

H. B. 2788

(By Delegates Boggs, T. Campbell,
Swartzmiller and Walters)

[Introduced January 24, 2011; referred to the
Committee on Energy, Industry and Labor, Economic
Development and Small Business then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §31-15A-2 and §31-15A-7 of the Code of West Virginia, 1931, as amended, all relating to infrastructure projects funded by the West Virginia Infrastructure Fund; providing definitions; specifying that infrastructure projects providing broadband services facilities be included in infrastructure projects eligible for funding; including the feasibility of inclusion of broadband transmission lines concomitant with the construction of new roads; providing that construction of broadband transmission lines may be funded from the infrastructure road improvement reserve account within the Infrastructure Fund; increasing the limitation of the amount of funds which may be annually transferred to the account.

Be it enacted by the Legislature of West Virginia:

That §31-15A-2 and §31-15A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT

1 **COUNCIL.**

2 **§31-15A-2. Definitions.**

3 For purposes of this article:

4 (a) "Bond" or "infrastructure revenue bond" means a revenue
5 bond, note, or other obligation issued by the Water Development
6 Authority pursuant to this article, including bonds to refund such
7 bonds and notes to renew such notes, and notes in anticipation of
8 and payable from the proceeds of such bonds.

9 **(b) "Broadband infrastructure" means all facilities, hardware**
10 **and software and other intellectual property necessary to provide**
11 **broadband services in this state, including, but not limited to,**
12 **voice, video and data.**

13 **(c) "Broadband" or "Broadband service" means any service**
14 **providing advanced telecommunications capability with either a**
15 **downstream data rate or upstream data rate of at least two hundred**
16 **kilobits per second, that does not require the end-user to dial up**
17 **a connection that has the capacity to always be on and for which**
18 **the transmission speeds are based on regular available bandwidth**
19 **rates, not sporadic or burstable rates, with a minimum downstream-**
20 **to-upstream data ratio of 10:1 for services with a downstream data**
21 **rate of up to five megabits per second for services with a**
22 **downstream data rate of five megabits per second or greater.**

23 **(d) "Broadband transmission lines" means telecommunication**
24 **equipment lines, regardless of the technology or medium, including,**

1 but not limited to, copper wire, fiber-optic cable or coaxial
2 cable, capable of transmitting broadband service.

3 ~~(b)~~ (e) "Code" means the Code of West Virginia, 1931, as
4 amended;

5 ~~(c)~~ (f) "Cost" means, as applied to any project to be
6 financed, in whole or in part, with infrastructure revenues or
7 funds otherwise provided pursuant to this article, the cost of
8 planning, acquisition, improvement and construction of the project;
9 the cost of preliminary design and analysis, surveys, borings; the
10 cost of environmental, financial, market and engineering
11 feasibility studies, assessments, applications, approvals,
12 submissions or clearances; the cost of preparation of plans and
13 specifications and other engineering services; the cost of
14 acquisition of all land, rights-of-way, property rights, easements,
15 franchise rights and any other interests required for the
16 acquisition, repair, improvement or construction of the project;
17 the cost of demolishing or removing any buildings or structures on
18 land so acquired, including the cost of acquiring any lands to
19 which buildings or structures may be moved; the cost of excavation,
20 grading, shaping or treatment of earth, demolishing or removing any
21 buildings or structures; the cost of constructing any buildings or
22 other improvements; the cost of all pumps, tanks, vehicles,
23 apparatus and other machinery, furnishings and equipment; loan or
24 origination fees and all finance charges and interest incurred

1 prior to and during the construction and for no more than six
2 months after completion of construction; the cost of all legal
3 services and expenses; the cost of all plans, specifications,
4 surveys and estimates of cost; all working capital and other
5 expenses necessary or incident to determining the feasibility or
6 practicability of acquiring, repairing, improving or constructing
7 any project; the cost of placing any project in operation; and all
8 other costs and expenses of any kind or nature incurred or to be
9 incurred by the project sponsor developing the project that are
10 reasonable and necessary for carrying out all works and
11 undertakings necessary or incident to the accomplishment of any
12 project: *Provided*, That costs shall not include any amounts
13 related to the ongoing operations of the owner or operator,
14 depreciation thereof or any other cost which the council or the
15 Water Development Authority has not determined to be consistent
16 with the purposes and objectives of this article;

17 ~~(d)~~ (g) "Council" means the West Virginia infrastructure and
18 jobs development council created in section three of this article;

19 ~~(e)~~ (h) "~~Division~~ "Department" of Environmental Protection"
20 means the ~~Division~~ Department of Environmental Protection
21 established under article one, chapter twenty-two of this code, or
22 any successor to all or any substantial part of its powers and
23 duties;

24 ~~(f)~~ (i) "Division of Health" means the Division of Health

1 created in article one, chapter sixteen of this code, or any
2 successor to all or any substantial part of its powers and duties;

3 ~~(g)~~ (j) "Economic Development Authority" means the Economic
4 Development Authority established under article fifteen, chapter
5 thirty-one of the code, or any successor to all or any substantial
6 part of its powers and duties;

7 ~~(h)~~ (k) "Emergency project" means a project which the council
8 has determined: (1) Is essential to the immediate economic
9 development of an area of the state; and (2) will not likely be
10 developed in that area if construction of the project is not
11 commenced immediately;

12 ~~(i)~~ (l) "Governmental agency" means any county; municipality;
13 watershed improvement district; assessment district; soil
14 conservation district; sanitary district; public service district;
15 drainage district; regional governmental authority and any other
16 state governmental agency, entity, political subdivision or public
17 corporation or agency authorized to acquire, construct or operate
18 water or wastewater facilities or infrastructure projects;

19 ~~(j)~~ (m) "Housing Development Fund" means the West Virginia
20 Housing Development Fund established under article eighteen of this
21 chapter, or any successor to all or any substantial part of its
22 powers and duties;

23 ~~(k)~~ (n) "Infrastructure fund" means the West Virginia
24 Infrastructure Fund created and established in section nine of this

1 article;

2 ~~(i)~~ (o) "Infrastructure project" means a project in the state
3 which the council determines is likely to foster and enhance
4 economic growth and development in the area of the state in which
5 the project is developed, for commercial, industrial, community
6 improvement or preservation or other proper purposes, including,
7 without limitation, tourism and recreational housing, land, air or
8 water transportation facilities and bridges, industrial or
9 commercial projects and facilities, mail order, warehouses,
10 wholesale and retail sales facilities, broadband services
11 facilities, and other real and personal properties, including
12 facilities owned or leased by this state or any other project
13 sponsor, and includes, without limitation: (1) The process of
14 acquiring, holding, operating, planning, financing, demolition,
15 construction, improving, expanding, renovation, leasing or
16 otherwise disposing of the project or any part thereof or interest
17 therein; and (2) preparing land for construction and making,
18 installing or constructing improvements on the land, including
19 water or wastewater facilities or any part thereof, steam, gas,
20 telephone and telecommunications and electric lines and
21 installations, broadband transmission lines, roads, bridges,
22 railroad spurs, buildings, docking and shipping facilities, curbs,
23 gutters, sidewalks, and drainage and flood control facilities,
24 whether on or off the site;

1 ~~(m)~~ (p) "Infrastructure revenue" means all amounts
2 appropriated by the Legislature; all amounts deposited into the
3 Infrastructure Fund; any amounts received, directly or indirectly,
4 from any source for the use of all or any part of any project
5 completed pursuant to this article; and any other amounts received
6 by the State Treasurer, council or the Water Development Authority
7 for the purposes of this article;

8 ~~(n)~~ (q) "Need of the project sponsors" means there is a public
9 need for a project. The council shall construe a population
10 increase evidenced by the last two decennial censuses in a county
11 in which a project is proposed, as a factor supporting the
12 conclusion that a need exists for projects in that county.

13 ~~(o)~~ (r) "Project" means any wastewater facility, water
14 facility project or any combination thereof, constructed or
15 operated or to be constructed or operated by a project sponsor;

16 ~~(p)~~ (s) "Project sponsor" means any Governmental Agency or
17 person, or any combination thereof, including, but not limited to,
18 any public utility, which intends to plan, acquire, construct,
19 improve or otherwise develop a project;

20 ~~(q)~~ (t) "Public Service Commission" means the Public Service
21 Commission of West Virginia created and established under section
22 three, article one, chapter twenty-four of this code, or any
23 successor to all or any substantial part of its powers and duties;

24 ~~(r)~~ (u) "Person" means any individual, corporation,

1 partnership, association, limited liability company or any other
2 form of business organization;

3 ~~(s)~~ (v) "Public utility" means any person or persons, or
4 association of persons, however associated, whether incorporated or
5 not, including, without limitation, any governmental agency,
6 operating a wastewater facility or water facility as a public
7 service, which is regulated by the Public Service Commission as a
8 public utility under chapter twenty-four of this code or which is
9 required to file its tariff with the Public Service Commission;

10 ~~(t)~~ (w) "State Development Office" means the West Virginia
11 Development Office established under article two, chapter five-b of
12 this code, or any successor to all or any substantial part of its
13 powers and duties;

14 ~~(u)~~ (x) "State Infrastructure Agency" means the Division of
15 Health, ~~Division~~ Department of Environmental Protection, Housing
16 Development Fund, Public Service Commission, State Development
17 Office, Water Development Authority, Economic Development Authority
18 and any other state agency, division, body, authority, commission,
19 instrumentality or entity which now or in the future receives
20 applications for the funding of, and provides funding or technical
21 assistance to, the planning, acquisition, construction or
22 improvement of a project;

23 ~~(v)~~ (y) "Wastewater facility" means all facilities, land and
24 equipment used for or in connection with treating, neutralizing,

1 disposing of, stabilizing, cooling, segregating or holding
2 wastewater, including, without limitation, facilities for the
3 treatment and disposal of sewage, industrial wastes or other
4 wastes, wastewater, and the residue thereof; facilities for the
5 temporary or permanent impoundment of wastewater, both surface and
6 underground; and sanitary sewers or other collection systems,
7 whether on the surface or underground, designed to transport
8 wastewater together with the equipment and furnishings therefor or
9 thereof and their appurtenances and systems, whether on the surface
10 or underground including force mains and pumping facilities
11 therefor;

12 ~~(w)~~ (z) "Water Development Authority" means the West Virginia
13 Water Development Authority continued pursuant to the provisions of
14 article one, chapter twenty-two-c of this code, or any successor to
15 all or any substantial part of its powers and duties; and

16 ~~(x)~~ (aa) "Water facility" means all facilities, land and
17 equipment used for or in connection with the collection and/or
18 storage of water, both surface and underground, transportation of
19 water, storage of water, treatment of water and distribution of
20 water all for the purpose of providing potable, sanitary water
21 suitable for human consumption and use.

22 **§31-15A-7. Current and prospective planning; roads and highways;**
23 **report to Division of Highways.**

24 (a) The council shall take into account the current and

1 prospective infrastructure needs in relation to plans of the
2 Division of Highways for the development and building of new roads.
3 Upon completion of an environmental impact study, the Commissioner
4 of Highways shall provide the council with plans for any and all
5 new roads. In a timely manner, the council shall advise the
6 Commissioner of the Division of Highways on the feasibility of the
7 expansion of new or existing water and sewer lines and broadband
8 transmission lines concomitant to the construction of the new
9 roads.

10 (b) The council has the authority to appoint local
11 infrastructure planning teams. The local infrastructure planning
12 teams may consist of the following: A designee of the Division of
13 Highways from the region where the new road is being built; a
14 designee of the Division of Highways from the central state office;
15 a designee from the Environmental Engineers Division of the
16 Department of Health and Human Resources; a designee from the local
17 developmental authority where the new road is being built; a
18 designee from the regional developmental authority in the area
19 where the new road is being built; a designee from the Public
20 Service Commission; a designee from the ~~Division~~ Department of
21 Environmental Protection; a designee from the county commission
22 where the new road is being built who shall serve as chairperson of
23 the planning team; a citizen of the county where the new road is
24 being built to be chosen by the county commission; and the elected

1 State Delegates and Senators from the area where the new road is
2 being built. In order to avoid delay of any highway project,
3 immediately upon appointment of a local infrastructure planning
4 team, the Director of the Division of Highways shall submit to the
5 council a time frame within which the planning team must act and
6 within which the planning team must submit any plans, maps,
7 recommendations or reports developed pursuant to this subsection.
8 The local infrastructure planning team shall meet prior to the
9 development and building of a new road. Members of the local
10 infrastructure planning team shall only receive payment for actual
11 expenses incurred. The local infrastructure planning team shall
12 advise the Commissioner of the Division of Highways on the
13 feasibility of an infrastructure plan. The local infrastructure
14 planning team shall meet to develop an infrastructure plan that
15 includes an assessment study of existing water and sewer lines and
16 a feasibility study on future development and laying of water and
17 sewer lines and broadband transmission lines. After these studies
18 are completed, a developmental map shall be drawn of the proposed
19 road route with overlays of the proposed water and sewer lines and
20 any proposed broadband transmission lines. These studies and the
21 map shall be presented to the Commissioner of the Division of
22 Highways and shall be used by the commissioner in the planning,
23 developing and building of the road.

24 (c) The Water Development Authority shall establish a

1 restricted account within the infrastructure fund to be expended
2 for the construction of water and sewage lines and broadband
3 transmission lines as may be recommended by the council in
4 accordance with this article and specifically, in accordance with
5 the plan developed under subsection (b) of this section. The
6 reserve account shall be known as the "infrastructure road
7 improvement reserve account". The council and the Division of
8 Highways may enter into agreements to share the cost of financing
9 projects approved in accordance with this section from moneys
10 available in the infrastructure road reserve account and moneys
11 available from the State Road Fund. Annually, the council may
12 direct the Water Development Authority to transfer funds from the
13 infrastructure fund in an amount not to exceed ~~one million dollars~~
14 \$2 million to the restricted account: *Provided*, That at no time
15 may the balance of the restricted account exceed ~~one million~~
16 ~~dollars~~ \$2 million.

17 (d) For the purposes of this section the term "new" means a
18 road right-of-way being built for the first time.

19 (e) After the construction of water and sewer lines adjacent
20 to the new road, these new lines shall be turned over to existing
21 utilities by expansion of boundaries of public service districts or
22 shall be main extensions from the municipality.

23 (f) After the construction of any new broadband transmission
24 lines in the new road right-of-way, the lines may be transferred to

1 broadband service providers. The council shall propose rules for
2 legislative approval in accordance with article three, chapter
3 twenty-nine-a of this code to provide for the transfer of ownership
4 of the new lines of broadband service providers and for the
5 equitable right to the use of the new lines by all broadband
6 service providers, subject to such appropriate limitations and
7 restrictions as the council may determine.

NOTE: The purpose of this bill is to specify that infrastructure projects providing broadband services facilities be included in infrastructure projects eligible for funding from the West Virginia Infrastructure Fund. The bill also provides for including the feasibility of inclusion of broadband transmission lines concomitant with the construction of new roads and that construction of broadband transmission lines may be funded from the infrastructure road improvement reserve account within the infrastructure fund. The bill also increases the limitation of the amount of funds which may be annually transferred to the account from \$1 million to \$2 million.

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