

SB 748 S
(veto)

FILED

2007 APR -4 PM 7:36

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 748

(BY SENATORS UNGER, FANNING, JENKINS, LOVE,
STOLLINGS, WHITE, FACEMYER AND BARNES)

[Passed March 10, 2007; in effect from passage.]

FILED

2007 APR -4 PM 7:36

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 748

(BY SENATORS UNGER, FANNING, JENKINS, LOVE,
STOLLINGS, WHITE, FACEMYER AND BARNES)

[Passed March 10, 2007; in effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-4-1, §5B-4-2, §5B-4-3, §5B-4-4, §5B-4-5, §5B-4-6, §5B-4-7, §5B-4-8, §5B-4-9, §5B-4-10, §5B-4-11, §5B-4-12, §5B-4-13, §5B-4-14 and §5B-4-15, all relating to expanding technology infrastructure to provide broadband internet access throughout the State of West Virginia; creating the Electronic Telecommunication Open Infrastructure Act (ETOPIA); providing definitions for terms used in the article; setting forth legislative findings; requiring an inventory and mapping of the current availability of access to broadband communications in

this state; developing coordinated deployment and operation of technology infrastructure within this state; providing for technology infrastructure inventory, local government cooperation and inventory survey reporting requirements; authorizing emergency and legislative rules; prescribing the authority of the Secretary of Department of Administration; describing specific authorized disclosures of confidential information; creating Joint Legislative Oversight Commission on Transportation and Infrastructure; providing subpoena powers; providing for enforcement of subpoena power through a court of competent jurisdiction; prescribing the powers and duties of the Secretary of Commerce; establishing reporting requirements; authorizing secretary to provide technical and funding assistance to develop technology infrastructure; authorizing secretary to engage in consulting services for fee; authorizing contractual and joint venture agreements; providing for the liberal construction of article; utilizing broadband infrastructure, technology and information to enhance early childhood development; providing for the confidentiality of trade secrets and proprietary information; and providing for criminal penalties for unlawful disclosure of confidential information or data.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5B-4-1, §5B-4-2, §5B-4-3, §5B-4-4, §5B-4-5, §5B-4-6, §5B-4-7, §5B-4-8, §5B-4-9, §5B-4-10, §5B-4-11, §5B-4-12, §5B-4-13, §5B-4-14 and §5B-4-15, all to read as follows:

ARTICLE 4. ELECTRONIC TELECOMMUNICATION OPEN INFRASTRUCTURE ACT.

§5B-4-1. Short title.

1 This article may be cited as the Electronic
2 Telecommunication Open Infrastructure Act and may
3 be referred to as ETOPIA.

§5B-4-2. Definitions.

1 The following terms, wherever used or referred to in
2 this article, shall have the following meanings unless a
3 different meaning clearly appears from the context:

4 (1) "Broadband infrastructure" means all facilities,
5 hardware and software and other intellectual property
6 necessary to provide broadband services in this state,
7 including, but not limited to, voice, video and data.

8 (2) "Broadband services" means the services,
9 including, but not limited to, voice, video and data, that
10 provide capacity for transmission in excess of two
11 hundred kilobits per second in at least one direction,
12 regardless of the technology or medium used, including,
13 but not limited to, wireless, copper wire, fiber-optic
14 cable or coaxial cable.

15 (3) "Commission" means the Joint Legislative
16 Oversight Commission on Transportation and
17 Infrastructure established by the provisions of section
18 eleven of this article.

19 (4) "Department of Commerce" means the department
20 within the executive branch of West Virginia state
21 government established by the provisions of subdivision
22 (8), subsection (a), section two, article one, chapter five-
23 f of this code. It is headed by the Secretary of

24 Commerce, who is appointed by the Governor with the
25 advice and consent of the Senate.

26 (5) "E-business" means "electronic business" and
27 includes any business process that relies on automated
28 information systems that are principally performed
29 with web-based technologies. E-business involves
30 business processes spanning electronic purchasing and
31 supply-chain management, the processing of orders
32 electronically, the handling of customer service and
33 cooperation with business partners. Special technical
34 standards for e-business facilitate the exchange of data
35 between companies. E-business software solutions
36 allow the integration of intrafirm and interfirm business
37 processes. E-business can be conducted using the world
38 wide web (web), the internet, intranets, extranets or a
39 combination of these tools.

40 (6) "E-commerce" means "electronic commerce" or
41 any range of transactions that consists primarily of the
42 distributing, buying, selling, marketing and servicing of
43 products or services over an electronic system such as
44 the internet or other computer networks. The
45 information technology industry may view this activity
46 as an electronic business application aimed at
47 commercial transactions. In this context, e-commerce
48 can involve electronic funds transfer, supply-chain
49 management, e-marketing, online marketing, online
50 transaction processing, electronic data interchange
51 (EDI), automated inventory management systems and
52 automated data collection systems. Electronic
53 commerce typically uses the electronic communications
54 technology of the world wide web at some point in the
55 transaction's lifecycle, although electronic commerce
56 frequently depends on computer technologies other than

57 the world wide web such as databases and e-mail and
58 on other noncomputer technologies such as
59 transportation for physical goods sold via e-commerce.

60 (7) "E-government" means "electronic government"
61 or the use of telecommunications technology to
62 facilitate and provide for access by the public to:

63 (A) Proceedings and operations of government;

64 (B) Records and information regarding the programs
65 and services that are currently implemented or are to be
66 proposed or discontinued by a governmental entity;

67 (C) Any records, not otherwise exempt by law from
68 disclosure, that are kept by governmental entities and
69 that would otherwise be available through nonweb-
70 based means; and

71 (D) Transactions between the government and the
72 public such as a citizen's receipt and return of forms
73 and applications, including, but not limited to, driver's
74 license applications, the payment of fines or penalties or
75 the filing of taxes. "E-government" also includes the
76 use of telecommunications technology to facilitate and
77 provide for exchanges of information between separate
78 governmental entities, whether local, state or federal,
79 and the use of videoconferencing to conduct
80 governmental proceedings with remote participants,
81 including, but not limited to, the establishment of
82 telecourts that adequately provide for the protection of
83 the constitutional rights and privileges of persons
84 involved in civil or criminal litigation, such as
85 arraignments, hearings, conferences, trials and appeals
86 held before such tribunals, and allow for appropriate

87 rulings to be made with dispatch.

88 (8) "E-learning" means "electronic learning" or the
89 use of telecommunications technology to facilitate and
90 provide education, through lectures or other
91 instructional training, as well as providing access to
92 stored knowledge and information and other learning
93 resources. The most common application of e-learning
94 is asynchronous e-learning which uses web-based
95 learning modules but does not support real time
96 interaction between the instructor and the students and
97 other asynchronous functions that typically support the
98 learning environment. Synchronous e-learning requires
99 more bandwidth than asynchronous e-learning and
100 consists principally of online real-time lectures which
101 typically have to be joined by students at the time of
102 their delivery. Most demanding in terms of bandwidth
103 are forms of collaborative e-learning in which students
104 have to interact continuously to solve problems or
105 engage in other learning activities.

106 (9) "Facilitator" or "nonprofit facilitator" means a
107 nonprofit corporation or any other lawfully constituted
108 not-for-profit organization or entity that can:

109 (A) Ally itself with both public and private partners to
110 form a strategic alliance with governmental entities,
111 technology-minded companies, institutions of higher
112 learning and any other public and private entities that
113 support the growth and expansion of electronic access
114 to technology, technology planning, public policy and
115 public-relations; and

116 (B) Design a workforce recruitment plan that will
117 necessarily be required to construct and implement the

118 necessary broadband to which this state has committed,
119 i.e., to provide access to the internet for all of the
120 citizens of this state.

121 (10) "Information equipment" includes central
122 processing units, front-end processing units,
123 miniprocessors, microprocessors and related peripheral
124 equipment such as data storage devices, networking
125 equipment, services, routers, document scanners, data
126 entry equipment, terminal controllers, data terminal
127 equipment, computer-based word processing systems
128 other than memory typewriters;

129 (11) "Information systems" mean computer-based
130 information equipment and related services designed
131 for the automated transmission, storage, manipulation
132 and retrieval of data by electronic or mechanical means;

133 (12) "Information technology" means data processing
134 and telecommunications hardware, software, services,
135 supplies, personnel, maintenance and training and
136 includes the programs and routines used to employ and
137 control the capabilities of data processing hardware.

138 (13) "Local government" means any municipality,
139 county, metro or regional government, or other political
140 subdivision of the state of West Virginia.

141 (14) "Person" means an individual, corporation,
142 limited or general partnership, joint venture, limited
143 liability company or a government entity, including
144 state authorities, municipalities, counties, police, fire
145 and other public safety organizations, judicial entities,
146 medical entities, schools, colleges, universities,
147 hospitals, libraries, community centers and local

148 economic development entities. Except to the extent
149 that state authorities, police, fire, and other public
150 safety organizations, judicial entities, medical entities,
151 schools, colleges, universities, hospitals and libraries
152 may constitute state entities, "person" does not include
153 the State of West Virginia.

154 (15) "Public body" means a governmental entity or
155 institution and its employees, including, but not limited
156 to, any department, division, agency, bureau, board,
157 commission, court of law in its nonjudicial functions
158 only, council, institution, spending unit, authority or
159 other instrumentality thereof of whatever description of
160 the State of West Virginia, or any county commission, or
161 any county board of education, or any incorporated
162 municipality, metro or regional government or any
163 other political subdivision;

164 (16) "Technology infrastructure" means information
165 systems, information technology, information
166 equipment and facilities, equipment, lines and services
167 designed for or used for the transmission, emission or
168 reception of signs, signals, writings, images or sounds of
169 intelligence of any nature by wire, radio, microwave or
170 other electromagnetic or optical systems, related
171 hardware, software and programming and specifically
172 including, but not limited to, all features, facilities,
173 equipment, systems, functions, programming and
174 capabilities and technical support used by:

175 (A) A cable operator;

176 (B) A commercial mobile service carrier;

177 (C) An open video system operator;

178 (D) A satellite carrier;

179 (E) A telecommunications carrier;

180 (F) Any other wireless carrier, providing current
181 generation broadband services or next generation
182 broadband services to subscribers through such
183 qualified equipment; or

184 (G) Any carrier or operator using any other
185 technology.

186 (17) "Telecommuting" means not only telecommuting,
187 but also includes or is related to "e-commuting",
188 "e-work", "telework" or "working from home" through
189 an arrangement under which the employee enjoys
190 limited flexibility in working location and hours and
191 avoids commuting to a central place of work by
192 utilizing telecommunication links. Telework is a
193 broader term, referring to substituting
194 telecommunications for any form of work-related
195 travel, thereby eliminating the distance restrictions of
196 teleworking. A telecommuting program requires a
197 management style which is based on results and not on
198 close scrutiny of individual employees.

199 (18) "Telemedicine" means the use of
200 telecommunications technology to facilitate and
201 broaden the application of the practice of medicine,
202 thus enabling healthcare providers to deliver health
203 care services from a distance, including, but not limited
204 to, diagnosis, consultation, treatment, transfer of
205 medical data, use of remote medical instruments and
206 equipment and generally establishing a convenient
207 means of delivering medical services to patients for

208 whom such services might otherwise be unavailable. In
209 addition to clinical applications, telemedicine also
210 includes web-based information and communications
211 technology that can provide education (including
212 continuing education programs) and reduce the
213 administrative costs of health care providers.

§5B-4-3. Legislative findings generally.

1 The Legislature finds as follows:

2 (1) It is a primary goal of this state, by the year two
3 thousand ten, to make every municipality, community
4 and rural area in this state, border to border, accessible
5 to the internet through the expansion and extension of
6 broadband services and technology.

7 (2) An increased availability of broadband through an
8 advanced technology infrastructure will allow more
9 West Virginians to connect with the "information
10 super-highway" of the internet at high speeds. With
11 current technology infrastructure, West Virginia can
12 feasibly take action to assure that all of its citizens will
13 have access to broadband services through cable
14 television or telephone networks that support two-way
15 communications using cable modems or telephone lines
16 and also by utilizing wireless mobile technologies,
17 satellite transmissions and other means of
18 communication. Ultimately, other means of achieving
19 higher speed connections will be conceived, evolved and
20 made available for use as conduits for the transmission
21 and diffusion of data, information and knowledge.
22 West Virginia must be positioned to be on the edge of
23 each such development.

24 (3) Access to broadband services and the
25 accompanying applications of broadband technology
26 will provide the State of West Virginia with the capacity
27 to foster or support new economic and social
28 opportunities and developments locally, regionally,
29 nationally and internationally.

30 (4) In achieving this primary goal of maximizing
31 internet accessibility, particular concerns of the
32 Legislature and the executive branch of government
33 should be concentrated on and directed toward those of
34 our citizens who are located in rural areas of the state
35 where access appears to be geographically or physically
36 difficult or economically impracticable. An idealized
37 achievement of this primary goal would equalize
38 internet availability to all of our citizens and
39 communities, give them access to the internet regardless
40 of their location, provide them with the knowledge,
41 information and technology available on the internet
42 and expose them to a myriad of other broadband digital
43 applications and services with their attendant benefits.

44 (5) The development of broadband and its diffusion to
45 residential subscribers is still in the early stages and the
46 market is far from mature. The expansion of broadband
47 into unserved areas of the state requires capital
48 investments for financing, for building the appropriate
49 technology infrastructure and for providing the services
50 and applications that can carry high speed data, quality
51 video and voice traffic. Deployment costs are high,
52 particularly in remote and scarcely populated areas. In
53 these circumstances, private operators often do not offer
54 broadband because it is not perceived as profitable to
55 do so. This presents a territorial gap in broadband
56 coverage, with urban households and businesses having

57 ready options and access to broadband while rural
58 population areas may have no options for access.

59 (6) The primary goal of subdivision (1) of this section
60 may be achieved by the legislative and executive
61 branches of state government by:

62 (A) Aggressively expanding and extending broadband
63 and other telecommunications services;

64 (B) Creating incentives for private and nonprofit
65 entities to establish broadband and other
66 telecommunications services;

67 (C) Undertaking telecommunications planning at the
68 local, regional and state levels and requiring that in
69 such planning, that the participants shall include: (i)
70 Citizens and organizations representing and speaking
71 on behalf of the public; (ii) officers of, or spokesmen for,
72 any involved or affected governmental body; and (iii)
73 representatives of various private sectors, including, but
74 not limited to, representatives of industry and
75 commerce, health care and education and research;

76 (D) Removing barriers to the full deployment of
77 broadband digital applications and services and
78 providing incentives for the removal of those barriers;
79 and

80 (E) Removing barriers to public-private partnerships
81 in areas of the state where business entities in the
82 private sector are unable to economically justify capital
83 investments in the technology infrastructure.

84 (7) There is little doubt that rapid growth of the

85 internet is increasingly altering and driving our country
86 in terms of commerce, learning, medicine and other
87 fields so that information technology offers increased
88 economic opportunities, higher living standards,
89 increased health, better education, more individual
90 choices and wider and more meaningful participation in
91 government and public life. The past decade has
92 brought considerable advancement in
93 telecommunications and the way people communicate
94 worldwide. Accordingly, telecommunications in
95 general, and the internet in particular, are becoming
96 increasingly important to the efficient and effective
97 operation of both private and public sector entities.
98 With the advent of the internet and its applications to
99 e-business, e-commerce, e-government, telemedicine, e-
100 learning, telecommuting and media and entertainment,
101 the ability of people in all parts of this state to access
102 the internet has become an important component in the
103 ability of the state and its people and institutions to
104 remain competitive in the information-based global
105 economy.

106 (8) At the same time, however, progress by market
107 forces and industry should be respected and
108 governmental assistance and funding should be focused
109 on areas and persons remaining unserved and not
110 displace accessible and generally competitively priced
111 broadband services in areas already served or where
112 industry is expected to offer accessible and generally
113 competitively priced broadband services by the end of
114 the next following calendar year.

**§5B-4-4. Legislative findings related to business, commerce
and industry.**

1 With regard to the projected impact of internet access
2 on business, commerce and industry, the Legislature
3 finds that there is a need to create and develop a
4 foundation and structure for “e-business” or “electronic
5 business” and for “e-commerce” or “electronic
6 commerce” as defined in section two of this article.

7 (1) That a private nonprofit facilitator, in partnership
8 with government and private enterprise, will best
9 enable the implementation of a legislative plan to
10 expand and extend the boundaries of technology-based
11 business and enhance West Virginia’s future workforce;

12 (2) That a broadband alliance formed by a nonprofit
13 facilitator and other entities should be focused on
14 building and sustaining a vital West Virginia economy
15 through job creation and improved business processes,
16 technology, education and advocacy;

17 (3) That a significant part of the mission of a nonprofit
18 facilitator is to promote technology-based economic
19 development for the state by fostering collaboration
20 among the leadership of public and private companies,
21 government agencies and institutions of higher
22 education and that by working with these entities the
23 private nonprofit facilitator will enable the State of
24 West Virginia to create more effective manufacturing
25 processes, improve communications, increase efficiency,
26 expand market opportunities and develop corporate
27 growth strategies;

28 (4) That our modern economy is driven by processes
29 and goods with high technical content and superiority,
30 competitiveness and progress and such an economy
31 relies upon a highly trained technical workforce.

32 (5) That the citizens of West Virginia now live and
33 work in the midst of an economic and cultural
34 environment that connects the world through advanced
35 communications and information technology and,
36 accordingly, progressive policies and the innovative use
37 of technology present the State of West Virginia with an
38 opportunity to thrive in this new environment;

39 (6) That in order to compete and thrive, West Virginia
40 must proactively improve the ability of its citizens and
41 businesses to adopt and use advantageous resources;
42 and

43 (7) That the use of computers, the internet and related
44 technologies advance the development of the skills that
45 fuel a progressive economy and, increasingly, companies
46 will choose locations and hire workers based upon the
47 availability of workers who possess technologically
48 centric skills and resources.

§5B-4-5. Legislative findings related to access to government.

1 (a) The Legislature finds that access to government
2 information is fundamental to our democratic society.
3 Streamlining state and local government processes
4 through internet-based tools has proven to be a highly
5 effective and cost-efficient way to improve services.

6 (b) E-government can:

7 (1) Permit the resources, services and nonsecure
8 information of an agency of government to be promptly
9 and easily electronically accessed by other
10 governmental entities or by constituents of government,
11 thus allowing those governmental bodies and their

12 constituents to efficiently and economically interact;

13 (2) Facilitate communications and transactions
14 between state and local government bodies with
15 vendors or contractors who provide goods or services to
16 governmental entities or to private programs funded by
17 public moneys;

18 (3) Ensure that West Virginia's governmental officers
19 and employees who deal directly with the public,
20 wherever located in the state, have access to high-speed
21 internet connectivity so that their electronic access will,
22 for example, speed up license renewals, provide online
23 employment information and improve overall service
24 levels.

25 (c) As state and local governments provide an
26 increasing number of services online, the ability to
27 access them through a faster connection becomes
28 paramount. Government, in partnership with an
29 alliance of a private nonprofit facilitator and other
30 entities, must take the lead in developing e-government
31 solutions, in reducing administrative costs and in
32 increasing access to services and the demand for
33 broadband internet applications. As a technology-
34 based resource in those situations where private
35 investment in infrastructure is not available, a public-
36 private partnership with a facilitator can keep
37 government officials apprised of policy issues and build
38 citizen participation through the development of new
39 applications, emergency preparedness information,
40 employment opportunities and links to other valuable
41 governmental resources.

**§5B-4-6. Legislative findings related to health care or
"telemedicine".**

1 The Legislature finds as follows:

2 (1) New technologies are enabling doctors to view and
3 send medical images from any location with access to
4 broadband services securely and quickly.

5 (2) Broadband access can reduce the disadvantages of
6 physical remoteness from cities, connecting rural health
7 care providers with potentially life-saving information.
8 In addition, consumers can use the internet to search for
9 health care information that was previously only
10 available by visiting their health care provider.

11 (3) The cost for health care providers to offer services
12 steadily increases, while the amount of revenue remains
13 flat or even decreases. As hospitals and physicians look
14 for ways to lower costs, broadband applications provide
15 efficiencies and cost-saving opportunities. Broadband
16 connectivity can improve the quality of services and
17 profits for health care providers where reliability is
18 essential, speed is important and cost is a defining
19 factor. High-bandwidth connections enhance the
20 dependability of web-based mission-critical
21 applications, reducing some of the cost and burden of
22 providing care. Ultimately, improved service levels are
23 the key to quality of life for both patients and
24 physicians.

§5B-4-7. Legislative findings related to e-learning.

1 The Legislature finds as follows:

2 (1) State, business and education leaders use
3 information obtained through broadband
4 communications in the design of their plans for
5 enhancing West Virginia's competitiveness in the

6 networked world.

7 (2) Access to information technology in West Virginia
8 will enhance the state's competitiveness in the
9 networked world by creating a better understanding of
10 the existing technological infrastructure, the
11 availability of access to that infrastructure and how it
12 is being used today.

13 (3) Education leaders recognize the important role
14 information technology and broadband technologies
15 will play in the long-term success of the state's
16 economy. Through the adoption of new technologies,
17 education resources can be made available to our
18 citizens, even in the most rural parts of West Virginia.

**§5B-4-8. Legislative findings related to early childhood
development.**

1 The Legislature finds as follows:

2 (1) Developing and utilizing broadband applications
3 that will allow internet users to interact with
4 educational programs (e-learning) and to connect with
5 other online databases, such as e-commerce and
6 telemedicine, will require capital investments and the
7 commitment of other resources, both public and private,
8 in these new and evolving information and
9 communication technologies.

10 (2) Establishing a broadband connection at a local
11 school will enable students to gain access, in the
12 classroom, to the knowledge and resources available on
13 the internet and, through high-speed cable, DSL,
14 wireless or other means, will enable students access
15 outside of the classroom. Broadband infrastructure will

16 enable a school to provide interactive programs that
17 project information and training related to early
18 childhood development directly into the homes and
19 families of children from birth to age eight in the
20 school's community.

21 (3) Mandating that the availability of broadband
22 access is a public or private service for all communities
23 and rural areas in this state requires recognition that
24 the ongoing financial support and resources of
25 governmental and private entities must include the
26 costs of providing such access within their support and
27 funding for education, social services, administration
28 and other services.

29 (4) As efforts to continue developing and providing
30 broadband infrastructure, information technologies and
31 appropriate applications of technologies impact the
32 area of early childhood development, this article should
33 be implemented in cooperation and partnership among
34 the Department of Commerce, the Department of
35 Education and the Department of Health and Human
36 Resources.

**§5B-4-9. Technology infrastructure needs assessment,
inventory and mapping; agency and local
government cooperation; information gathering;
reporting requirements; rule-making authority;
and provision of broadband technology to
families with children from birth to age eight.**

1 (a) The state encourages the coordinated deployment
2 and operation of technology infrastructure for present
3 and future use. Therefore, it is necessary for the state to
4 maintain an ongoing, continually updated record of the
5 nature and extent of its technology infrastructure

6 comprised of information systems, information
7 equipment and information technology, the demands on
8 its technology infrastructure and those governmental
9 entities which use or desire to use the resources of the
10 technology infrastructure providing information
11 services, cable service, advanced services, broadband
12 services, internet, internet protocol enabled services,
13 telecommunications services or similar services or
14 support.

15 (b) The Secretary of the Department of
16 Administration shall develop systems and processes for
17 maintaining accurate information on the state of the
18 technology infrastructure in the state on an ongoing
19 basis and conduct an infrastructure resources survey of
20 the deployment and operation of technology
21 infrastructure in this state. The secretary shall
22 determine the form and format of the information
23 submitted, and the availability of the results of
24 inventory and mapping, including the use of electronic
25 submissions.

26 (c) To facilitate the infrastructure resources survey,
27 the Secretary of the Department of Administration shall
28 propose emergency and legislative rules in accordance
29 with article three, chapter twenty-nine-a of this code.
30 These rules may include:

31 (1) The manner of reporting the technology
32 infrastructure information;

33 (2) Promulgation of a form or forms for reporting
34 purposes;

35 (3) A means of providing training to individuals
36 responsible for the completion and submission of the

37 information on the proposed form;

38 (4) A means of reporting back to individual
39 participating public bodies, from time to time, at the
40 request of a public body, on findings specific to that
41 body to allow the public body to evaluate independently
42 the information provided;

43 (5) A limitation that the information is to be used
44 solely for the purposes of this article;

45 (6) Safeguards to protect the confidential information
46 as provided in section ten of this article;

47 (7) Methodology for collection of information and the
48 analysis of the information;

49 (8) Protocols for an annual update of the
50 infrastructure resources survey including information
51 collection, analysis and reporting thereof by the
52 Department of Administration; and

53 (9) A policy to encourage businesses and to require
54 state and local government agencies to report to the
55 Chief Technology Officer on donations of information
56 technology to educational facilities, nonprofit
57 organizations and members of the public, including
58 without limitation, a description of each item donated
59 and identification of the recipient.

60 (d) Every public body shall complete an infrastructure
61 resources survey no later than the first day of October,
62 two thousand seven, and a survey each year thereafter
63 as provided in rules promulgated pursuant to this
64 section.

65 (e) The Secretary shall file annually a report with the
66 Joint Legislative Oversight Commission on
67 Transportation and Infrastructure created in section
68 eleven of this article. The report shall generally advise
69 the Joint Oversight Commission on Transportation and
70 Infrastructure about the deployment and operation of
71 technology infrastructure in this state and to make
72 recommendations on policy and statutory changes that
73 may be needed. The report shall include a discussion of
74 each the following:

75 (1) The connectivity, priorities and interoperability of
76 the technology infrastructure owned, leased or used by
77 public bodies;

78 (2) The technology infrastructure that is owned,
79 leased, operated or used by the public bodies of the
80 state;

81 (3) Technology infrastructure as it affects homeland
82 security, public safety and health, systems reliability
83 and providing continuity of government operations;

84 (4) Technology infrastructure identifying potential
85 market demand areas where expanded resources may be
86 expected;

87 (5) Practices or suggestions to coordinate the
88 development of technology infrastructure and the
89 deployment of services between the public bodies
90 through the coordinated delivery of these systems; and

91 (6) Any other topic that may be beneficial in
92 adequately assessing technology infrastructure.

93 (f) To the extent technology infrastructure

94 information is readily provided by private persons or
95 otherwise available, the Secretary shall utilize and
96 incorporate that data to fulfill the reporting
97 requirements of this section.

98 (g) Not later than the first day of December, two
99 thousand seven, the Governor's Chief Technology
100 Officer within the Department of Administration shall
101 submit a report to the Legislature that:

102 (1) Assesses the availability of, and access to,
103 broadband technology in homes and families with
104 children from birth to age eight;

105 (2) Estimates the number of families with children
106 from birth to age eight who are using broadband
107 technology in their homes;

108 (3) Estimates the unmet demand for broadband
109 technology for families with children from birth to age
110 eight; and

111 (4) Sets forth a strategic plan to meet the demand
112 described in subdivision (3) of this subsection.

§5B-4-10. Confidential information; exemption from disclosure.

1 (a) Information submitted by a public body as part of
2 the survey that may be a trade secret or otherwise
3 confidential shall be identified by that body as
4 confidential information. The public body claiming
5 confidentiality shall provide written justification to the
6 secretary at the time the information is submitted
7 stating the reasons for confidentiality and why the
8 information should not be released.

9 (b) In addition to records or documents that may be
10 considered confidential under this code, confidential
11 information means records, reports or information, or a
12 particular portion or any combination or aggregation
13 thereof, that if made public would present a threat to
14 the safety and security of any system or component
15 relating to the technology infrastructure and related
16 systems.

17 (c) Information designated as confidential and the
18 written justification shall be maintained in a file
19 separate from the general records related to the public
20 body. The confidential information will be exempt from
21 disclosure requirements under this code.

22 (d) Information designated as confidential may be
23 released to the Department of Administration, its
24 employees and agents when compiling and analyzing
25 the infrastructure resources survey information and as
26 may be necessary to develop the report required by this
27 article. Any individual receiving information
28 designated confidential shall protect the information as
29 confidential.

30 (e) Trade secrets or proprietary information obtained
31 by the Governor's Chief Technology Officer from
32 broadband providers and other persons or entities
33 through activities related to surveying and mapping
34 broadband access in West Virginia shall be secured and
35 safeguarded by the state. Such information or data
36 shall not be disclosed to the public or to any firm,
37 individual or agency other than officials or authorized
38 employees of this state. Any person who makes any
39 unauthorized disclosure of such confidential
40 information or data is guilty of a misdemeanor and,

41 upon conviction thereof, may be fined not more than
42 five thousand dollars or confined in a correctional
43 facility for not more than one year, or both.

44 (f) The official charged with securing and
45 safeguarding trade secrets and proprietary data is the
46 Governor's Chief Technology Officer, within the
47 Department of Administration, who is authorized to
48 establish and direct appropriate security measures. The
49 Governor shall designate two additional persons to
50 share the responsibility of securing trade secrets or
51 proprietary information. No one will be allowed access
52 without written approval of a minimum of two of the
53 three authorized persons specified above.

**§5B-4-11. Joint Legislative Oversight Commission on
Transportation and Infrastructure; examination
and subpoena powers; contempt proceedings;
legislative reports.**

1 (a) The President of the Senate and the Speaker of the
2 House of Delegates shall each designate five members of
3 their respective houses, at least one of whom shall be a
4 member of the minority party, to serve on a joint
5 legislative oversight commission charged with
6 immediate and ongoing oversight of transportation and
7 infrastructure matters, specifically including, but not
8 limited to, the ongoing oversight of the management
9 and coordination of the deployment and operation of
10 infrastructure related to technology. This commission
11 shall be known as the Joint Legislative Oversight
12 Commission on Transportation and Infrastructure.

13 (b) The Joint Legislative Oversight Commission on
14 Transportation and Infrastructure may:

15 (1) Make a continuing investigation, study and review
16 of the practices, policies and procedures utilized to
17 expand broadband infrastructure in this state;

18 (2) Make a continuing investigation, study and review
19 of all matters related to broadband policy in the state;

20 (3) Review program development by the various
21 agencies of state government if those programs impact
22 access to broadband internet;

23 (4) Conduct studies on:

24 (A) The amount of funds expended by state
25 government and by public and private entities in this
26 state for broadband services to persons who are unable
27 to pay for those services;

28 (B) The extent to which persons in this state forego
29 broadband access because of insufficient income and
30 assets to pay for broadband services;

31 (C) The extent to which the state is maximizing
32 available federal programs and moneys in providing
33 and expanding broadband services to the citizens of this
34 state;

35 (D) The operation of the programs and funds created
36 by this article; and

37 (E) The roles of the public, private and private
38 nonprofit sectors in providing broadband services and
39 access to the citizens of this state;

40 (5) Review and study the feasibility and financial

41 impact upon the state of assuring increased access by
42 school children to broadband in their homes, families
43 and other nonschool settings, if available; and

44 (6) Conduct a study on the effects of extending
45 broadband infrastructure into rural areas, including
46 effects on the quality, cost and availability of
47 broadband services.

48 (c) For purposes of carrying out its duties, the
49 commission may examine witnesses and subpoena such
50 persons and books, records, documents, papers or any
51 other tangible things as it believes should be examined
52 to make a complete investigation.

53 (d) All witnesses appearing before the commission
54 under subpoena shall testify under oath or affirmation.
55 Any member of the commission may administer oaths or
56 affirmations to such witnesses.

57 (e) To compel the attendance of witnesses at such
58 hearings or the production of any books, records,
59 documents, papers or any other tangible thing, the
60 commission may issue subpoenas, signed by one of the
61 cochairpersons, in accordance with section five, article
62 one, chapter four of this code. Subpoenas may be
63 served by any person authorized by law to serve and
64 execute legal process and service shall be made without
65 charge. Witnesses subpoenaed to attend hearings shall
66 be allowed the same mileage and per diem as is allowed
67 witnesses before any petit jury in this state.

68 (f) If any person subpoenaed to appear at any hearing
69 refuses to appear or to answer inquiries there
70 propounded, or fails or refuses to produce books,

71 records, documents, papers or any other tangible thing
72 within his control when demanded, the commission
73 shall report the facts to the circuit court of Kanawha
74 County or any other court of competent jurisdiction and
75 the court may compel obedience to the subpoena as
76 though such subpoena had been issued by the court in
77 the first instance.

78 (g) The commission shall submit annual reports to the
79 Legislature, which describe and evaluate in a concise
80 manner:

81 (1) The major activities of agencies of state
82 government and public and private entities involved in
83 expand the infrastructure of, and access to broadband
84 for the fiscal year immediately past, including
85 important policy decisions reached on initiatives
86 undertaken during that year, especially as such
87 activities, decisions and initiatives relate to:

88 (A) Improving the accessibility of appropriate
89 broadband services in all areas of this state;

90 (B) Improving the ability of the citizens of this state to
91 reasonable afford broadband services.

92 (2) Other information considered by the commission to
93 be important, including recommendations for statutory,
94 fiscal or policy reforms and reasons for such
95 recommendations.

96 (h) The reports may specify in what manner any
97 practice, policy or procedure may or should be modified
98 to satisfy the goal of efficient and effective access to
99 broadband services as they become increasingly

100 available in this state.

§5B-4-12. Powers and duties of the Secretary of Commerce.

1 (a) The primary responsibility of the secretary is to
2 foster and support economic development and the
3 advancement and commercialization of new and
4 emerging technologies through collaborative
5 agreements between business, industry and the state.

6 (b) The secretary may provide consulting and
7 additional services, including, but not limited to,
8 evaluation of technology, verification and assessment of
9 market applications, grant administration for any
10 person engaged in public-private collaborations with
11 the department pertaining to technology advancement
12 and commercialization activities and research into new
13 areas of economic development relating to technology,
14 technology infrastructure and telecommunications.

15 (c) The secretary may receive and accept from any
16 public body or person or entity of any nature
17 whatsoever grants to be expended in accomplishing the
18 objectives of this article and to receive and accept state
19 appropriations and grants from any public body and
20 from any other source, aid or contributions of either
21 money, property or other things of value to be held,
22 used and applied only for the purposes for which the
23 grants and contributions may be made or collect fees for
24 consulting services rendered to any public body.

25 (d) The secretary may accept and expend any gift,
26 grant, contribution, bequest, endowment or other
27 money for the purposes of this article and to make a
28 maximum effort to encourage external support for

29 programs intended to expand broadband infrastructure
30 into areas of the state not currently served. Any
31 transfer of endowment or other assets to the department
32 shall be formalized in a memorandum of agreement to
33 assure, at a minimum, that any restrictions governing
34 the future disposition of funds are preserved.

35 (e) The Department of Commerce shall cooperate with
36 the Department of Education and the Department of
37 Health and Human Resources to coordinate state
38 resources as they relate to the expansion of broadband
39 technology so as to provide interactive programs that
40 project information and training related to early
41 childhood development directly into the homes and
42 families of children from birth to age eight.

43 (f) The Secretary of Commerce may promulgate rules
44 to fulfill the purposes of this section. These rules are not
45 subject to the provisions of chapter twenty-nine-a of
46 this code, but shall be filed with the Secretary of State.

**§5B-4-13. Need for study; reporting requirements; information
gathering.**

1 (a) The Secretary of Commerce shall enhance
2 well-being, prosperity, economic growth and
3 community development through the ongoing study and
4 research into and development of best known methods
5 regarding the management practices, human factors and
6 cultural changes related to the implementation,
7 operation and utilization of technology, technology
8 infrastructure and related services. For the purposes of
9 this section, "best known methods" refers to plans that
10 outline strategies and activities designed to continue,
11 diversify or expand the economic base of the state as a

12 whole; create jobs; develop a highly capable workforce;
13 enhance productivity; facilitate business access to
14 capital, including venture capital and capital markets;
15 advertise and market the resources offered by the state
16 with respect to the technology needs of business and
17 industry; facilitate cooperation among state
18 government, entrepreneurship efforts, public private
19 partnerships, universities and colleges; and leverage
20 funding from sources other than the state, including
21 federal and private sources.

22 (b) In developing its study, the department shall
23 consider resources and technical support available
24 through other agencies, both public and private,
25 including, but not limited to, the state college and
26 university systems; the West Virginia Housing
27 Development Fund; the Consumer Advocate Office of
28 the Public Service Commission; the West Virginia
29 Economic Development Authority; the West Virginia
30 Parkways, Economic Development and Tourism
31 Authority; the West Virginia Chamber of Commerce;
32 regional planning and development councils; and state
33 appropriations. The Infrastructure and Jobs
34 Development Council, as created by the provisions of
35 section three, article fifteen-a, chapter thirty-one of this
36 code, is also included with the above-named agencies
37 and entities, inasmuch as the broadband infrastructure
38 project or projects to be undertaken under the
39 provisions of this article are within the definition of the
40 term "infrastructure project" as it is defined in section
41 two, article fifteen-a, chapter thirty-one of this code.

42 (c) Upon completion of a study of best known methods
43 in private industry and public policy, the Secretary
44 shall file an initial preliminary report with the Joint

45 Legislative Oversight Commission on Transportation
46 and Infrastructure created in this article no later than
47 the first day of November, two thousand seven. The
48 report shall include consideration of the following:

49 (1) Strategies and activities designed to continue,
50 diversify or expand the resources offered by the state
51 with respect to the technology needs of the state;

52 (2) Strategies to facilitate cooperation among state
53 government, local government, entrepreneurship efforts,
54 public-private partnerships and colleges and
55 universities, with respect to the technology needs of
56 business and industry;

57 (3) Management and utilization of technology
58 infrastructure identifying potential growth areas where
59 expanded resources may be expected;

60 (4) Practices or methods to coordinate development
61 and utilization of technology infrastructure and the
62 deployment of technology infrastructure and related
63 technology between public bodies through the
64 coordinated delivery of these systems; and

65 (5) Any other information that may be beneficial in
66 adequately assessing technology available in
67 determining the need for and the preparation of
68 technology infrastructure plans.

69 (d) The secretary shall report annually to the Joint
70 Oversight Commission on Transportation and
71 Infrastructure to advise the commission about the
72 deployment and operation of technology infrastructure
73 in this state and to make recommendations on policy

74 and statutory changes that may be needed.

**§5B-4-14. Providing technical and funding assistance to
develop technology infrastructure; contractual
and joint venture agreements.**

1 (a) The Department of Commerce may:

2 (1) Provide assistance, including funding assistance to
3 develop technology infrastructure, and related
4 technology through a matching grant program. The
5 department shall establish criteria for awarding
6 matching grants within the limits of funds appropriated
7 by the Legislature for the program or as may be
8 available from other sources;

9 (2) Provide technical assistance, including consulting
10 services for a fee to one or more public bodies
11 pertaining to the development of technology and
12 technology infrastructure; and

13 (3) Enter into contractual or joint venture agreements
14 with one or more persons and public bodies pertaining
15 to the development of technology and technology
16 infrastructure: *Provided*, That such agreements may not
17 be considered a debt of the state or a pledge of the
18 credit of the state.

19 (b) The powers and authority granted by this article,
20 however, must be focused on technical and funding
21 assistance in those areas remaining unserved and not
22 displace accessible and generally competitively priced
23 broadband services or where industry is expected to
24 offer accessible and generally competitively priced
25 broadband services by the end of the next following

26 calendar year.

§5B-4-15. Complete authority of article; liberal construction.

1 This article is full and complete authority for carrying
2 out the powers and duties of the same as herein
3 provided. The provisions of this article shall be
4 liberally construed to accomplish its purpose and no
5 procedure or proceedings, notices, consents or
6 approvals, are required in connection therewith except
7 as may be prescribed by this article.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is disapproved* this
the *14th* Day of *April*, 2007.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 02 2007

Time 3:35pm