



1 Council and Water Development Authority; creating the  
2 Infrastructure Fund for Broadband Middle Mile Development;  
3 providing for the disposition of funds on termination or  
4 dissolution of the authority; providing that broadband middle  
5 mile projects funded by the authority are public improvements;  
6 authorizing the issuance of broadband middle mile revenue  
7 bonds; creating the Broadband Middle Mile Infrastructure Debt  
8 Service Fund; providing for funding of debt service fund;  
9 specifying the requirements for the issuance of bonds;  
10 providing for contents of trust agreement and trustee for  
11 bonds; specifying the remedies available to bondholders,  
12 noteholders and trustee; making broadband middle mile  
13 infrastructure revenue bonds lawful investments; providing for  
14 purchase, cancellation and refunding of bonds; and declaring  
15 that bonds are not state debts and are exempt from taxation.

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

17 That §31-15A-2 of the Code of West Virginia, 1931, as amended,  
18 be amended and reenacted; and that said code be amended by adding  
19 thereto sixteen new sections, designated §31-15A-9a, §31-15A-9b,  
20 §31-15A-10a, §31-15A-11a, §31-15A-12a, §31-15A-13a, §31-15A-14a,  
21 §31-15A-15a, §31-15A-17c, §31-15A-18a, §31-15A-19a, §31-15A-20a,  
22 §31-15A-21a, §31-15A-22a, §31-15A-23a and §31-15A-24a, all to read  
23 as follows:

1 **ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT**  
2 **COUNCIL.**

3 **§31-15A-2. Definitions.**

4 ~~For purposes of this article:~~

5 (a) General. -- When used in this article, words defined in  
6 subsection (b) of this section have the meaning ascribed to them in  
7 this section, except in those instances where a different meaning  
8 is distinctly expressed or the context in which the word is used  
9 clearly that a different meaning is intended.

10 (b) Definitions. --

11 (1) "Bond" or "infrastructure revenue bond" means a revenue  
12 bond, note, or other obligation issued by the water development  
13 authority pursuant to this article, including bonds to refund such  
14 bonds and notes to renew such notes, and notes in anticipation of  
15 and payable from the proceeds of such bonds;

16 (2) "Broadband infrastructure" means all facilities, hardware  
17 and software and other intellectual property necessary to provide  
18 broadband services in this state, including, but not limited to,  
19 voice, video and data services;

20 (3) "Broadband infrastructure project" means any middle mile  
21 project that deploys equipment, fiber optic cables, facilities, or  
22 other technologies necessary to provide broadband transport  
23 services: Provided, That nothing in this article may be construed

1 to provide the Infrastructure and Jobs Development Council  
2 jurisdiction or oversight over broadband infrastructure projects  
3 for the sole use of homeland security agencies in this state.

4       (4) "Broadband infrastructure revenue bond" means a revenue  
5 bond, note, or other obligation issued by the West Virginia  
6 Infrastructure and Jobs Development Council pursuant to this  
7 article to fund one or more broadband middle mile infrastructure  
8 projects, including bonds to refund such bonds and notes to renew  
9 such notes, and notes in anticipation of and payable from the  
10 proceeds of such bonds;

11       (5) "Broadband revenue" means all amounts deposited into the  
12 Infrastructure Fund for Broadband Middle Mile Development; any  
13 amounts received directly or indirectly from any source for the use  
14 of all or any part of any broadband project completed pursuant to  
15 this article and any other amounts received by the Water  
16 Development Authority for the purpose of broadband middle mile  
17 development.

18       ~~(b)~~ (6) "Code" means the Code of West Virginia, 1931, as  
19 amended;

20       ~~(c)~~ (7) "Cost" means, as applied to any project to be  
21 financed, in whole or in part, with infrastructure revenues or  
22 funds otherwise provided pursuant to this article, the cost of  
23 planning, acquisition, improvement and construction of the project;

1 the cost of preliminary design and analysis, surveys, borings; the  
2 cost of environmental, financial, market and engineering  
3 feasibility studies, assessments, applications, approvals,  
4 submissions or clearances; the cost of preparation of plans and  
5 specifications and other engineering services; the cost of  
6 acquisition of all land, rights-of-way, property rights, easements,  
7 franchise rights and any other interests required for the  
8 acquisition, repair, improvement or construction of the project;  
9 the cost of demolishing or removing any buildings or structures on  
10 land so acquired, including the cost of acquiring any lands to  
11 which buildings or structures may be moved; the cost of excavation,  
12 grading, shaping or treatment of earth, demolishing or removing any  
13 buildings or structures; the cost of constructing any buildings or  
14 other improvements; the cost of all pumps, tanks, vehicles,  
15 apparatus and other machinery, furnishings and equipment; loan or  
16 origination fees and all finance charges and interest incurred  
17 prior to and during the construction and for no more than six  
18 months after completion of construction; the cost of all legal  
19 services and expenses; the cost of all plans, specifications,  
20 surveys and estimates of cost; all working capital and other  
21 expenses necessary or incident to determining the feasibility or  
22 practicability of acquiring, repairing, improving or constructing  
23 any project; the cost of placing any project in operation; and all

1 other costs and expenses of any kind or nature incurred or to be  
2 incurred by the project sponsor developing the project that are  
3 reasonable and necessary for carrying out all works and  
4 undertakings necessary or incident to the accomplishment of any  
5 project: *Provided*, That costs ~~shall~~ may not include any amounts  
6 related to the ongoing operations of the owner or operator,  
7 depreciation thereof or any other cost which the council, ~~or~~ the  
8 Water Development Authority has not determined to be consistent  
9 with the purposes and objectives of this article;

10 ~~(d)~~ (8) "Council" means the West Virginia infrastructure and  
11 jobs development council created in section three of this article;

12 (9) "Department of Administration" means the Department of  
13 Administration established under article one, chapter five-a of  
14 this code, or any successor to all or any substantial part of its  
15 powers and duties;

16 ~~(e)~~ (10) "Division Department of Environmental Protection"  
17 means the ~~Division~~ Department of Environmental Protection  
18 established under article one, chapter twenty-two of this code, or  
19 any successor to all or any substantial part of its powers and  
20 duties;

21 ~~(f)~~ (11) "Division of Health" means the Division of Health  
22 created in article one, chapter sixteen of this code, or any  
23 successor to all or any substantial part of its powers and duties;

1       ~~(g)~~ (12) "Economic development authority" means the economic  
2 development authority established under article fifteen, chapter  
3 thirty-one of the code, or any successor to all or any substantial  
4 part of its powers and duties;

5       ~~(h)~~ (13) "Emergency project" means a project which the council  
6 has determined: (1) Is essential to the immediate economic  
7 development of an area of the state; and (2) will not likely be  
8 developed in that area if construction of the project is not  
9 commenced immediately;

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

18       ~~(j)~~ (15) "Housing Development Fund" means the West Virginia  
19 Housing Development Fund established under article eighteen of this  
20 chapter, or any successor to all or any substantial part of its  
21 powers and duties;

22       (16) "Includes" and "including", when used in this article, do  
23 not exclude other things otherwise within the definition or the

1 sentence in which the term is used;

2       ~~(k)~~ (17) "Infrastructure Fund" means the West Virginia  
3 Infrastructure Fund created and established in section nine of this  
4 article;

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



1 and shipping facilities, curbs, gutters, sidewalks, and drainage  
2 and flood control facilities, whether on or off the site;

3 ~~(m)~~ (19) "Infrastructure revenue" means all amounts  
4 appropriated by the Legislature; all amounts deposited into the  
5 infrastructure fund; any amounts received, directly or indirectly,  
6 from any source for the use of all or any part of any project  
7 completed pursuant to this article; and any other amounts received  
8 by the State Treasurer, council, or the Water Development Authority  
9 for the purposes of this article: Provided, That funds for water  
10 and sewer infrastructure projects and funds for broadband middle  
11 mile infrastructure projects shall be kept separate;

12 (20) "Middle mile" when used in the context of broadband means  
13 any wired or wireless facilities, or portions thereof, which  
14 facilitate transport service for service providers or carriers, and  
15 provides connectivity between communities, community access points,  
16 network access points and carrier access points, but does not  
17 include any last mile facilities (or portions thereof) that provide  
18 connectivity to end-users.

19 (21) "Middle mile fiber threshold" means a fiber optic cable  
20 containing no less than one hundred forty-four individual strands  
21 of fiber with minimum performance characteristics consistent with  
22 nonzero dispersion shifted single mode optical fiber cable as  
23 defined by the International Telecommunication Union standard ITU-T

1 G.655;

2 ~~(n)~~ (22) "Need of the project sponsors" means there is a  
3 public need for a project. The council shall, for water and sewer  
4 projects, construe a population increase evidenced by the last two  
5 decennial censuses in a county in which a project is proposed, as  
6 a factor supporting the conclusion that a need exists for projects  
7 in that county;

8 (23) "Network access point" when used in the context of  
9 broadband means a direct connection to carriers that provide core  
10 interstate TCPIP backbone networks that comprise or make up primary  
11 portions of the national Internet backbone system and which provide  
12 direct connectivity on a national scale throughout the United  
13 States in addition to direct or indirect connectivity to  
14 international networks throughout the world;

15 (24) "Open access" when used in the context of broadband means  
16 the equitable and nondiscriminatory use of the lines by all  
17 broadband service providers including the grant of infeasible  
18 rights to use particular strands if the rights can be granted in an  
19 equitable and nondiscriminatory manner, subject to such appropriate  
20 limitations and restrictions as the council may determine.

21 (25) "Person" means any individual, partnership, firm,  
22 association, corporation or other legal entity.

23 ~~(o)~~ (26) "Project" means any wastewater facility, water

1 facility project or any combination thereof, constructed or  
2 operated or to be constructed or operated by a project sponsor;

3 ~~(p)~~ (27) "Project sponsor" means any service provider  
4 governmental agency or person, or any combination thereof,  
5 including, but not limited to, any public utility which intends to  
6 plan, acquire, construct, improve or otherwise develop a project;

7 ~~(q)~~ (28) "Public Service Commission" means the Public Service  
8 Commission of West Virginia created and established under section  
9 three, article one, chapter twenty-four of this code, or any  
10 successor to all or any substantial part of its powers and duties;

11 ~~(r)~~ (29) "Person" means any individual, corporation,  
12 partnership, association, limited liability company or any other  
13 form of business organization;

14 ~~(s)~~ (30) "Public utility" means any person or persons, or  
15 association of persons, however associated, whether incorporated or  
16 not, including, without limitation, any governmental agency,  
17 operating a wastewater facility or water facility as a public  
18 service, which is regulated by the Public Service Commission as a  
19 public utility under chapter twenty-four of this code or which is  
20 required to file its tariff with the Public Service Commission;

21 (31) "Service provider" when used in the context of broadband  
22 means any service provider that provides broadband service and is  
23 certified to provide services in accordance with state and federal

1 regulations;

2 ~~(t)~~ (32) "State Development Office" means the West Virginia  
3 Development Office established under article two, chapter five-b of  
4 this code, or any successor to all or any substantial part of its  
5 powers and duties;

6 ~~(u)~~ (33) "State infrastructure agency" means the division of  
7 health, ~~Division~~ Department of Environmental Protection, Housing  
8 Development Fund, Public Service Commission, State Development  
9 Office, Water Development Authority, Economic Development  
10 Authority, and any other state agency, division, body, authority,  
11 commission, instrumentality or entity which now or in the future  
12 receives applications for the funding of, and provides funding or  
13 technical assistance to, the planning, acquisition, construction or  
14 improvement of a project;

15 (34) "Transport service" when used in the context of broadband  
16 means any service that provides a service provider or carrier with  
17 the ability to transport high-capacity voice, data, graphics or  
18 video between communities, community access points, network access  
19 points and carrier access points. Transport services do not  
20 include any last mile broadband services or other services provided  
21 directly to end-users;

22 ~~(v)~~ (35) "Wastewater facility" means all facilities, land and  
23 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)~~ (36) "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)~~ (37) "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; and

22 (38) "West Virginia Network for Educational Telecomputing"  
23 means the network managed by the vice chancellor for administration

1 of the Higher Education Policy Commission as provided in section  
2 two, article four, chapter eighteen-b of this code.

3 (39) "Zone" means a predetermined section of the West Virginia  
4 broadband middle mile established by the Infrastructure and Jobs  
5 Development Council.

6 **§31-15A-9a. Infrastructure Fund for Broadband Middle Mile**  
7 **Development; deposits in fund; use of funds for**  
8 **projects.**

9 (a) The Water Development Authority shall create and establish  
10 a special revolving fund of moneys made available by appropriation,  
11 grant, contribution or loan to be known as the "West Virginia  
12 Infrastructure Fund for Broadband Middle Mile Development". This  
13 fund shall be governed, administered and accounted for by the Water  
14 Development Authority as a special purpose account separate and  
15 distinct from any other moneys, funds or funds owned and managed by  
16 the authority for broadband middle mile development. The  
17 Infrastructure Fund for Broadband Middle Mile Development shall  
18 consist of subaccounts, as deemed necessary by the authority, for  
19 the deposit of:

20 (1) Infrastructure revenues for broadband middle mile  
21 deployment;

22 (2) Any appropriations, grants, gifts, contributions, loan  
23 proceeds or other revenues received by the Infrastructure Fund for

1 Broadband Middle Mile Development from any source, public or  
2 private;

3 (3) All proceeds derived from the sale of bonds issued  
4 pursuant to this article for broadband middle mile infrastructure  
5 development;

6 (4) Insurance proceeds payable to Infrastructure and Jobs  
7 Development Council or the Infrastructure Fund For Broadband Middle  
8 Mile Development in connection with any broadband middle mile  
9 infrastructure project; and

10 (5) All income earned on moneys held in the Infrastructure  
11 Fund for Broadband Middle Mile Development.

12 (b) Any money collected pursuant to this section shall be paid  
13 into the West Virginia Infrastructure Fund for Broadband Middle  
14 Mile Development by the state agent or entity charged with the  
15 collection of the same, credited to that fund, and used only for  
16 purposes set forth in this article for broadband middle mile  
17 development.

18 (c) Amounts in the Infrastructure Fund for Broadband Middle  
19 Mile Development shall be segregated and administered by the Water  
20 Development Authority separate and apart from its other assets and  
21 programs. Amounts in the Infrastructure Fund for Broadband Middle  
22 Mile Development may not be transferred to any other fund or  
23 account or used, other than indirectly, for the purposes of any

1 other program of the Water Development Authority.

2 (d) Notwithstanding any provision of this code to the  
3 contrary, amounts in the Infrastructure Fund for Broadband Middle  
4 Mile Development shall be deposited by the Water Development  
5 Authority in one or more banking institutions: *Provided*, That any  
6 moneys so deposited shall be deposited in a banking institution  
7 located in this state. The banking institution shall be selected  
8 by the Water Development Authority by competitive bid. Pending the  
9 disbursement of any money from the Infrastructure Fund for  
10 Broadband Middle Mile Development as authorized under this section,  
11 the Water Development Authority shall invest and reinvest the  
12 moneys subject to the limitations set forth in section twelve,  
13 article six, chapter twelve of this code.

14 **§31-15A-9b. Broadband Deployment Council to serve as advisory**  
15 **body on broadband middle mile matters; all state**  
16 **areas considered unserved.**

17 (a) The Broadband Deployment Council shall serve as an  
18 advisory body to make recommendations to the Infrastructure and  
19 Jobs Development Council as described in section three of this  
20 article, on matters pertaining to the construction and operation of  
21 the West Virginia broadband middle mile, including establishing  
22 middle mile infrastructure zones. For all purposes relating to West  
23 Virginia broadband middle mile infrastructure, all areas of the



1 state are "unserved areas" as described in subdivision seven,  
2 section two, article fifteen-c of this chapter.

3 **§31-15A-10a. Middle mile characteristics; open access guaranteed;**  
4 **business and residential service required; zones;**  
5 **rights may be granted; existing infrastructure may**  
6 **be purchased; reports.**

7 (a) The West Virginia Broadband Middle Mile infrastructure, to  
8 include more than two thousand miles of fiber optic cable, shall be  
9 owned and operated by the State of West Virginia. The network  
10 provided or enhanced by the broadband middle mile infrastructure  
11 project shall be open access, subject to rules of the council.  
12 Existing broadband infrastructure which meets the required  
13 specifications of middle mile fiber threshold with a minimum of one  
14 hundred forty-four strands of fiber may be purchased as part of the  
15 middle mile infrastructure project. Internet services provided  
16 through the broadband middle mile shall be available to both  
17 business and residential users as well as to governmental agencies.  
18 The cost for access to the middle mile will be the cost of  
19 maintaining and administering the middle mile network. The network  
20 shall provide free broadband, data and phone to schools,  
21 universities and government buildings in the state. The council  
22 shall reserve at least eight strands of fiber for use by the state,  
23 its instrumentalities and political subdivisions.

1 (b) The Infrastructure and Jobs Development Council shall  
2 establish zones in the broadband middle mile infrastructure. The  
3 zones shall be established after considering the recommendations of  
4 the Infrastructure Deployment Council. Each zone of the middle mile  
5 infrastructure shall be let for bid separately, to encourage  
6 participation by multiple project sponsors. A project sponsor may  
7 bid to construct part or all of a zone of the middle mile  
8 infrastructure project. As a condition of a contract, a project  
9 sponsor may be granted infeasible rights to use up to twenty  
10 percent of the fibers in any number of zones of the broadband  
11 middle mile, but may not use more than twenty percent of the fibers  
12 in any one zone.

13 (c) The Infrastructure and Jobs Development Council shall  
14 report to the Governor, The Legislative Manager, the Speaker of the  
15 House of Delegates and the President of the Senate during each  
16 regular session of the Legislature, on the status of the broadband  
17 middle mile project and, to the extent known, the economic activity  
18 and jobs created as a result of the broadband middle mile  
19 infrastructure project.

20 **§31-15A-11a. Reservation of funds for broadband middle mile**  
21 **infrastructure projects.**

22 (a) Funds deposited in the West Virginia Infrastructure Fund  
23 for Broadband Middle Mile Development shall be dedicated for the

1 purpose of providing funding for the cost of broadband middle mile  
2 infrastructure projects as defined in section two of this article.

3 (b) No bonds may be issued under this article for broadband  
4 infrastructure projects until such time as the Legislature has  
5 provided for sufficient revenue to meet debt service on the bonds,  
6 unless the Infrastructure and Jobs Development Council is able to  
7 identify a repayment source for the bonds.

8 **§31-15A-12a. Additional powers of Water Development Authority**  
9 **relating to broadband middle mile infrastructure**  
10 **projects.**

11 To accomplish the purpose and intent of this article, the  
12 Water Development Authority, upon approval of the Infrastructure  
13 and Jobs Development Council, is hereby empowered, in addition to  
14 all other powers granted to it under this code to:

15 (1) Enter into agreements or other transactions with any  
16 federal or state agency in connection with any broadband middle  
17 mile infrastructure project;

18 (2) Receive or administer on behalf of any federal or state  
19 agency grants, subsidies or other payments to be applied to the  
20 costs of any broadband middle mile infrastructure project financed,  
21 in whole or in part, or otherwise assisted by the Infrastructure  
22 and Jobs Development Council, including, but not limited to,  
23 payments to be applied to operating costs and debt service or

1 obligations of any project sponsor;

2 (3) Receive and accept aid or contributions from any source of  
3 money, property, labor or other things of value, to be held, used  
4 and applied only for the purposes for which such grants and  
5 contributions are made; and

6 (4) Do all things which are necessary to further the purposes  
7 and intent of this article. The Water Development Authority may  
8 propose rules for legislative approval pursuant to article three,  
9 chapter twenty-nine-a of this code, and may promulgate emergency  
10 rules pursuant to the provisions of section fifteen, article three,  
11 chapter twenty-nine-a of this code.

12 **§31-15A-13a. Prohibition on funds inuring to the benefit of or**  
13 **being distributable to Water Development Board;**  
14 **transactions between the Water Development Board**  
15 **and officers having certain interests in such**  
16 **transactions.**

17 No part of the West Virginia Infrastructure Fund for Broadband  
18 Middle Mile Development or the West Virginia Broadband Middle Mile  
19 Infrastructure Revenue Debt Service Fund inures to the benefit of  
20 or is distributable to the Water Development Board directors or  
21 officers of the Water Development Authority except that the Water  
22 Development Authority is authorized and empowered to pay reasonable

1 compensation, other than to members of the Water Development Board,  
2 including the chairman, vice chairman, secretary-treasurer for  
3 services rendered and to make loans and exercise its other powers  
4 as previously specified in furtherance of its corporate purpose:  
5 *Provided*, That no loans may be made, and no property may be  
6 purchased or leased from, or sold, leased or otherwise disposed of,  
7 to any Water Development Board member or officer of the Water  
8 Development Authority.

9 **§31-15A-14a. Disposition of Infrastructure Fund for Broadband**  
10 **Development upon termination or dissolution of**  
11 **council.**

12 Upon the termination or dissolution of the Water Development  
13 Authority, all rights and properties of the authority with respect  
14 to the Infrastructure Fund for Broadband Middle Mile Development  
15 shall pass to and be vested in the state, subject to the rights of  
16 lienholders and other creditors.

17 **§31-15A-15a. Broadband middle mile projects not to be considered**  
18 **public improvements for financing; competitive bid**  
19 **requirements.**

20 (a) No broadband middle mile infrastructure project acquired,  
21 constructed or maintained or financed, in whole or in part, by the  
22 Water Development Authority is a "public improvement" within the

1 meaning of article five-a, chapter twenty-one of this code for  
2 purposes of the financing of the project.

3       (b) The state and its subdivisions shall, except as provided  
4 in subsection (c) of this section, solicit competitive bids and  
5 require the payment of prevailing wage rates as provided in article  
6 five-a, chapter twenty-one of this code for the construction of  
7 every broadband middle mile infrastructure project funded pursuant  
8 to this article exceeding \$25,000 in total cost.

9       Following the solicitation of the bids, a construction  
10 contract shall be awarded to the lowest qualified responsible  
11 bidder, who shall furnish a sufficient performance and payment  
12 bond: *Provided*, That the state and its subdivisions may reject all  
13 bids and solicit new bids on the project.

14       (c) This section does not:

15       (1) Apply to work performed on construction or repair projects  
16 not exceeding a total cost of \$50,000 by regular full-time  
17 employees of the state or its subdivisions: *Provided*, That no more  
18 than \$50,000 shall be expended on an individual project in a single  
19 location in a twelve-month period;

20       (2) Prevent students enrolled in vocational educational  
21 schools from being used in the construction or repair projects when  
22 such use is a part of the students' training program;

23       (3) Apply to emergency repairs to building components and

1 systems: *Provided*, That the term "emergency repairs" means repairs  
2 that, if not made immediately, will seriously impair the use of the  
3 building components and systems or cause danger to those persons  
4 using the building components and systems; or

5 (4) Apply to any situation where the state or a subdivision of  
6 the state comes to an agreement with volunteers, or a volunteer  
7 group, by which the governmental body will provide construction or  
8 repair materials, architectural, engineering, technical or any  
9 other professional services and the volunteers will provide the  
10 necessary labor without charge to, or liability upon, the  
11 governmental body: *Provided*, That the total cost of the  
12 construction or repair projects does not exceed \$50,000.

13 (d) Subsection (b) of this section does not apply to privately  
14 owned broadband middle mile infrastructure projects.

15 **§31-15A-17c. Water Development Authority empowered to issue**  
16 **broadband middle mile infrastructure revenue bonds**  
17 **and refunding bonds; creation of Broadband Middle**  
18 **Mile Infrastructure Revenue Debt Service Fund;**  
19 **funding of Broadband Middle Mile Infrastructure**  
20 **Revenue Debt Service Fund; requirements and manner**  
21 **of such issuance.**

22 (a) To accomplish the purpose and intent of this article, the

1 Water Development Authority upon direction of the Infrastructure  
2 and Jobs Development Council is hereby empowered to issue from time  
3 to time broadband middle mile infrastructure revenue bonds of the  
4 state in such principal amounts as the council deems necessary to  
5 pay for expected broadband middle mile construction projects.

6 (b) The proceeds of broadband middle mile infrastructure  
7 revenue bonds may be used only for the purposes of related  
8 administrative expenses, paying for construction projects awarded  
9 through the bidding process, or for purchase of existing broadband  
10 infrastructure which meets the specifications established by the  
11 council and minimum performance characteristics consistent with  
12 nonzero dispersion shifted single mode optical fiber cable as  
13 defined by the International Telecommunication Union standard ITU-T  
14 G.655. The proceeds shall be deposited in one or more special  
15 accounts with the trustee under the trust agreement securing the  
16 bonds and shall be disbursed from time to time for broadband middle  
17 mile infrastructure projects in accordance with this article.

18 (c) The Water Development Authority may not authorize the  
19 disbursement of any proceeds of broadband middle mile  
20 infrastructure revenue bonds unless it has received from the  
21 Infrastructure Jobs Development Council the documentation required  
22 by section ten-a of this article.

23 (d) There is hereby created in the Water Development Authority



1 a special fund which shall be designated and known as the  
2 "Broadband Middle Mile Infrastructure Revenue Debt Service Fund,"  
3 into which shall be transferred solely from income from operation  
4 of the broadband middle mile, and deposited in the Infrastructure  
5 Fund for Broadband Middle Mile Development, the amounts certified  
6 by the authority as necessary to pay the principal, premium, if  
7 any, and interest on broadband middle mile infrastructure revenue  
8 bonds and any reserve requirements, subject to the terms of any  
9 agreement with the holders of the broadband middle mile  
10 infrastructure revenue bonds. All amounts deposited in the West  
11 Virginia Broadband Middle Mile Infrastructure Revenue Debt Service  
12 Fund shall be pledged to the repayment of the principal, interest  
13 and redemption premium, if any, on any broadband middle mile  
14 infrastructure revenue bonds authorized by this article: *Provided,*  
15 That amounts on deposit in the fund may be used to establish or  
16 maintain reserves created for the purposes of securing the  
17 broadband middle mile infrastructure revenue bonds. The pledge is  
18 valid and binding from the time the pledge is made, and the West  
19 Virginia Broadband Middle Mile Infrastructure Revenue Debt Service  
20 Fund so pledged is immediately subject to the lien of the pledge  
21 without any physical delivery thereof or further act, and the lien  
22 of any such pledge is valid and binding as against all parties  
23 having claims of any kind in tort, contract or otherwise against

1 the Water Development Authority irrespective of whether the parties  
2 have notice thereof.

3 (e) Except as may otherwise be expressly provided in this  
4 article or by resolution of the Water Development Authority, every  
5 issue of broadband middle mile infrastructure revenue bonds are  
6 special obligations of the Water Development Authority payable  
7 solely from amounts in the West Virginia Broadband Middle Mile  
8 Infrastructure Revenue Debt Service Fund, and the reserves created  
9 for this purpose by the Water Development Authority, without  
10 preference or priority among the bonds regardless of when issued,  
11 subject only to any agreements with the holders of any bonds to the  
12 contrary. All such bonds are hereby declared to be negotiable  
13 instruments.

14 (f) Broadband middle mile infrastructure revenue bonds shall  
15 be authorized by resolution of the Water Development Authority.  
16 These bonds shall bear such dates and shall mature at such times,  
17 in case of any note or renewal thereof not exceeding five years  
18 from the date of issue of the original note, and in the case of any  
19 bond not exceeding fifty years from the date of issue, as the  
20 resolution may provide. Broadband middle mile infrastructure  
21 revenue bonds shall bear interest at a rate or rates, including  
22 variable rates, shall be taxable or tax-exempt, shall be in the  
23 denominations, shall be in registered form, shall carry the

1 registration privileges, shall be payable in the medium and place  
2 of payment, and shall be subject to the terms of redemption as the  
3 Water Development Authority may authorize. Broadband middle mile  
4 infrastructure revenue bonds may be sold by Water Development  
5 Authority at public or private sale at the price the authority  
6 determines in consultation with the council. Broadband middle mile  
7 infrastructure revenue bonds shall be executed by the chairman and  
8 the vice chairman of the Water Development Authority, either or  
9 both of whom may use a facsimile signature. The official seal of  
10 the Water Development Authority or a facsimile thereof shall be  
11 affixed thereto or printed thereon and attested by manual or  
12 facsimile signature by the secretary-treasurer of the Water  
13 Development Authority. If any officer whose signature, or a  
14 facsimile of whose signature appears on any broadband  
15 infrastructure revenue bond ceases to be such officer before  
16 delivery of such bond, such signature or facsimile is nevertheless  
17 sufficient for all purposes to the same extent as if he or she had  
18 remained in office until such delivery, and if the seal of the  
19 Water Development Authority has been changed after a facsimile has  
20 been imprinted on such bond, the facsimile will continue to be  
21 sufficient for all purposes.

22 (g) Any resolution authorizing any broadband infrastructure  
23 revenue bonds may contain provisions, subject to any agreement with

1 bondholders or noteholders which may then exist, which agreements  
2 shall be part of the contract with the holder thereof, with respect  
3 to the pledge of or other use and disposition of amounts in the  
4 Broadband Middle Mile Infrastructure Revenue Debt Service Fund; the  
5 setting aside of reserve funds; the disposition of any assets of  
6 the Water Development Authority; limitations on the purpose to  
7 which the proceeds of sale of bonds may be applied; the  
8 authorization of notes issued in anticipation of the issuance of  
9 bonds; an agreement of the Water Development Authority to do all  
10 things necessary for the authorization, issuance and sale of such  
11 bonds in such amounts as may be necessary for the timely retirement  
12 of such notes; limitations on the issuance of additional bonds; the  
13 terms upon which additional bonds may be issued and secured; the  
14 refunding of outstanding bonds and the renewal of outstanding  
15 notes; the procedures, if any, by which the terms of any contract  
16 with bondholders or noteholders may be amended or abrogated; the  
17 amount of bonds the holders of which must consent thereto and the  
18 manner in which such consent may be given; and any other matter  
19 which in any way affects the security for or protection of the  
20 bonds.

21       (h) In the event that the sum of all reserves pledged to the  
22 payment of the bonds is less than the minimum reserve requirements  
23 established in any resolution or resolutions authorizing the

1 issuance of the bonds, the chairman of the Water Development  
2 Authority shall certify, on or before December 1 of each year, the  
3 amount of such deficiency to the Governor of the state for  
4 inclusion, if the Governor shall so elect, of the amount of such  
5 deficiency in the budget to be submitted to the next session of the  
6 Legislature for appropriation to the Infrastructure and Jobs  
7 Development Council to be pledged for payment of such bonds:  
8 *Provided*, That the Legislature shall not be required to make any  
9 appropriations so requested, and the amount of such deficiencies  
10 does not constitute a debt or liability of the state.

11 (I) Neither the officers or board members of the Water  
12 Development Authority or the Infrastructure and Jobs Development  
13 Council, nor any person executing the broadband middle mile  
14 infrastructure revenue bonds, are liable personally on the bonds or  
15 be subject to any personal liability or accountability by reason of  
16 the issuance thereof.

17 **§31-15A-18a. Trustee for holders of broadband middle mile**  
18 **infrastructure revenue bonds; contents of trust**  
19 **agreement.**

20 (a) Any broadband middle mile infrastructure revenue bonds  
21 issued by the Water Development Authority under this article shall  
22 be secured by a trust agreement between the Water Development  
23 Authority and a corporate trustee, which trustee may be any trust

1 company or banking institution having the powers of a trust company  
2 within this state.

3       (b) Any trust agreement may pledge or assign the Broadband  
4 Middle Mile Infrastructure Revenue Debt Service Fund. Any trust  
5 agreement or any resolution providing for the issuance of such  
6 bonds may contain such provisions for protecting and enforcing the  
7 rights and remedies of the bondholders or noteholders as are  
8 reasonable and proper and not in violation of law, including  
9 section seventeen-a of this article, and covenants setting forth  
10 the duties of the Water Development Authority in respect to the  
11 payment of the principal of and interest, charges and fees on loans  
12 made to, or bond purchases from, governmental agencies from the  
13 proceeds of the bonds, and the custody, safeguarding and  
14 application of all moneys. Any banking institution or trust company  
15 incorporated under the laws of this state which may act as  
16 depository of the proceeds of bonds or of the Broadband Middle Mile  
17 Infrastructure Revenue Debt Service Fund shall furnish such  
18 indemnifying bonds or pledge securities as are required by the  
19 Water Development Authority. The trust agreement may set forth the  
20 rights and remedies of the bondholders and noteholders and of the  
21 trustee and may restrict individual rights of action by bondholders  
22 and noteholders as customarily provided in trust agreements or  
23 trust indentures securing similar bonds and notes. The trust

1 agreement may contain such other provisions as the Water  
2 Development Authority deems reasonable and proper for the security  
3 of the bondholders or noteholders. All expenses incurred in  
4 carrying out the provisions of any such trust agreement may be  
5 treated as part of the cost of the construction, renovation,  
6 repair, improvement or acquisition of a project or infrastructure  
7 project.

8 **§31-15A-19a. Legal remedies of broadband middle mile**  
9 **infrastructure revenue bondholders or**  
10 **noteholders and trustees.**

11 Any holder of broadband middle mile infrastructure revenue  
12 bonds issued pursuant to this article and the trustee under any  
13 trust agreement, except to the extent the rights given by this  
14 article may be restricted by the applicable resolution or trust  
15 agreement, may by civil action, mandamus or other proceedings  
16 protect and enforce any rights granted under the laws of this state  
17 or granted under this article, by the trust agreement or by the  
18 resolution in the issuance of the bonds, and may enforce and compel  
19 the performance of all duties required by this article, pursuant to  
20 the trust agreement or resolution, to be performed by the Water  
21 Development Authority or any officer thereof.

22 **§31-15A-20a. Broadband middle mile infrastructure revenue bonds**  
23 **lawful investments.**

1 All broadband middle mile infrastructure revenue bonds issued  
2 pursuant to this article are lawful investments for banking  
3 institutions, societies for savings, building and loan  
4 associations, savings and loan associations, deposit guarantee  
5 associations, trust companies, and insurance companies, including  
6 domestic for life and domestic not for life insurance companies.

7 **§31-15A-21a. Purchase and cancellation of broadband middle mile**  
8 **infrastructure revenue bonds.**

9 (a) The Water Development Authority, subject to such  
10 agreements with noteholders or bondholders as may then exist, shall  
11 have the power, from any funds available therefor, to purchase or  
12 redeem broadband middle mile infrastructure revenue bonds of the  
13 council.

14 (b) If the broadband middle mile infrastructure revenue bonds  
15 are then redeemable, the price of the purchase may not exceed the  
16 redemption price then applicable, plus accrued interest to the next  
17 interest payment date thereon. If the broadband middle mile  
18 infrastructure revenue bonds are not then redeemable, the price of  
19 the purchase may not exceed the redemption price applicable on the  
20 first date after the purchase upon which the bonds become subject  
21 to redemption, plus accrued interest to such date. Upon purchase or  
22 redemption, the bonds shall be canceled.

23 **§31-15A-22a. Refunding broadband middle mile revenue bonds.**



1 Any broadband middle mile infrastructure revenue bonds issued  
2 pursuant to this article and at any time outstanding may at any  
3 time and from time to time be refunded by the Water Development  
4 Authority by the issuance of its refunding revenue bonds in an  
5 amount it deems necessary to refund the principal of the bonds to  
6 be refunded, together with any unpaid interest thereon, to provide  
7 additional funds for the Water Development Authority to, in its  
8 discretion, issue additional revenue bonds, and to pay any premiums  
9 and commissions necessary to be paid in connection therewith. Any  
10 refunding may be effected whether the broadband middle mile  
11 infrastructure revenue bonds to be refunded shall have then matured  
12 or shall thereafter mature: *Provided*, That the holders of any  
13 broadband middle mile infrastructure revenue bonds so to be  
14 refunded may not be compelled without their consent to surrender  
15 their broadband middle mile infrastructure revenue bonds for  
16 payment or exchange prior to the date on which they are payable or,  
17 if they are called for redemption, prior to the date on which they  
18 are by their terms subject to redemption. Any refunding revenue  
19 bonds issued pursuant to this article are payable from the West  
20 Virginia Broadband Middle Mile Infrastructure Revenue Debt Service  
21 Fund, and are subject to section seventeen-c of this article, and  
22 shall be secured in accordance with sections seventeen-c and  
23 eighteen-a of this article.

1 **§31-15A-23a. Broadband middle mile infrastructure revenue bonds**  
2 **not debt of state, county, municipality or any**  
3 **political subdivision.**

4 Broadband middle mile infrastructure revenue bonds issued  
5 pursuant to this article do not constitute a debt or a pledge of  
6 the faith and credit or taxing power of this state or of any  
7 county, municipality or any other political subdivision of this  
8 state. The holders or owners thereof have no right to have taxes  
9 levied by the Legislature or the taxing authority of any county,  
10 municipality or any other political subdivision of this state for  
11 the payment of the principal thereof or interest thereon. The  
12 broadband middle mile revenue bonds are payable solely from the  
13 revenues and funds pledged for their payment as authorized by this  
14 article. All such bonds shall contain on the face thereof a  
15 statement to the effect that the bonds, as to both principal and  
16 interest, are not debts of the state or any county, municipality or  
17 political subdivision thereof, but are payable solely from revenues  
18 and funds pledged for their payment.

19 **§31-15A-24a. Broadband middle mile infrastructure revenue bonds**  
20 **exempt from state taxation.**

21 The exercise of the powers granted to the Water Development  
22 Authority by this article will be in all respects for the benefit

1 of the people of the state, for the improvement of their health,  
2 safety, convenience and welfare and for the enhancement of their  
3 residential, agricultural, recreational, economic, commercial and  
4 industrial opportunities and is for a public purpose. As the  
5 construction, acquisition, repair or renovation of broadband middle  
6 mile infrastructure projects will constitute the performance of  
7 essential governmental functions, the Water Development Authority  
8 may not be required to pay any taxes or assessments upon any  
9 project or upon any property acquired or used by the Water  
10 Development Authority or upon the income therefrom. The broadband  
11 middle mile infrastructure revenue bonds and all interest and  
12 income thereon are exempt from all taxation by this state, or any  
13 county, municipality, political subdivision or agency thereof,  
14 except estate taxes.

NOTE: This bill provides for the construction of a state-wide, fiber optic broadband infrastructure network, known as broadband middle mile, to be purchased and owned by the state. The bill adds and defines new terms and creates a separate infrastructure fund for broadband middle mile infrastructure projects. The bill provides additional powers to Infrastructure and Jobs Development Council and Water Development Authority and creates the Broadband Middle Mile Infrastructure Revenue Debt Service Fund. The bill authorizes the issuance of broadband middle mile revenue bonds, provides for contents of trust agreement and trustee for bonds, and specifies remedies available to bondholders, noteholders and trustees. The bill makes broadband middle mile infrastructure revenue bonds lawful investments and provides for purchase, cancellation and refunding of bonds. The bill declares that the bonds are not state debts and are exempt from state taxation.

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

§31-15A-9a, §31-15A-9b, §31-15A-10a, §31-15A-11a, §31-15A-12a, §31-15A-13a, §31-15A-14a, §31-15A-15a, §31-15A-17c, §31-15A-18a, §31-15A-19a, §31-15A-20a, §31-15A-21a, §31-15A-22a, §31-15A-23a and §31-15A-24a are new; therefore, underscoring has been omitted.