

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 735

FISCAL
NOTE

By Senators Deeds, Fuller, and Woodrum

[Introduced March 11, 2025; referred
to the Committee on Government Organization; and
then to the Committee on Finance]

1 A BILL to amend and reenact the Code of West Virginia, 1931, as amended, by adding a new
 2 article, designated §5B-4-1, §5B-4-2, §5B-4-3, §5B-4-4, §5B-4-5, §5B-4-6, §5B-4-7, §5B-
 3 4-8, §5B-4-9, §5B-4-10, §5B-4-11, §5B-4-12, §5B-4-13, §5B-4-14, §5B-4-15, §5B-4-16,
 4 §5B-4-17, §5B-4-18, §5B-4-19, §5B-4-20, §5B-4-21, §5B-4-22, and §5B-4-23, relating to
 5 the Broadband Development Program; providing a short title; providing legislative findings
 6 and purpose; providing definitions; establishing individual and joint powers of public
 7 agencies; creating a joint development between public agencies; providing appropriation
 8 of funds; exempting Division of Highways from broadband placement; creating a board
 9 and the composition, compensation, and duties associated with the board; providing an
 10 annual audit; providing eminent domain; providing competitive bids; clarifying costs;
 11 authorizing of and refunding of revenue bonds; providing a trust indenture; providing
 12 exemptions; authorizing a sinking fund; clarifying the collection of revenue and
 13 enforcement; creating a statutory mortgage lien; clarifying rates and charges; and
 14 establishing liability exemptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. WEST VIRGINIA BROADBAND DEVELOPMENT PROGRAM

§5B-4-1. Short title.

1 This article shall be known and cited as the "West Virginia Broadband Development
 2 Program", or the "WVBDP".

§5B-4-2. Legislative findings and purpose.

1 (a) The Legislature finds that:

2 (1) The advent and advancement of new and existing technologies in the area of
 3 broadband have created opportunities for businesses to more easily expand their existing markets
 4 while allowing for people to work remotely.

5 (2) With the development of broadband, West Virginia's education systems, health-care
 6 systems, public-safety systems, industries, businesses, governmental operations, and citizens

7 will gain access to a greater quantity of resources, workers, and operational efficiencies; thereby
8 allowing West Virginia businesses to remain competitive within the national and international
9 marketplaces.

10 (3) It is in the best interest of the state to encourage broadband development so that West
11 Virginia citizens—regardless of location and economic background—may have the same access
12 to remote educational opportunities.

13 (b) The Legislature declares that facilitating the expansion of the state’s broadband
14 infrastructure is a necessity for future economic development and it directly and indirectly serves
15 the public interest of the citizens of the state. As a result, the purpose of the WVBDP is to
16 encourage, improve, and develop broadband infrastructure within the state in order to:

17 (1) Drive innovation and job creation, promote population growth opportunities, and
18 expand markets for existing West Virginia businesses;

19 (2) Serve the ongoing and growing needs of West Virginia's education systems, health-
20 care systems, public-safety systems, industries, businesses, governmental operations, and
21 citizens; and

22 (3) Improve accessibility for underserved communities and populations—particularly for
23 educational purposes.

§5B-4-3. Definitions.

1 For the purposes of this article:

2 "Board" means a broadband development board, created pursuant to the provisions of this
3 article, that operates and maintains the broadband system: *Provided*, That a public agency or
4 each such public agency, as applicable, may appoint itself or themselves to serve as the board in
5 the official action taken to create the broadband system.

6 "Broadband infrastructure", "broadband system", "broadband services", or
7 "broadband" means any service-providing advanced telecommunication capability, wired or
8 wireless, that does not require the end-user to dial up a connection, that has the capacity to always

9 be on, that is suitable for real-time applications and services—such as voice-over Internet protocol
10 and video conferencing—with monthly usage capacity reasonably comparable to that of
11 residential terrestrial fixed broadband offerings in urban areas.

12 "Cost" or "costs" means, but shall not be limited to, the cost of acquisition, construction,
13 reconstruction, improvement, enlargement, betterment or extension of any broadband project,
14 including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues
15 relating thereto, the cost of labor and materials; the cost of land, land rights, rights-of-way and
16 easements, fees, permits, approvals, licenses, certificates, and the preparation of applications for
17 and securing the same; administrative, legal, engineering, and inspection expenses; financing
18 fees, expenses and costs; working capital; interest on bonds during the period of construction and
19 for such reasonable period thereafter as may be determined by the board; establishment of
20 reserves; and all other expenditures of the board, incidental, necessary, or convenient to the
21 acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of
22 any broadband project and the placing of the broadband project in operation.

23 "Emergency repairs" means repairs that, if not made immediately, will seriously impair the
24 use of the broadband system or cause danger to those persons in contact with the broadband
25 system.

26 "Net revenue" or "net revenues" means the revenues of the broadband system remaining
27 after the payment of the reasonable expense of operation, repair, and maintenance, such amount,
28 if bonds shall not have been issued and remain outstanding to be retained in a revenue fund or
29 capital improvement fund of the board and invested in the discretion of the board in investments
30 permitted for political subdivisions of the state, or alternatively if bonds shall have been issued and
31 remain outstanding, to be paid by the board into a sinking fund and/or reserve fund for such bonds,
32 at intervals to be determined by ordinance prior to issuance of the bonds or as determined
33 pursuant to any trust indenture executed in connection with such bonds, for: (1) The interest upon
34 such bonds as such interest shall fall due; (2) The necessary fiscal agency charges for paying

35 bonds and interest; (3) The payment of the bonds as they fall due, or, if all bonds mature at one
36 time, the proper maintenance of a sinking fund in such amounts as are necessary and sufficient for
37 the payment thereof at such time; and (4) A margin for safety and for the payment of premiums
38 upon bonds retired by call or purchase as herein provided, which margin, together with any
39 unused surplus of such margin carried forward from preceding years, shall equal 10% of all other
40 amounts so required to be paid into the sinking fund or reserve fund unless a different amount shall
41 be specified in the ordinance or trust indenture pursuant to which such bonds are issued. If bonds
42 shall have been issued and remain outstanding for the purpose of financing or refinancing
43 improvements to the broadband system there is hereby created and shall exist a lien upon the net
44 revenues of the broadband system to secure repayment of such bonds and a statutory mortgage
45 lien upon the components of the broadband system which were improved by the proceeds of such
46 bonds.

47 "Official action" means an ordinance or resolution, as appropriate in the circumstanced
48 enacted or adopted respectively by a municipality in accordance with the laws of the state or an
49 order entered by a county commission in accordance with the laws of the state.

50 "Public agency" or "public agencies" means any municipality, county commission,
51 municipal building commission, county building commission, or county or municipal development
52 authority duly created and validly existing pursuant to the laws of the state.

53 "Rate-paying residential customer" means a person who is connected to and actively
54 receiving residential broadband services from the board.

55 "Revenue" or "revenues" means all monies collected by the board in connection with the
56 operation of the broadband system.

57 "State" means the state of West Virginia.

§5B-4-4. Individual and joint powers of public agencies.

1 (a) Any powers, privileges, or authority of a public agency of this state relating to the costs
2 of a broadband system may be exercised individually or jointly with any other public agency of this

3 state, to the extent that the laws of the United States permit. Any agency of the state government,
4 when acting individually or jointly with any public agency, may exercise all of the powers,
5 privileges, and authority conferred by this program upon a public agency.

6 (b) Any public agency may individually design, acquire, construct, equip, improve, and
7 operate a broadband system and any public agency may enter into agreements with one or more
8 other public agencies for the purpose of undertaking the design, acquisition, construction,
9 equipping, improvement, and operation of a broadband system. Each public agency shall approve
10 the intergovernmental agreement by appropriate official action and thereupon file the same in the
11 office of the clerk of the county commission of each county which is a party to such agreement and
12 with the city clerk or recorder of each municipality which is a party to such agreement and no other
13 procedure, including but not limited to any public hearing or approval by the Attorney General of
14 West Virginia shall be necessary prior to such intergovernmental agreement taking effect.

15 (c) Counties constructing and operating broadband systems that are also intended to
16 serve municipalities, or parts thereof, shall obtain the prior written consent of the effected
17 municipalities prior financing or paying costs of portions of the broadband system which are
18 intended to be located within the boundaries of such municipality. Similarly, municipalities
19 constructing and operating broadband systems that are also intended to serve counties, or parts
20 thereof, shall obtain the prior written consent of the effected counties prior to financing or payment
21 costs of portions of the broadband system which are intended to be located within the boundaries
22 of such county.

23 (d) A public agency desiring to construct and operate a broadband system in order to
24 provide broadband service, or two or more public agencies acting jointly as herein provided, shall
25 approve and establish the same by official action duly taken by each such public agency, which
26 official action shall also provide that the broadband system shall be owned and operated by a
27 board which shall be an administrative agency or unit of the public agency or each such public
28 agency creating the same which board shall have such powers as hereinafter provided: *Provided,*

29 That such public agency may, in lieu of appointing a separate board, designate itself or
30 themselves, as applicable, as the board in which case the public agency or public agencies shall
31 thereafter have all powers provided for the board in this article.

32 (e) Any two or more public agencies which have taken official action to jointly create and
33 operate a broadband system through a common board may enter into an inter-governmental
34 agreement as to the organization and powers of the board which agreement may address the
35 following matters or such other items as the public agencies may determine:

36 (1) That the board is an administrative agency or unit of each such public agency creating
37 same;

38 (2) The permitted purpose or purposes of the board and its powers;

39 (3) The manner in which the public agencies are to appoint members of the board;

40 (4) The respective voting rights of each member of the board appointed by each public
41 agency;

42 (5) Approving the bylaws and any rules of procedure which are to be utilized by the board
43 and the manner of amending the same;

44 (6) The duration of existence of the board;

45 (7) The manner in which the assets, liabilities, income and loss, if any, of the board are to
46 be allocated to the public agencies creating the board during its term of operation or upon its
47 termination or other dissolution;

48 (8) The manner in which the board is to finance its operations and capital improvements
49 and of establishing and maintaining a budget therefor;

50 (9) The permissible methods for partial or complete termination of the agreement and for
51 disposing of property upon such partial or complete termination;

52 (10) The manner of acquiring, holding, and disposing of real and personal property of the
53 board; and

54 (11) Any other necessary and proper matters.

55 (f) Any such intergovernmental agreement may be amended to include additional public
56 agencies by consent of two thirds of the signatories to the agreement, if no terms of agreement are
57 changed, otherwise a new agreement with the new public agency shall be drawn. Where only two
58 public agencies come together to form a board, both parties must consent to the amendment of
59 the agreement to include additional public agencies.

60 (g) A public agency which enters into an intergovernmental agreement made hereunder
61 shall not offer or provide broadband services in competition with another public agency entering
62 into such agreement.

63 (h) A public agency which enters into an intergovernmental agreement made hereunder
64 shall not withdraw from the agreement until such time as the outstanding bonded indebtedness of
65 the broadband system is retired without first obtaining the prior written consent of all bondholders
66 affected thereby.

§5B-4-5. Joint development between public agencies.

1 (a) The Legislature hereby finds and declares that the citizens of this state would benefit
2 from coordinated, economic-development efforts for broadband infrastructure and that to
3 encourage cooperation and coordination, the board established by one or more public agencies
4 should be authorized to own all of the partnership, ownership, and membership interests in a
5 broadband system, for the sole purpose of undertaking jointly through their joint ownership
6 through the board of all partnership, ownership, or membership in the broadband system, any
7 project or projects established pursuant to this program and the payment of all costs in connection
8 with same.

9 (b) The board formed by two or more public agencies may directly hold all of the
10 partnership, ownership, or membership interests in a broadband system or alternatively such
11 board may form a corporation or limited liability company, hold all of the ownership or membership
12 interests therein and own and operate such broadband system through such jointly owned
13 corporation or limited liability company in which case all references herein to the board shall also

14 be deemed to be a reference to such corporation or limited liability company and in such case the
15 corporation or limited liability formed for such purpose shall have all the powers and duties of a
16 board hereunder.

17 (c) To the extent consistent with and not prohibited by or in conflict with the restrictions and
18 limitations on, or the rights and attributes of a broadband system as set forth in this section, the
19 applicable general law governing partnerships, corporations, or limited liability companies govern
20 the organization, existence, duration, powers, governance, and dissolution of a partnership,
21 corporation, or limited liability company formed by a board to operate a broadband system as
22 herein provided as well as the rights and responsibilities of the partners, owners, or members of a
23 broadband system.

24 (d) For West Virginia tax purposes, a broadband system which is either directly owned and
25 operated by a board or alternatively through a partnership, corporation or limited liability company
26 as provided herein is deemed to be public property and as such the income generated therefrom
27 as well as the sale of the services provided by the broadband system shall be exempt from all
28 state, county, municipal, and other local income, sales, and property taxation.

§5B-4-6. Furnishing of funds, personnel, or services.

1 Any public agency acting individually to own and operate a broadband system, or
2 alternatively entering into an intergovernmental agreement with other public agencies for such
3 purpose as provided in this article, may appropriate public funds and may sell, lease, give, or
4 otherwise supply to the broadband system created such personnel, services, or property of the
5 public agency which is needed for the operation of such broadband system without the need to
6 undertake a public bidding or auction process to do so and without the need to receive and
7 consideration for such transfer.

§5B-4-7. Department of highways.

1 No public agency or board created hereunder shall place any portion of a broadband
2 system on land owned or a public right-of-way held by the West Virginia Department of

3 Transportation, Division of Highways or other appropriate state agency which is used for the
4 operation of a road or highway for motor vehicle transportation without obtaining the advance
5 written consent of the Division of Highways, unless otherwise provided by law.

§5B-4-8. Broadband development boards.

1 (a) Any public agency which has taken official action to create a broadband system as
2 herein provided shall also in such official action provide for the appointment of a board for the
3 purpose of owning and operating the broadband system: *Provided*, That the public agency may
4 designate itself to act as the board in lieu of appointing a separate board. The board shall consist
5 of not less than five persons, selected by the public agency. When the board is organized by more
6 than one public agency, each participating public agency shall appoint at least one member. At
7 least one half of the membership of the board must be made up of rate-paying customers of the
8 broadband system. All other members of the board must be residents of the state but may be
9 selected based upon knowledge and skill which is determined by the public agency making the
10 appointment to be useful in the operation of a broadband system. Each term of office of a member
11 of the board shall be four years: *Provided, however*, That the terms of office shall be staggered as
12 provided in the bylaws of the board and the initial appointments to the board may be for terms less
13 than four years in order to provide for staggered terms. Each member of the board shall take an
14 oath of office to uphold the constitution of the state and to faithfully discharge their duties as a
15 member of the board as provided in this article and the governing documents of the board. Each
16 member of the board shall serve until their successor shall have been appointed and qualified for
17 office.

18 (b) When the board is organized by more than one public agency, the manner of selection
19 of the board members and terms of office shall be set forth in the intergovernmental agreement
20 provided for by this article. At the first meeting of the board in each calendar year or as soon
21 thereafter as may be practical, the board shall elect one of its members as president, one as
22 treasurer, and one as secretary. Each member shall have one vote in any matter that comes

23 before the board for decision. However, when the board is organized by more than one public
24 agency, the public agencies shall, in the intergovernmental agreement providing for the
25 organization of the broadband system, set forth any special voting rights.

26 (c) For the purpose of operating as a board, as provided in this article, the powers,
27 authorities, and privileges of a board shall include, but are not limited to, the following:

28 (1) To accept by gift or grant from any person, firm, corporation, partnership, limited liability
29 company, other business entity, trust or foundation, or from this state, or any other state, or any
30 political subdivision or municipality thereof, or from the United States, any funds or property or any
31 interest therein for the uses and purposes of the broadband system and to hold title thereto in trust
32 or otherwise and to bind the board to apply the same according to the terms of such gift or grant;

33 (2) To sue and be sued;

34 (3) To enter into franchises, contracts and agreements with this or any other state or the
35 United States or any municipality, political subdivision or authority thereof, or any of their agencies
36 or instrumentalities, or any public or private person, partnership, association, corporation, limited
37 liability company or other business entity organized in this state or any other state or the United
38 States, and this state and any such municipality, political subdivision, authority, or any of their
39 agencies or instrumentalities, and any such public or private person, partnership, association,
40 corporation, limited liability company or other business entity is hereby authorized to enter into
41 contracts and agreements with such board for any term not exceeding 40 years for the planning,
42 development, construction, acquisition, maintenance, or operation of any facility or component of
43 the broadband system or for any service rendered to, for, or by said board;

44 (4) To borrow money and evidence the same by warrants, notes, or bonds as hereinafter
45 provided in this article, and to refund the same by the issuance of refunding obligations;

46 (5) To acquire land and interests in land by gift, purchase, exchange, or eminent domain,
47 such power of eminent domain to be exercised within or without the boundaries of the board's
48 service area which shall include the boundaries of each public agency creating the board in

49 accordance with provisions of §54-2-1 et seq. of this code;

50 (6) To acquire by purchase or lease, construct, install, and operate facilities for the
51 provision of broadband services and to own and hold such real and personal property, fixtures and
52 equipment as may be necessary to carry out the purposes of this article;

53 (7) To sell, lease, or exchange any of its real or personal property upon such terms and for
54 such consideration as the board may determine appropriate in its sole discretion without any
55 requirement for a public hearing or a public auction process so long as the board first makes a
56 finding that such is in the best interests of the customers of the broadband system and in
57 furtherance of the purposes of this article.

58 (8) To have the general management, control, and supervision of all the business, affairs,
59 property and facilities of the broadband system, and of the construction, installation, operation,
60 and maintenance of broadband system improvements, and to establish regulations relating
61 thereto;

62 (9) To hire and retain agents, employees, engineers, and attorneys and to determine their
63 compensation. The board shall select and appoint a general manager who shall serve at the
64 pleasure of the board. The general manager shall have training and experience in the supervision
65 and administration of the system or systems operated by the board and shall manage and control
66 the broadband system under the general supervision of the board. All employees, servants and
67 agents of the board shall be under the immediate control and management of said general
68 manager. The general manager shall perform all such other duties as may be prescribed by the
69 board and shall give the board a good and sufficient surety company bond in a sum to be set and
70 approved by the board. The board may also require that any other employees be bonded in such
71 amount as it shall determine. The cost of said bonds shall be paid out of the funds of the
72 broadband system;

73 (10) To adopt and amend rules and regulations for the operation of the broadband system
74 which are not in conflict with the constitution and laws of this state or of the United States, which

75 the board deems necessary for the carrying on of the business, objects and affairs of the board
76 and of the broadband system;

77 (11) To hire companies or service providers to operate and maintain the broadband system
78 or any component thereof or to provide any services or expertise in connection therewith and to
79 enter into operation and maintenance agreements for said purposes. The board may enter into
80 such arrangements and related agreements upon such terms and for such consideration as the
81 board may determine appropriate in its sole discretion without any requirement for a public hearing
82 or a public auction process so long as the board first makes a finding that such is in the best
83 interests of the customers of the broadband system and in furtherance of the purposes of this
84 article; and

85 (12) To have and exercise all rights and powers necessary or incidental to or implied from
86 the specific powers granted herein. Such specific powers shall not be considered as a limitation
87 upon any power necessary or appropriate to carry out the purposes of this article.

§5B-4-9. Board fiscal year; meetings and audits.

1 (a) Unless otherwise provided by the official action which created the board, the board
2 shall operate on a fiscal year basis which begins each July 1 and ends on the following June 30
3 except that the first fiscal year of the board will begin on the creation date of the board and end on
4 the following June 30.

5 (b) The board of the broadband system shall meet as often as the needs of the broadband
6 system requires but not less frequently than on a quarterly basis. The minutes of each meeting of
7 the board shall be filed with the governing body of each public agency which created the board as
8 soon as reasonably practical following the approval of such minutes by the board.

9 (c) The board shall cause to be made an annual audit of the financial records of the
10 broadband system by either the West Virginia Auditor's Office or a certified public accountant or
11 firm of certified public accountants. The cost of said audit may be paid from the revenues of the
12 broadband system. The board shall file the audit report with each public agency that created the

13 board as soon as reasonably practical following the filing and acceptance of such report with the
14 board.

§5B-4-10. Acquisition by condemnation.

1 For the purpose of acquiring any lands, rights, or easements deemed necessary or
2 incidental for the purposes of the broadband system, the Board shall have the right of eminent
3 domain within or without the boundaries of each public agency to the same extent and to be
4 exercised in the same manner as now or hereafter provided by law for such right of eminent
5 domain by public agencies: *Provided*, That the power of eminent domain provided in this section
6 does not extend to highways, road, or drainage easements owned or operated by the West
7 Virginia Division of Highways without the express agreement of the Commissioner of Highways.

§5B-4-11. Competitive bids.

1 (a) The board shall, except as provided in subsection (b) of this section, solicit or require
2 solicitation of competitive bids and require compliance with §21-1C-1 *et seq.* of this code for every
3 construction project for the purpose of building, constructing, or equipping components of the
4 broadband system funded pursuant to this article exceeding \$100,000 in total cost.

5 (b) Following the solicitation of the bids, the construction contract shall be awarded to the
6 lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond:
7 *Provided*, That the board soliciting the bids may reject all bids and solicit new bids on the project.

8 (c) No officer or employee of this state or of any public agency, public authority, public
9 corporation, or other public entity, and no person acting or purporting to act on behalf of such
10 officer or employee or public entity shall require that any performance bond, payment bond, or bid
11 bond required or permitted by this section be obtained from any particular surety company, agent,
12 broker, or producer.

13 (d) This section does not:

14 (1) Apply to work performed on construction projects not exceeding a total cost of
15 \$100,000 by regular full-time employees of the board: provided, that no more than \$100,000 shall

16 be expended on an individual project, in a single location, within a 12 month period;

17 (2) Prevent students enrolled in vocational educational schools from being used in
 18 construction or repair projects when such use is a part of the students' training program;

19 (3) Apply to emergency repairs to the broadband system; or

20 (4) Apply to any situation where the board comes to an agreement with volunteers, or a
 21 volunteer group, by which the board will provide construction or repair materials, architectural,
 22 engineering, technical, or any other professional services, and the volunteers will provide the
 23 necessary labor without charge to, or liability upon, the board: *Provided*, That the total cost of the
 24 construction or repair projects does not exceed \$100,000.

§5B-4-12. Costs.

1 The costs of any broadband system acquired or constructed under the provisions of this
 2 article shall be deemed to include, but shall not be limited to, the cost of acquisition, construction,
 3 reconstruction, improvement, enlargement, betterment or extension of any broadband project,
 4 including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues
 5 relating thereto, the cost of labor and materials; the cost of land, land rights, rights-of-way and
 6 easements, fees, permits, approvals, licenses, certificates, and the preparation of applications for
 7 and securing the same; administrative, legal, engineering, and inspection expenses; financing
 8 fees, expenses and costs; working capital; interest on bonds during the period of construction and
 9 for such reasonable period thereafter as may be determined by the board; establishment of
 10 reserves; and all other expenditures of the board, incidental, necessary, or convenient to the
 11 acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of
 12 any broadband project and the placing of the broadband project in operation.

§5B-4-13. Revenue bonds.

1 (a) For constructing or acquiring any broadband system as provided in this article, or
 2 necessary or incidental thereto, and for constructing improvements and extensions thereto, and
 3 also for reimbursing or paying any costs incurred by the board, the board of any such broadband

4 system is hereby authorized to borrow money from time to time and in evidence thereof issue the
5 revenue bonds, notes or other obligations of such broadband system.

6 (b) Such revenue bonds or other obligations are hereby made a lien on the net revenues
7 produced from the operation of the broadband system as well as a statutory mortgage lien on all
8 real and personal property improved or acquired with the proceeds of such bonds or other
9 obligations but shall not be general obligations of the public agencies organizing the broadband
10 system or of the board. All revenue bonds or other obligations issued under this article shall be
11 signed by the president of the Broadband Development Board and attested by the secretary of the
12 Broadband Development Board and shall contain a recital stating that the same are issued
13 pursuant to the authority of this article and the resolution or resolutions of the board and that they
14 are to be paid by the board solely from the net revenues derived from the operation of the
15 broadband system and not from any other fund or source and that said bonds are negotiable
16 instruments under the laws of the state.

17 (c) Such bonds or other obligations may be issued in one or more series, may bear such
18 date or dates, may mature at such time or times not exceeding 40 years from their respective
19 dates, may bear interest at a rate not exceeding 12% per annum, may be payable at such times,
20 may be in such form, may carry such registration privileges, may be payable at such place or
21 places, may be subject to such terms of redemption with or without premium, may be declared or
22 become due before the maturity date thereof, may be authenticated in any manner, and upon
23 compliance with such conditions, and may contain such terms and covenants as may be provided
24 pursuant to the resolution or resolutions of the board authorizing the issuance of such bonds or in
25 any trust indenture executed in connection with the issuance of such bonds.

26 (d) Notwithstanding the form or tenor thereof, and in the absence of any express recital on
27 the face thereof, that the bond or other obligation is nonnegotiable, all such bonds or other
28 obligations shall be, and shall be treated as, negotiable instruments under the laws of the state.
29 Bonds or other obligations bearing the signatures of a board member on the date of the signing

30 thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof
31 any or all of the persons whose signatures appear thereon shall have ceased to be such members.

32 (e) Notwithstanding the requirements or provisions of any other law, any such bonds may
33 be negotiated or sold in such manner and at such time or times as is found by the board to be most
34 advantageous, and all such bonds or other obligations may be sold at such price or prices as may
35 be determined by the board. Any resolution or resolutions providing for the issuance of such bonds
36 or other obligations may contain such covenants and restrictions upon the issuance of additional
37 bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of
38 the bonds thereby authorized.

39 (f) The bonds or other obligations issued by the board shall be special, limited obligations
40 of the board, payable solely from and secured solely by the net revenues of the broadband system
41 and the remaining components of the trust estate which are pledged to the repayment of the bonds
42 or other obligations as may be described in a trust indenture executed in connection with the
43 issuance of such obligations. Neither the bonds or other obligations nor the interest thereon shall
44 ever constitute an indebtedness of the board within the meaning of any constitutional provision or
45 statutory limitation and shall never constitute or give rise to a pecuniary liability of the board.
46 Moreover, neither the bonds or other obligations nor the interest thereon shall constitute a charge
47 against the general credit or taxing power of the board, if any.

§5B-4-14. Trust indenture.

1 In the discretion and at the option of the board, such bonds or other obligations may be
2 secured by a trust indenture by and between the board and a corporate trustee, which may be a
3 trust company or bank having powers of a trust company within or without the state of West
4 Virginia. The resolution authorizing the bonds and fixing the details thereof may provide that such
5 trust indenture may contain such provisions for protecting and enforcing the rights and remedies of
6 bondholders as may be reasonable and proper, not in violation of law, including covenants setting
7 forth the duties of the board and its members, in relation to the construction, acquisition and

8 operation of the broadband system, and the improvement, extension, operation, repair,
 9 maintenance and insurance thereof, and the custody, safeguarding and application of all moneys,
 10 and may provide that all or any part of the construction work shall be contracted for, constructed
 11 and paid for, under the supervision and approval of consulting engineers employed or designated
 12 by the board and satisfactory to the original bond purchasers, their successors, assignees or
 13 nominees, who may be given the right to require the security given by contractors and by any
 14 depository of the proceeds of bonds or revenues of the broadband system or other money
 15 pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees.
 16 Such indenture may set forth the rights and remedies of the bondholders and such trustee.

§5B-4-15. Refunding revenue bonds.

1 The board having issued bonds under the provisions of this article is hereby empowered
 2 thereafter by resolution to issue refunding bonds for the purpose of retiring or refinancing such
 3 outstanding bonds or other obligations, together with any unpaid interest thereon and redemption
 4 premium thereunto appertaining and all of the provisions of this article relating to the issuance,
 5 security and payment of bonds or other obligations shall be applicable to such refunding bonds,
 6 subject, however, to the provisions of the proceedings which authorized the issuance of the bonds
 7 or other obligations to be so refunded.

§5B-4-16. Obligations exempt from taxation and legal investments.

1 (a) Said bonds or other obligations and the interest thereon shall be exempt from all
 2 taxation by the state of West Virginia or any county, municipality, political subdivision or agency
 3 thereof.

4 (b) Bonds or other obligations issued under the provisions of this article shall be legal
 5 investments for banks, building and loan associations, and insurance companies organized under
 6 the laws of this state and for a business development corporation organized pursuant to §31-14-1
 7 et seq. of the code.

§5B-4-17. Sinking funds.

1 At or before the time of the issuance of any bonds or other obligations under this article the
2 board shall by resolution or in the trust indenture, if any, provide for the creation of a sinking fund
3 and for monthly payments into such fund from the net revenues of the broadband system operated
4 by the board such sums in excess of the cost of maintenance and operation of such properties as
5 will be sufficient to pay the accruing interest and retire the bonds or other obligations at or before
6 the time each will respectively become due and to establish and maintain reserves therefor. All
7 sums which are or should be, in accordance with such provisions, paid into such sinking fund shall
8 be used solely for payment of interest and for the retirement of such bonds at or prior to maturity as
9 may be provided or required by such resolutions.

§5B-4-18. Collection of revenues and enforcement.

1 (a) The board of any such broadband system shall have power to insert enforceable
2 provisions in any resolution authorizing the issuance of bonds or other obligations relating to the
3 collection, custody and application of revenues of the board from the operation of the broadband
4 system under its control and to the enforcement of the covenants and undertakings of the board.

5 (b) In the event there shall be any default in the sinking fund provisions aforesaid or in the
6 payment of the principal or interest on any of such bonds or other obligations or, in the event the
7 broadband system or its board, or any of its members, agents, or employees, shall fail or refuse to
8 comply with the provisions of this article, or shall default in any covenant or agreement made with
9 respect to the issuance of such bonds or other obligations or offered as security therefor, then any
10 holder or holders of such bonds and any such trustee under the trust indenture, if there be one,
11 shall have the right by suit, action, mandamus, or other proceeding instituted in the circuit court for
12 the county or any of the counties wherein the broadband system extends, or in any other court of
13 competent jurisdiction, to enforce and compel performance of all duties required by this article or
14 undertaken by the board in connection with the issuance of such bonds or other obligations, and
15 upon application of any such holder or holders, or such trustee, such court shall, upon proof of
16 such defaults, have the power to appoint a receiver for the affairs of the board and its properties,

17 which receiver so appointed shall forthwith directly, or by his or her agents and attorneys, enter
 18 into and upon and take possession of the affairs of the board and the broadband system and each
 19 and every part thereof, and hold, use, operate, manage and control the same, and in the name of
 20 the board exercise all of the rights and powers of such broadband system as shall be deemed
 21 expedient, and such receiver shall have power and authority to collect and receive all revenues
 22 and apply the same in such manner as the court shall direct.

23 (c) Whenever the default causing the appointment of such receiver shall have been
 24 cleared and fully discharged and all other defaults shall have been cured, the court may in its
 25 discretion and after such notice and hearing as it deems reasonable and proper direct the receiver
 26 to surrender possession of the affairs of the broadband system to its board. Such receiver so
 27 appointed shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of the
 28 broadband system except as hereinbefore provided.

§5B-4-19. Statutory lien and foreclosure.

1 There shall be and is hereby created a statutory mortgage lien upon such components of
 2 the broadband system which are financed with the proceeds of bonds or other obligations that may
 3 be issued by the board from time to time, which shall exist in favor of the holders of bonds or other
 4 obligations hereby authorized to be issued, and each of them, and such broadband system shall
 5 remain subject to such statutory mortgage lien until payment in full of all principal of and interest on
 6 such bonds or other obligations.

§5B-4-20. Rates and charges.

1 (a) The board shall by appropriate resolution make provisions for the payment of said
 2 bonds or other obligations by fixing rates, fees and charges, for the use of all services rendered by
 3 the broadband system, which rates, fees and charges shall be sufficient to pay the costs of
 4 operation, improvement and maintenance of the broadband system, to provide an adequate
 5 depreciation fund, provide an adequate sinking fund to retire said bonds and pay interest thereon
 6 when due, and to create reasonable reserves for such purposes. Said fees, rates or charges shall

7 be sufficient to allow for miscellaneous and emergency or unforeseen expenses. The board shall
 8 maintain a working capital reserve in an amount of no less than one-eighth of all expenses
 9 incurred by the board on an annual basis: provided, this working capital reserve shall be separate
 10 and distinct from and in addition to (1) Any repair and replacement fund that may be required by
 11 bond covenants; and (2) Any other funds held by the board.

12 (b) The resolution of the board authorizing the issuance of revenue bonds or other
 13 obligations may include agreements, covenants or restrictions deemed necessary or advisable by
 14 the board to affect the efficient operation of the system and to safeguard the interests of the
 15 holders of the revenue bonds and to secure the payment of the bonds and the interest thereon.

§5B-4-21. Liabilities.

1 The board and the broadband system shall be exempt from liability from its customers of
 2 the broadband system for any failure or insufficiency of service of the broadband system other
 3 than failures or insufficiencies caused by the intentional acts or gross negligence of the board or
 4 any of its officers or employees. Additionally, utilities that operate and maintain rights of way and
 5 easements that are shared with the broadband system shall be exempt from liability for damages
 6 caused to the broadband system or service outages caused thereby which result from the routine
 7 operation, maintenance and installation activities of such utility relative to its own utility systems
 8 and infrastructure: *Provided*, That if a utility damages part of the broadband system, it shall be
 9 liable for the limited costs of repair or replacement of said damage.

§5B-4-22. Invalidity in part.

1 If any section or sections of this article be declared unconstitutional or invalid, this shall not
 2 invalidate any other section of this article.

§5B-4-23. Liberal construction.

1 This article is necessary for the public health, safety, and welfare and shall be liberally
 2 construed to effectuate its purposes.

NOTE: The purpose of this bill is to encourage, improve, and develop broadband infrastructure within the State in order to: (1) drive innovation and job creation, promote population growth opportunities, and expand markets for existing West Virginia businesses; (2) serve the ongoing and growing needs of West Virginia's education systems, health-care systems, public-safety systems, industries, businesses, governmental operations, and citizens; and (3) improve accessibility for underserved communities and populations—particularly for educational purposes.

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