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Senate Bill No. 110

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15C. BROADBAND DEPLOYMENT.

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

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

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

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

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

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

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

18 (5) The State Superintendent of Schools or his or her
19 designee; and

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

23 (i) One member representing employees of communica-
24 tions and cable providers who is a member or representative
25 of a union representing communications workers;

26 (ii) One member representing the interests of the business
27 community in this state;

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

30 (iv) One member representing cable operators who
31 provide broadband services in this state;

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

34 (vi) One member representing broadband equipment or
35 device manufacturers;

36 (vii) One member representing higher education or
37 secondary education; and

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

42 (7) In addition to the fifteen voting members of the
43 council, the President of the Senate shall name two senators
44 from the West Virginia Senate and the Speaker of the House
45 shall name two delegates from the West Virginia House of
46 Delegates, each to serve in the capacity of an ex officio,
47 nonvoting advisory member of the council.

48 (c) The Secretary of Commerce or his or her designee
49 shall chair the council and appoint one of the other council
50 members to serve as vice chair. In the absence of the Secretary of Commerce or his or her designee, the vice chair shall
51 serve as chair. The council shall appoint a secretary-treasurer who need not be a member of the council and
52 who, among other tasks or functions designated by the
53 council, shall keep records of its proceedings.

56 (d) The council may appoint committees or subcommittees to investigate and make recommendations to the full
57 council. Members of these committees or subcommittees need
58 not be members of the council.

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

64 (f) The council is part time. Public members appointed by
65 the Governor may pursue and engage in another business or

66 occupation or gainful employment. Any person employed by,
67 owning an interest in or otherwise associated with a broad-
68 band deployment project, project sponsor or project partici-
69 pant may serve as a council member and is not disqualified
70 from serving as a council member because of a conflict of
71 interest prohibited under section five, article two, chapter
72 six-b of this code and is not subject to prosecution for
73 violation of said section when the violation is created solely
74 as a result of his or her relationship with the broadband
75 deployment project, project sponsor or project participant so
76 long as the member recuses himself or herself from board
77 participation regarding the conflicting issue in the manner
78 set forth in legislative rules promulgated by the West
79 Virginia Ethics Commission.

80 (g) No member of the council who serves by virtue of his
81 or her office receives any compensation or reimbursement of
82 expenses for serving as a member. The public members and
83 members of any committees or subcommittees are entitled to
84 be reimbursed for actual and necessary expenses incurred for
85 each day or portion thereof engaged in the discharge of his
86 or her official duties in a manner consistent with the guide-
87 lines of the Travel Management Office of the Department of
88 Administration.

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

1 (a) The council shall:

2 (1) Explore the potential for increased use of broadband
3 service for the purposes of education, career readiness,
4 workforce preparation and alternative career training;

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

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

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

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

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

24 (3) Advise on deployment of e-government portals such
25 that all public bodies and political subdivisions have
26 homepages, encourage one-stop government access, and that
27 all public entities stream audio and video of all public
28 meetings;

29 (4) To make and execute contracts, commitments and
30 other agreements necessary or convenient for the exercise of
31 its powers, including, but not limited to, the hiring of
32 consultants to assist in the mapping of the state, categorization of areas within the state and evaluation of project
33 applications: *Provided*, That the provisions of article three,
34 chapter five-a of this code do not apply to the agreements
35 and contracts executed under the provisions of this article;
36

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

40 (6) Receive and dispense funds appropriated for its use by
41 the Legislature or other funding sources or solicit, apply for
42 and receive any funds, property or services from any person,
43 governmental agency or organization to carry out its statutory duties; and
44

45 (7) Perform any and all other activities in furtherance of
46 its purpose.

47 (c) The council shall exercise its powers and authority to
48 bring broadband service to unserved areas. The council may
49 not duplicate or displace broadband service in areas already
50 served or where private industry feasibly can be expected to
51 offer services in the reasonably foreseeable future.