

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 2979

(BY DELEGATE(S) BOGGS, SKAFF, E. NELSON,
WHITE, MORGAN, M. POLING AND MILEY)

[Passed April 11, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §31-15C-2, §31-15C-4, §31-15C-8, §31-15C-9 and §31-15C-10 of the Code of West Virginia, 1931, as amended, all relating to the Broadband Deployment Council; modifying and adding definitions; clarifying that the data rate for broadband will be the same as specified by the Federal Communications Commission; requiring annual reports to the Joint Committee on Government and Finance; extending the council's public outreach and education efforts beyond unserved areas; rule-making and emergency rule-making authority; revising the council's guidelines and criteria for funding assistance; modifying the application process for project assistance; and revising notice and publication requirements.

Be it enacted by the Legislature of West Virginia:

That §31-15C-2, §31-15C-4, §31-15C-8, §31-15C-9 and §31-15C-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15C. BROADBAND DEPLOYMENT.

§31-15C-2. Definitions.

1 For the purposes of this article:

2 (1) “Broadband” or “broadband service” means any service
3 providing advanced telecommunications capability with the
4 same downstream data rate and upstream data rate as is specified
5 by the Federal Communications Commission and that does not
6 require the end-user to dial up a connection that has the capacity
7 to always be on, and for which the transmission speeds are based
8 on regular available bandwidth rates, not sporadic or burstable
9 rates, with latency suitable for real-time applications and
10 services such as VoIP and video conferencing, and with monthly
11 usage capacity reasonably comparable to that of residential
12 terrestrial fixed broadband offerings in urban areas: *Provided,*
13 That as the Federal Communications Commission updates the
14 downstream data rate and the upstream data rate the Council will
15 publish the revised data rates in the State Register within sixty
16 days of the federal update.

17 (2) “Broadband demand promotion project” means a
18 statewide or regional project to undertake activities to promote
19 demand for broadband services and broadband applications.

20 (3) “Broadband deployment project” means a project to
21 provide broadband services in a type 2 and/or type 3 unserved
22 area, as defined in section six of this article.

23 (4) “Council” means the Broadband Deployment Council.

24 (5) “Downstream data rate” means the transmission speed
25 from the service provider source to the end-user.

26 (6) “Upstream data rate” means the transmission speed from
27 the end-user to the service provider source.

28 (7) “Unserved area” means a community that has no access
29 to broadband service.

§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, including
8 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 all
14 powers necessary or appropriate to carry out and effectuate the
15 purpose and intent of this article. The council shall have the
16 power and capacity to:

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 that
25 all public bodies and political subdivisions have homepages,
26 encourage one-stop government access and that all public
27 entities stream audio and video of all public meetings;

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

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

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

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

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

51 In providing governmental funding for broadband
52 deployment projects, the council shall give priority to funding
53 for projects in areas without access to broadband service of any
54 type or any speed before providing governmental funding for
55 projects in areas with existing broadband service below the
56 minimum speeds specified in section two of this article.

57 (d) The council shall report to the Joint Committee on
58 Government and Finance on or before January 1 of each year.
59 The report shall include the action that was taken by the council
60 during the previous year in carrying out the provisions of this
61 article. The council shall also make any other reports as may be
62 required by the Legislature or the Governor.

§31-15C-8. Stimulation of demand through public outreach and education.

1 In order to implement and carry out the intent of this article,
2 the council may take such actions as it deems necessary or
3 advisable in order to stimulate demand through public outreach
4 and education. The council shall consider the views, if offered,
5 of affected members of the public, including private industry.

§31-15C-9. Development of guidelines and application for funding assistance; emergency rule-making authority.

1 (a) In order to implement and carry out the intent of this
2 article in type 2 and type 3 unserved areas, the council shall
3 propose rules for legislative approval, pursuant to the provisions
4 of article three, chapter twenty-nine-a of this code, to develop
5 comprehensive, uniform guidelines for use by the council in
6 evaluating any request by a project sponsor for funding
7 assistance to plan, acquire, construct, improve or otherwise
8 develop and execute a broadband deployment project in a type
9 2 or type 3 unserved area. The council may promulgate
10 emergency rules pending authorization of the legislative rules.

11 (b) The guidelines shall include the following:

12 (1) The cost-effectiveness of the project;

13 (2) The economic development benefits of the project;

14 (3) The availability of alternative sources of funding that
15 could help finance the project, including, but not limited to,

16 private grants or federal funding and the efforts undertaken to
17 obtain such funding;

18 (4) If the project requires the construction of a network, the
19 applicant's ability to operate and maintain such network;

20 (5) The degree to which the project advances statewide
21 broadband access and other state broadband planning goals;

22 (6) If the project involves the construction of a network, the
23 proposed technologies, bandwidths, upstream data rates and
24 downstream data rates;

25 (7) The estimated dates the project would commence and be
26 completed;

27 (8) How the proposed project compares to alternative
28 proposals for the same unserved area with regard to the number
29 of people served, the amount of financial assistance sought, and
30 the long-term viability of the proposed project; and

31 (9) Any other consideration the council deems pertinent in
32 evaluating requests for funding assistance.

33 (c) Under no circumstances may the council's guidelines
34 allow for the approval of any project for broadband service
35 involving the construction of a network that does not meet the
36 minimum specifications for broadband service as set by the
37 Federal Communications Commission.

38 (d) The council shall create an application form that shall be
39 used by all project sponsors requesting funding assistance from
40 the council to plan, acquire, construct, improve or otherwise
41 develop and execute broadband deployment projects in type 2 or
42 type 3 unserved areas or broadband demand promotion projects.
43 The application form shall advise applicants of information
44 required by state agencies that will issue permits and certificates
45 regarding the project.

46 (e) The application form shall require the project sponsor to
47 set forth:

48 (1) The proposed location of the project;

49 (2) If the project involves the construction of a network, the
50 type(s) of unserved area(s) the project proposes to address;

51 (3) The estimated total cost of the project;

52 (4) The amount of funding assistance required and the
53 specific uses of the funding;

54 (5) Other sources of funding available or potentially
55 available for the project;

56 (6) Information demonstrating the need for the project;

57 (7) That the proposed funding of the project is the most
58 economically feasible and viable alternative to completing the
59 project; and

60 (8) Such other information as the council considers
61 necessary.

**§31-15C-10. Requirements for project funding assistance; review
of project application by council; competitive
applications.**

1 (a) As determined by the council, project sponsors may
2 submit applications for funding assistance.

3 (b) Broadband deployment projects, including projects
4 involving the construction of a network, may be submitted for
5 type 2 and/or type 3 unserved areas as those areas are
6 categorized pursuant to section six of this article. Broadband
7 demand promotion projects may be submitted on a statewide or
8 regional basis.

9 (c) When a completed application is received for a project
10 area, the council shall post notice with the Secretary of State of
11 the first completed application received for that project area. The
12 notice shall be published in the State Register for sixty days to
13 allow for competing applications to be submitted to the council.

14 (d) Within thirty days of the close of the sixty-day notice
15 period, the council shall review all applications timely received
16 during the sixty-day period and either:

17 (1) Approve funding for one or more projects after
18 determining that the funding would constitute an appropriate
19 investment of public funds; or

20 (2) Deny the project funding request if the council
21 determines that:

22 (A) The application does not contain all of the required
23 information;

24 (B) Is incomplete;

25 (C) A proposed project is not eligible for funding assistance;
26 or

27 (D) The proposed project is otherwise not an appropriate or
28 prudent investment of state funds.

29 (e) Prior to approving or denying any funding request, the
30 council may seek the advice of any expert consultant retained
31 pursuant to section seven of this article, but the council is not
32 bound by that advice. The council shall also consider the views,
33 if offered, of affected members of the public, including private
34 industry.

35 (f) To apply for or receive any funding assistance for a
36 broadband deployment project or a broadband demand
37 promotion project from the council pursuant to this section, the

38 project sponsor seeking the funding assistance shall submit a
39 completed application to the council on the form prepared for
40 such purpose by the council pursuant to section nine of this
41 article.

42 (g) In reviewing each application, the council may use the
43 engineering, financial and technical expertise of outside
44 consultants in addition to the respective staffs of the government
45 agencies and private-sector entities represented on the council or
46 other government agencies.

47 (h) Notwithstanding any provision of article fifteen-a,
48 chapter thirty-one or any other provision of this code, broadband
49 deployment project proposals and broadband demand promotion
50 project proposals submitted to the council for its consideration
51 pursuant to this article and the council's decisions with regard to
52 such projects shall not be subject to review by the West Virginia
53 Infrastructure and Jobs Development Council.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2013.

Governor

