by the authority which obligates public funds for any high-impact development project shall be subject to inspection and copying pursuant to §29B-1-1 *et seq.* of this code as of the date the agreement or resolution is entered into, signed, or otherwise made public.