

COMMITTEE SUBSTITUTE

FOR

H. B. 2979

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(Originating in the Committee on Finance)

[March 28, 2013]

A BILL 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 actions of the broadband deployment council generally; modifying the minimum data rates and other components of the definition of the terms “broadband” and “broadband service”; modifying and adding other definitions; requiring annual reports to the Legislature; providing that the council’s public outreach and education efforts extend beyond unserved areas; revising the council’s guidelines on requests for

funding assistance; requiring projects for broadband service involving the construction of a network to meet the revised definition of “broadband service” and “broadband” before being approved; revising the criteria for funding assistance applications; 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 (a) For the purposes of this article,
- 2 (1) “Broadband” or “broadband service” means any service
- 3 providing advanced telecommunications capability with ~~either~~
- 4 a minimum downstream data rate ~~or of 6 Mbps and a minimum~~
- 5 upstream data rate of ~~at least 200 kilobits per second~~ 1.5 Mbps,
- 6 that does not require the end-user to dial up a connection that has
- 7 the capacity to always be on, and for which the transmission
- 8 speeds are based on regular available bandwidth rates, not
- 9 sporadic or burstable rates, with ~~a minimum downstream-to-~~

10 ~~upstream data ratio of 10:1 for services with a downstream data~~
11 ~~rate of up to five megabits per second, and with a minimum~~
12 ~~upstream data rate of 500 kilobits per second for services with a~~
13 ~~downstream data rate of five megabits per second or greater~~
14 latency suitable for real-time applications and services such as
15 VoIP and video conferencing, and with monthly usage capacity
16 reasonably comparable to that of residential terrestrial fixed
17 broadband offerings in urban areas.

18 (2) “Broadband deployment project” means ~~either: (A) A a~~
19 ~~project to provide broadband services to~~ in a type 2 and/or type
20 3 unserved area; as defined in section six of this article; ~~or (B) a~~
21 ~~project to undertake activities to promote demand for broadband~~
22 ~~services and broadband applications.~~

23 (3) “Broadband demand promotion project” means a
24 statewide or regional project to undertake activities to promote
25 demand for broadband services and broadband applications.

26 (3)(4) “Downstream data rate” means the transmission speed
27 from the service provider source to the end-user.

28 (4)(5) “Upstream data rate” means the transmission speed
29 from the end-user to the service provider source.

30 ~~(5)~~(6) “Unserved area” means a community that has no
31 access to broadband service.

32 (b) The definition of the term “broadband,” the designation
33 of areas that are “unserved”, and the level of service required to
34 qualify for funding of state programs and projects, are based on
35 the ~~Federal Communications Commission’s current definition of~~
36 ~~broadband, which is stated in terms of the number of Kilobits~~
37 ~~(Kbps) per second, either upstream or downstream~~ National
38 Telecommunications and Information Administration’s speed
39 tiers. It is the intention of the Legislature that the definition of
40 broadband in this article and the level of service requirements for
41 state funding be promptly updated by future Legislatures to
42 conform with any revisions enacted by Congress or any rule or
43 regulation promulgated by the Federal Communications
44 Commission or other federal agencies involved with deploying
45 and enhancing broadband services.

§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 (d) The council shall report to the Legislature on or before
52 January 1 of each year concerning the action taken by the
53 council during the previous year in carrying out the provisions
54 of this article and make such special reports as may be required
55 by the Legislature and 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. ~~in unserved areas.~~ The council shall consider the
5 views, if offered, of affected members of the public, including
6 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 ~~promulgate emergency~~ propose for promulgation legislative
4 rules pursuant to the provisions of ~~section fifteen~~, article three,
5 chapter twenty-nine-a of this code to develop comprehensive,
6 uniform guidelines for use by the council in evaluating any
7 request by a project sponsor for funding assistance to plan,
8 acquire, construct, improve or otherwise develop and execute a
9 broadband deployment project in a type 2 or type 3 unserved
10 area, and may promulgate emergency rules under section fifteen
11 of said article three pending authorization of the legislative rules.
12 The guidelines shall include the following factors: (1) The cost-
13 effectiveness of the project; (2) the economic development
14 benefits of the project; (3) the availability of alternative sources
15 of funding that could help finance the project, including, but not
16 limited to, private grants or federal funding and the efforts
17 undertaken to obtain such funding; (4) if the project requires the
18 construction of a network, the applicant's ability to operate and
19 maintain such network; (5) the degree to which the project

20 advances statewide broadband access and other state broadband
21 planning goals; (6) if the project involves the construction of a
22 network, the proposed technologies, bandwidths, upstream data
23 rates and downstream data rates; (7) the estimated date the
24 project would commence and be completed; (8) how the
25 proposed project compares to alternative proposals for the same
26 unserved area with regard to the number of people served, the
27 amount of financial assistance sought, and the long-term
28 viability of the proposed project; and (9) any other consideration
29 the council deems pertinent in evaluating requests for funding
30 assistance.

31 (b) Under no circumstances may the council's guidelines
32 allow for the approval of any project for broadband service ~~that~~
33 ~~does not include a minimum downstream transmission rate of~~
34 ~~600 kilobits per second (Kbps) and a minimum downstream-to-~~
35 ~~upstream ratio of 8.5:1 for services with a downstream rate of up~~
36 ~~to five megabits per second (Mbps). In those cases where a~~
37 ~~project's broadband service's downstream rate is five Mbps or~~
38 ~~greater, the council's guidelines must require a minimum~~
39 ~~upstream data rate of 588 Kbps and allow information~~

40 ~~applications and market demands to dictate acceptable~~
41 ~~downstream-to-upstream data ratios~~ involving the construction
42 of a network that does not meet the minimum requirements for
43 broadband service as that term and the term broadband are
44 defined in section two of this article.

45 (c) The council shall create an application form that shall be
46 used by all project sponsors requesting funding assistance from
47 the council to plan, acquire, construct, improve or otherwise
48 develop and execute broadband deployment projects in type 2 or
49 type 3 unserved areas or broadband demand promotion projects.

50 The application form shall ~~contain all~~ advise applicants of
51 information required by ~~all~~ state agencies that will ~~be required~~
52 ~~to~~ issue permits and certificates regarding the project. The
53 application form shall require the project sponsor to set forth the
54 proposed location of the project; if the project involves the
55 construction of a network, the type(s) of unserved area(s) the
56 project proposes to address; the estimated total cost of the
57 project; the amount of funding assistance required and the
58 specific uses of the funding; other sources of funding available
59 or potentially available for the project; information

60 demonstrating the need for the project; that the proposed funding
61 of the project is the most economically feasible and viable
62 alternative to completing the project; and such other information
63 as the council considers necessary.

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

1 (a) ~~Once the council has categorized unserved areas pursuant~~
2 ~~to section six of this article, At a time and place determined by~~
3 ~~the council, project sponsors may submit applications for~~
4 ~~funding assistance. ~~for projects in those unserved areas. Upon~~~~
5 ~~receiving its first completed application for a categorized~~
6 ~~unserved area, the council shall post notice of such application~~
7 ~~with the Secretary of State Broadband deployment projects,~~
8 ~~including projects involving the construction of a network, may~~
9 ~~be submitted for type 2 and/or type 3 unserved areas as those~~
10 ~~areas are categorized pursuant to section six of this article.~~
11 ~~Broadband demand promotion projects may be submitted on a~~
12 ~~statewide or regional basis. When a completed application is~~
13 ~~received for a project area, the council shall post notice with the~~
14 ~~Secretary of State of the first completed application received for~~

15 that project area. The notice shall be published in the State
16 Register for sixty days ~~so as~~ to allow for competing applications
17 to be submitted to the council. Within thirty days of the close of
18 the aforementioned sixty-day notice period, the council shall
19 review all applications timely received during the sixty-day
20 period and either: (i) Approve funding for one or more projects
21 after determining that the funding would constitute an
22 appropriate investment of public funds; or (ii) if the council
23 determines that the application does not contain all of the
24 required information or otherwise is incomplete, or that a
25 proposed project is not eligible for funding assistance, or that the
26 proposed project is otherwise not an appropriate or prudent
27 investment of state funds, the council shall deny the project
28 funding request. Prior to approving or denying any funding
29 request, the council may seek the advice of any expert consultant
30 retained pursuant to section seven of this article, but the council
31 is not bound by that advice. The council shall also consider the
32 views, if offered, of affected members of the public, including
33 private industry.

34 (b) To apply for or receive any funding assistance for a
35 broadband deployment project or a broadband demand

36 promotion project from the council pursuant to subsection (a) of
37 this section, the project sponsor seeking the funding assistance
38 shall submit a completed application to the council on the form
39 prepared for such purpose by the council pursuant to section nine
40 of this article.

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

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

