

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 110**

7 (SENATORS UNGER, BEACH AND KLEMPA, *original sponsors*)

8 _____
9 [Passed March 10, 2012; in effect ninety days from passage.]
10 _____

11
12 AN ACT to amend and reenact §31-15C-3 and §31-15C-4 of the Code of
13 West Virginia, 1931, as amended, all relating to modifying and
14 increasing the membership of the Broadband Deployment Council;
15 increasing the number of members required for a quorum; and
16 expanding the powers and duties of the Broadband Deployment
17 Council.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §31-15C-3 and §31-15C-4 of the Code of West Virginia,
20 1931, as amended, be amended and reenacted, all to read as follows:

21 **ARTICLE 15C. BROADBAND DEPLOYMENT.**

22 **§31-15C-3. Broadband Deployment Council established; members of**
23 **council; administrative support.**

24 (a) The Broadband Deployment Council is continued. The
25 council is a governmental instrumentality of the state. The

1 exercise by the council of the powers conferred by this article and
2 the carrying out of its purpose and duties are considered and held
3 to be, and are hereby determined to be, essential governmental
4 functions and for a public purpose. The council is created under
5 the Department of Commerce for administrative, personnel and
6 technical support services only.

7 (b) The council shall consist of fifteen voting members,
8 designated as follows:

9 (1) The Governor or his or her designee;

10 (2) The Secretary of Commerce or his or her designee;

11 (3) The Secretary of Administration or his or her designee;

12 (4) The Director of Homeland Security and Emergency Management
13 or his or her designee;

14 (5) The State Superintendent of Schools or his or her
15 designee; and

16 (6) Ten public members that serve at the will and pleasure of
17 the Governor and are appointed by the Governor with the advice and
18 consent of the Senate, as follows:

19 (i) One member representing employees of communications and
20 cable providers who is a member or representative of a union
21 representing communications workers;

22 (ii) One member representing the interests of the business
23 community in this state;

24 (iii) One member representing incumbent local exchange
25 carriers who provide broadband services in this state;

26 (iv) One member representing cable operators who provide

1 broadband services in this state;

2 (v) One member representing competitive local exchange
3 carriers who provide broadband services in this state;

4 (vi) One member representing broadband equipment or device
5 manufacturers;

6 (vii) One member representing higher education or secondary
7 education; and

8 (viii) Three members representing the general public who are
9 residents of the state, one of whom shall represent rural
10 communities, and who may not reside in the same congressional
11 district.

12 (7) In addition to the fifteen voting members of the council,
13 the President of the Senate shall name two senators from the West
14 Virginia Senate and the Speaker of the House shall name two
15 delegates from the West Virginia House of Delegates, each to serve
16 in the capacity of an ex officio, nonvoting advisory member of the
17 council.

18 (c) The Secretary of Commerce or his or her designee shall
19 chair the council and appoint one of the other council members to
20 serve as vice chair. In the absence of the Secretary of Commerce
21 or his or her designee, the vice chair shall serve as chair. The
22 council shall appoint a secretary-treasurer who need not be a
23 member of the council and who, among other tasks or functions
24 designated by the council, shall keep records of its proceedings.

25 (d) The council may appoint committees or subcommittees to
26 investigate and make recommendations to the full council. Members

1 of these committees or subcommittees need not be members of the
2 council.

3 (e) Eight voting members of the council constitute a quorum
4 and the affirmative vote of at least the majority of those members
5 present is necessary for any action taken by vote of the council.

6 (f) The council is part time. Public members appointed by the
7 Governor may pursue and engage in another business or occupation or
8 gainful employment. Any person employed by, owning an interest in
9 or otherwise associated with a broadband deployment project,
10 project sponsor or project participant may serve as a council
11 member and is not disqualified from serving as a council member
12 because of a conflict of interest prohibited under section five,
13 article two, chapter six-b of this code and is not subject to
14 prosecution for violation of said section when the violation is
15 created solely as a result of his or her relationship with the
16 broadband deployment project, project sponsor or project
17 participant so long as the member recuses himself or herself from
18 board participation regarding the conflicting issue in the manner
19 set forth in legislative rules promulgated by the West Virginia
20 Ethics Commission.

21 (g) No member of the council who serves by virtue of his or
22 her office receives any compensation or reimbursement of expenses
23 for serving as a member. The public members and members of any
24 committees or subcommittees are entitled to be reimbursed for
25 actual and necessary expenses incurred for each day or portion
26 thereof engaged in the discharge of his or her official duties in

1 a manner consistent with the guidelines of the Travel Management
2 Office of the Department of Administration.

3 **§31-15C-4. Powers and duties of the council generally.**

4 (a) The council shall:

5 (1) Explore the potential for increased use of broadband
6 service for the purposes of education, career readiness, workforce
7 preparation and alternative career training;

8 (2) Explore ways for encouraging state and municipal agencies
9 to expand the development and use of broadband services for the
10 purpose of better serving the public, including audio and video
11 streaming, voice-over Internet protocol, teleconferencing and
12 wireless networking; and

13 (3) Cooperate and assist in the expansion of electronic
14 instruction and distance education services by July, 2014.

15 (b) In addition to the powers set forth elsewhere in this
16 article, the council is hereby granted, has and may exercise all
17 powers necessary or appropriate to carry out and effectuate the
18 purpose and intent of this article. The council shall have the
19 power and capacity to:

20 (1) Provide consultation services to project sponsors in
21 connection with the planning, acquisition, improvement,
22 construction or development of any broadband deployment project;

23 (2) Promote awareness of public facilities that have community
24 broadband access that can be used for distance education and
25 workforce development;

26 (3) Advise on deployment of e-government portals such that all

1 public bodies and political subdivisions have homepages, encourage
2 one-stop government access, and that all public entities stream
3 audio and video of all public meetings;

4 (4) To make and execute contracts, commitments and other
5 agreements necessary or convenient for the exercise of its powers,
6 including, but not limited to, the hiring of consultants to assist
7 in the mapping of the state, categorization of areas within the
8 state and evaluation of project applications: *Provided*, That the
9 provisions of article three, chapter five-a of this code do not
10 apply to the agreements and contracts executed under the provisions
11 of this article;

12 (5) Acquire by gift or purchase, hold or dispose of real
13 property and personal property in the exercise of its powers and
14 performance of its duties as set forth in this article;

15 (6) Receive and dispense funds appropriated for its use by the
16 Legislature or other funding sources or solicit, apply for and
17 receive any funds, property or services from any person,
18 governmental agency or organization to carry out its statutory
19 duties; and

20 (7) Perform any and all other activities in furtherance of its
21 purpose. (c) The council shall exercise its powers and authority
22 to bring broadband service to unserved areas. The council may not
23 duplicate or displace broadband service in areas already served or
24 where private industry feasibly can be expected to offer services
25 in the reasonably foreseeable future.