

**Senate Bill No. 459**

(By Senators Walters, Kessler, Nohe, Williams, Palumbo, Boso and Stollings)

\_\_\_\_\_

[Introduced February 12, 2015; referred to the Committee Transportation and Infrastructure; and

then to the Committee on Finance.]

\_\_\_\_\_

**FISCAL  
NOTE**

A BILL to amend and reenact §31-15A-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto sixteen new sections, designated §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, all relating generally to development of broadband middle mile infrastructure in the state; defining new terms; creating a separate infrastructure fund for broadband middle mile infrastructure projects; providing for deposits and expenditures; setting forth additional powers to West Virginia Network for Educational Telecomputing and Water Development Authority; creating Infrastructure Fund for Broadband Middle Mile Development; providing for disposition of funds on termination or dissolution of authority; providing that broadband middle mile projects funded by authority are public improvements; authorizing issuance of broadband middle mile revenue bonds;

1 creating Broadband Middle Mile Infrastructure Debt Service Fund; providing for funding of  
2 debt service fund; specifying requirements for issuance of bonds; providing for contents of  
3 trust agreement and trustee for bonds; specifying remedies available to bondholders,  
4 noteholders and trustee; making broadband middle mile infrastructure revenue bonds lawful  
5 investments; providing for purchase, cancellation and refunding of bonds; and declaring that  
6 bonds are not state debts and are exempt from taxation.

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

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

13 **ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT**  
14 **COUNCIL.**

15 **§31-15A-2. Definitions.**

16 For purposes of this article:

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

21 (b) Definitions. --

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

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

8           (3) "Broadband infrastructure project" means any middle mile project that deploys  
9 equipment, fiber optic cables, facilities, or other technologies necessary to provide broadband  
10 transport services: *Provided*, That nothing in this article may be construed to provide the West  
11 Virginia Network for Educational Telecomputing (WVNET) jurisdiction or oversight over  
12 broadband infrastructure projects for the sole use of homeland security agencies in this state.

13           (4) "Broadband infrastructure revenue bond" means a revenue bond, note, or other obligation  
14 issued by the West Virginia Network for Educational Telecomputing pursuant to this article to fund  
15 one or more broadband middle mile infrastructure projects, including bonds to refund such bonds  
16 and notes to renew such notes, and notes in anticipation of and payable from the proceeds of such  
17 bonds;

18           (5) "Broadband revenue" means all amounts deposited into the Infrastructure Fund for  
19 Broadband Middle Mile Development; any amounts received directly or indirectly from any source  
20 for the use of all or any part of any broadband project completed pursuant to this article and any other  
21 amounts received by the Water Development Authority for the purpose of broadband middle mile

1 development.

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

3        ~~(c)~~ (7) "Cost" means, as applied to any project to be financed, in whole or in part, with  
4 infrastructure revenues or funds otherwise provided pursuant to this article, the cost of planning,  
5 acquisition, improvement and construction of the project; the cost of preliminary design and analysis,  
6 surveys, borings; the cost of environmental, financial, market and engineering feasibility studies,  
7 assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and  
8 specifications and other engineering services; the cost of acquisition of all land, rights-of-way,  
9 property rights, easements, franchise rights and any other interests required for the acquisition,  
10 repair, improvement or construction of the project; the cost of demolishing or removing any  
11 buildings or structures on land so acquired, including the cost of acquiring any lands to which  
12 buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth,  
13 demolishing or removing any buildings or structures; the cost of constructing any buildings or other  
14 improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnishings and  
15 equipment; loan or origination fees and all finance charges and interest incurred prior to and during  
16 the construction and for no more than six months after completion of construction; the cost of all  
17 legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all  
18 working capital and other expenses necessary or incident to determining the feasibility or  
19 practicability of acquiring, repairing, improving or constructing any project; the cost of placing any  
20 project in operation; and all other costs and expenses of any kind or nature incurred or to be incurred  
21 by the project sponsor developing the project that are reasonable and necessary for carrying out all

1 works and undertakings necessary or incident to the accomplishment of any project: *Provided*, That  
2 costs ~~shall~~ may not include any amounts related to the ongoing operations of the owner or operator,  
3 depreciation thereof or any other cost which the council, WVNET or the Water Development  
4 Authority has not determined to be consistent with the purposes and objectives of this article;

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

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

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

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

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

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

21 ~~(i)~~ (14) "Governmental agency" means any county; municipality; watershed improvement

1 district; assessment district; soil conservation district; sanitary district; public service district; drainage  
2 district; regional governmental authority and any other state governmental agency, entity, political  
3 subdivision or public corporation or agency authorized to acquire, construct or operate water or  
4 wastewater facilities or broadband middle mile infrastructure projects;

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

8       (16) "Includes" and "including", when used in this article, do not exclude other things  
9 otherwise within the definition or the sentence in which the term is used;

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

12       ~~(l)~~ (18) "Infrastructure project" means a project in the state which the council or WVNET  
13 determines is likely to foster and enhance economic growth and development in the area of the state  
14 in which the project is developed, for commercial, industrial, community improvement or  
15 preservation or other proper purposes, including, without limitation, tourism and recreational housing,  
16 land, air or water transportation facilities and bridges, industrial or commercial projects and facilities,  
17 mail order, warehouses, wholesale and retail sales facilities, and other real and personal properties,  
18 including facilities owned or leased by this state or any other project sponsor, and includes, without  
19 limitation: (1) The process of acquiring, holding, operating, planning, financing, demolition,  
20 construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any  
21 part thereof or interest therein; and (2) preparing land for construction and making, installing or

1 constructing improvements on the land, including water or wastewater facilities or any part thereof,  
2 steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges,  
3 railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and  
4 flood control facilities, whether on or off the site;

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

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

16 (21) "Middle mile fiber threshold" means a fiber optic cable containing no less than one  
17 hundred forty-four individual strands of fiber with minimum performance characteristics consistent  
18 with nonzero dispersion shifted single mode optical fiber cable as defined by the International  
19 Telecommunication Union standard ITU-T G.655;

20 ~~(n)~~ (22) "Need of the project sponsors" means there is a public need for a project. The council  
21 shall, for water and sewer projects, construe a population increase evidenced by the last two decennial

1 censuses in a county in which a project is proposed, as a factor supporting the conclusion that a need  
2 exists for projects in that county;

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

8 (24) "Open access" when used in the context of broadband means the equitable and  
9 nondiscriminatory use of the lines by all broadband service providers including the grant of  
10 indefeasible rights to use particular strands if the rights can be granted in an equitable and  
11 nondiscriminatory manner, subject to such appropriate limitations and restrictions as WVNET may  
12 determine.

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

15 ~~(t)~~ (26) "Project" means any wastewater facility, water facility project or any combination  
16 thereof, constructed or operated or to be constructed or operated by a project sponsor;

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

20 ~~(q)~~ (28) "Public Service Commission" means the Public Service Commission of West Virginia  
21 created and established under section three, article one, chapter twenty-four of this code, or any



1 successor to all or any substantial part of its powers and duties;

2       (†)(29) "Person" means any individual, corporation,9 partnership, association, limited liability  
3 company or any other form of business organization;

4       (§) (30) "Public utility" means any person or persons, or association of persons, however  
5 associated, whether incorporated or not, including, without limitation, any governmental agency,  
6 operating a wastewater facility or water facility as a public service, which is regulated by the Public  
7 Service Commission as a public utility under chapter twenty-four of this code or which is required  
8 to file its tariff with the Public Service Commission;

9       (31) "Service provider" when used in the context of broadband means any service provider  
10 that provides broadband service and is certified to provide services in accordance with state and  
11 federal regulations;

12       (†)(32) "State Development Office" means the West Virginia Development Office established  
13 under article two, chapter five-b of this code, or any successor to all or any substantial part of its  
14 powers and duties;

15       (†) (33) "State infrastructure agency" means the Division of Health, ~~Division~~ Department of  
16 Environmental Protection, Housing Development Fund, Public Service Commission, State  
17 Development Office, Water Development Authority, Economic Development Authority, and any  
18 other state agency, division, body, authority, commission, instrumentality or entity which now or in  
19 the future receives applications for the funding of, and provides funding or technical assistance to,  
20 the planning, acquisition, construction or improvement of a project;

21       (34) "Transport service" when used in the context of broadband means any service that

1 provides a service provider or carrier with the ability to transport high-capacity voice, data, graphics  
2 or video between communities, community access points, network access points and carrier access  
3 points. Transport services do not include any last mile broadband services or other services provided  
4 directly to end-users;

5       (v) (35) "Wastewater facility" means all facilities, land and equipment used for or in  
6 connection with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding  
7 wastewater, including, without limitation, facilities for the treatment and disposal of sewage,  
8 industrial wastes or other wastes, wastewater, and the residue thereof; facilities for the temporary or  
9 permanent impoundment of wastewater, both surface and underground; and sanitary sewers or other  
10 collection systems, whether on the surface or underground, designed to transport wastewater together  
11 with the equipment and furnishings therefor or thereof and their appurtenances and systems, whether  
12 on the surface or underground including force mains and pumping facilities therefor;

13       (w) (36) "Water Development Authority" means the West Virginia Water Development  
14 Authority continued pursuant to ~~the provisions of~~ article one, chapter twenty-two-c of this code, or  
15 any successor to all or any substantial part of its powers and duties; ~~and~~

16       (x) (37) Water facility means all facilities, land and equipment used for or in connection with  
17 the collection and/or storage of water, both surface and underground, transportation of water, storage  
18 of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary  
19 water suitable for human consumption and use; and

20       (38) "WVNET" means the West Virginia Network for Educational Telecomputing, the  
21 network managed by the vice chancellor for administration of the Higher Education Policy

1 Commission as provided in section two, article four, chapter eighteen-b of this code.

2 (39) "Zone" means a predetermined section of the West Virginia broadband middle mile  
3 established by the West Virginia Network for Educational Telecomputing.

4 **§31-15A-9a. Infrastructure Fund for Broadband Middle Mile Development; deposits in fund;**  
5 **use of funds for projects.**

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

13 (1) Infrastructure revenues for broadband middle mile deployment;

14 (2) Any appropriations, grants, gifts, contributions, loan proceeds or other revenues received  
15 by the Infrastructure Fund for Broadband Middle Mile Development from any source, public or  
16 private;

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

19 (4) Insurance proceeds payable to WVNET or the Infrastructure Fund For Broadband Middle  
20 Mile Development in connection with any broadband middle mile infrastructure project; and

21 (5) All income earned on moneys held in the Infrastructure Fund for Broadband Middle Mile

1 Development.

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

6 (c) Amounts in the Infrastructure Fund for Broadband Middle Mile Development shall be  
7 segregated and administered by the Water Development Authority separate and apart from its other  
8 assets and programs. Amounts in the Infrastructure Fund for Broadband Middle Mile Development  
9 may not be transferred to any other fund or account or used, other than indirectly, for the purposes  
10 of any other program of the Water Development Authority.

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

19 **§31-15A-9b. Broadband Deployment Council to serve as advisory body on broadband middle**  
20 **mile matters; all state areas considered unserved.**

21 The Broadband Deployment Council shall serve as an advisory body to make

1 recommendations to WVNET as described in section two of this article, on matters pertaining to the  
2 construction and operation of the West Virginia broadband middle mile, including establishing  
3 middle mile infrastructure zones. For all purposes relating to West Virginia Broadband Middle Mile  
4 Infrastructure, all areas of the state are "unserved areas" as described in subdivision seven, section  
5 two, article fifteen-c of this chapter.

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

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

21 (b) WVNET shall establish zones in the broadband middle mile infrastructure. Each zone of

1 the middle mile infrastructure shall be let for bid separately, to encourage participation by multiple  
2 project sponsors. A project sponsor may bid to construct part or all of a zone of the middle mile  
3 infrastructure project. As a condition of a contract, a project sponsor may be granted indefeasible  
4 rights to use up to twenty percent of the fibers in any number of zones of the broadband middle mile,  
5 but may not use more than twenty percent of the fibers in any one zone.

6 (c) WVNET shall report to the Governor, the Legislative Manager, the Speaker of the House  
7 of Delegates and the President of the Senate during each regular session of the Legislature, on the  
8 status of the broadband middle mile project and, to the extent known, the economic activity and jobs  
9 created as a result of the broadband middle mile infrastructure project.

10 **§31-15A-11a. Reservation of funds for broadband middle mile infrastructure projects.**

11 (a) Funds deposited in the West Virginia Infrastructure Fund for Broadband Middle Mile  
12 Development shall be dedicated for the purpose of providing funding for the cost of broadband  
13 middle mile infrastructure projects as defined in section two of this article.

14 (b) No bonds may be issued under this article for broadband infrastructure projects until such  
15 time as the Legislature has provided for sufficient revenue to meet debt service on the bonds, unless  
16 WVNET is able to identify a repayment source for the bonds.

17 **§31-15A-12a. Additional powers of Water Development Authority relating to broadband**  
18 **middle mile infrastructure projects.**

19 To accomplish the purpose and intent of this article, the Water Development Authority, upon  
20 approval of WVNET, is hereby empowered, in addition to all other powers granted to it under this  
21 code to:

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

3 (2) Receive or administer on behalf of any federal or state agency grants, subsidies or other  
4 payments to be applied to the costs of any broadband middle mile infrastructure project financed, in  
5 whole or in part, or otherwise assisted by WVNET, including, but not limited to, payments to be  
6 applied to operating costs and debt service or obligations of any project sponsor;

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

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

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

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

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

6 **§31-15A-14a. Disposition of Infrastructure Fund for Broadband Development upon**  
7 **termination or dissolution of authority.**

8 Upon the termination or dissolution of the Water Development Authority, all rights and  
9 properties of the authority with respect to the Infrastructure Fund for Broadband Middle Mile  
10 Development shall pass to and be vested in the state, subject to the rights of lien holders and other  
11 creditors.

12 **§31-15A-15a. Broadband middle mile projects not to be considered public improvements for**  
13 **financing; competitive bid requirements.**

14 (a) No broadband middle mile infrastructure project acquired, constructed or maintained or  
15 financed, in whole or in part, by the Water Development Authority is a "public improvement" within  
16 the meaning of article five-a, chapter twenty-one of this code for purposes of the financing of the  
17 project.

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



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

4           (c) This section does not:

5           (1) Apply to work performed on construction or repair projects not exceeding a total cost of  
6 \$50,000 by regular full-time employees of the state or its subdivisions: *Provided*, That no more than  
7 \$50,000 shall be expended on an individual project in a single location in a twelve-month period;

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

10          (3) Apply to emergency repairs to building components and systems: *Provided*, That the term  
11 "emergency repairs" means repairs that, if not made immediately, will seriously impair the use of the  
12 building components and systems or cause danger to those persons using the building components  
13 and systems; or

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

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

21 **§31-15A-17c. Water Development Authority empowered to issue broadband middle mile**

1                   **infrastructure revenue bonds and refunding bonds; creation of Broadband**  
2                   **Middle Mile Infrastructure Revenue Debt Service Fund; funding of**  
3                   **Broadband Middle Mile Infrastructure Revenue Debt Service Fund;**  
4                   **requirements and manner of such issuance.**

5           (a) To accomplish the purpose and intent of this article, the Water Development Authority  
6 upon direction of WVNET is hereby empowered to issue from time to time broadband middle mile  
7 infrastructure revenue bonds of the state in such principal amounts as WVNET deems necessary to  
8 pay for expected broadband middle mile construction projects.

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

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

20           (d) There is hereby created in the Water Development Authority a special fund which shall  
21 be designated and known as the "Broadband Middle Mile Infrastructure Revenue Debt Service Fund,"

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

16 (e) Except as may otherwise be expressly provided in this article or by resolution of the Water  
17 Development Authority, every issue of broadband middle mile infrastructure revenue bonds are  
18 special obligations of the Water Development Authority payable solely from amounts in the West  
19 Virginia Broadband Middle Mile Infrastructure Revenue Debt Service Fund, and the reserves created  
20 for this purpose by the Water Development Authority, without preference or priority among the bonds  
21 regardless of when issued, subject only to any agreements with the holders of any bonds to the

1 contrary. All such bonds are hereby declared to be negotiable instruments.

2 (f) Broadband middle mile infrastructure revenue bonds shall be authorized by resolution of  
3 the Water Development Authority. These bonds shall bear such dates and shall mature at such times,  
4 in case of any note or renewal thereof not exceeding five years from the date of issue of the original  
5 note, and in the case of any bond not exceeding fifty years from the date of issue, as the resolution  
6 may provide. Broadband middle mile infrastructure revenue bonds shall bear interest at a rate or rates,  
7 including variable rates, shall be taxable or tax-exempt, shall be in the denominations, shall be in  
8 registered form, shall carry the registration privileges, shall be payable in the medium and place of  
9 payment, and shall be subject to the terms of redemption as the Water Development Authority may  
10 authorize. Broadband middle mile infrastructure revenue bonds may be sold by Water Development  
11 Authority at public or private sale at the price the authority determines in consultation with WVNET.  
12 Broadband middle mile infrastructure revenue bonds shall be executed by the chairman and the vice  
13 chairman of the Water Development Authority, either or both of whom may use a facsimile signature.  
14 The official seal of the Water Development Authority or a facsimile thereof shall be affixed thereto  
15 or printed thereon and attested by manual or facsimile signature by the secretary-treasurer of the  
16 Water Development Authority. If any officer whose signature, or a facsimile of whose signature  
17 appears on any broadband infrastructure revenue bond ceases to be such officer before delivery of  
18 such bond, such signature or facsimile is nevertheless sufficient for all purposes to the same extent  
19 as if he or she had remained in office until such delivery, and if the seal of the Water Development  
20 Authority has been changed after a facsimile has been imprinted on such bond, the facsimile will  
21 continue to be sufficient for all purposes.

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

15 (h) In the event that the sum of all reserves pledged to the payment of the bonds is less than  
16 the minimum reserve requirements established in any resolution or resolutions authorizing the  
17 issuance of the bonds, the chairman of the Water Development Authority shall certify, on or before  
18 December 1 of each year, the amount of such deficiency to the Governor of the state for inclusion,  
19 if the Governor shall so elect, of the amount of such deficiency in the budget to be submitted to the  
20 next session of the Legislature for appropriation to WVNET to be pledged for payment of such bonds:  
21 *Provided*, That the Legislature shall not be required to make any appropriations so requested, and the

1 amount of the deficiencies does not constitute a debt or liability of the state.

2 (I) Neither the officers or board members of the Water Development Authority or WVNET,  
3 nor any person executing the broadband middle mile infrastructure revenue bonds, are liable  
4 personally on the bonds or be subject to any personal liability or accountability by reason of the  
5 issuance thereof.

6 **§31-15A-18a. Trustee for holders of broadband middle mile infrastructure revenue bonds;**  
7 **contents of trust agreement.**

8 (a) Any broadband middle mile infrastructure revenue bonds issued by the Water  
9 Development Authority under this article shall be secured by a trust agreement between the Water  
10 Development Authority and a corporate trustee, which trustee may be any trust company or banking  
11 institution having the powers of a trust company within this state.

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

1 as are required by the Water Development Authority. The trust agreement may set forth the rights and  
2 remedies of the bondholders and noteholders and of the trustee and may restrict individual rights of  
3 action by bondholders and noteholders as customarily provided in trust agreements or trust indentures  
4 securing similar bonds and notes. The trust agreement may contain such other provisions as the Water  
5 Development Authority deems reasonable and proper for the security of the bondholders or  
6 noteholders. All expenses incurred in carrying out the provisions of any such trust agreement may be  
7 treated as part of the cost of the construction, renovation, repair, improvement or acquisition of a  
8 project or infrastructure project.

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

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

18 **§31-15A-20a. Broadband middle mile infrastructure revenue bonds lawful investments.**

19 All broadband middle mile infrastructure revenue bonds issued pursuant to this article are  
20 lawful investments for banking institutions, societies for savings, building and loan associations,  
21 savings and loan associations, deposit guarantee associations, trust companies, and insurance

1 companies, including domestic for life and domestic not for life insurance companies.

2 **§31-15A-21a. Purchase and cancellation of broadband middle mile infrastructure revenue**  
3 **bonds.**

4 (a) The Water Development Authority, subject to such agreements with noteholders or  
5 bondholders as may then exist, shall have the power, from any funds available therefor, to purchase  
6 or redeem broadband middle mile infrastructure revenue bonds.

7 (b) If the broadband middle mile infrastructure revenue bonds are then redeemable, the price  
8 of the purchase may not exceed the redemption price then applicable, plus accrued interest to the next  
9 interest payment date thereon. If the broadband middle mile infrastructure revenue bonds are not then  
10 redeemable, the price of the purchase may not exceed the redemption price applicable on the first date  
11 after the purchase upon which the bonds become subject to redemption, plus accrued interest to such  
12 date. Upon purchase or redemption, the bonds shall be canceled.

13 **§31-15A-22a. Refunding broadband middle mile revenue bonds.**

14 Any broadband middle mile infrastructure revenue bonds issued pursuant to this article and  
15 at any time outstanding may at any time and from time to time be refunded by the Water Development  
16 Authority by the issuance of its refunding revenue bonds in an amount it deems necessary to refund  
17 the principal of the bonds to be refunded, together with any unpaid interest thereon, to provide  
18 additional funds for the Water Development Authority to, in its discretion, issue additional revenue  
19 bonds, and to pay any premiums and commissions necessary to be paid in connection therewith. Any  
20 refunding may be effected whether the broadband middle mile infrastructure revenue bonds to be  
21 refunded shall have then matured or shall thereafter mature: *Provided*, That the holders of any



1 broadband middle mile infrastructure revenue bonds so to be refunded may not be compelled without  
2 their consent to surrender their broadband middle mile infrastructure revenue bonds for payment or  
3 exchange prior to the date on which they are payable or, if they are called for redemption, prior to the  
4 date on which they are by their terms subject to redemption. Any refunding revenue bonds issued  
5 pursuant to this article are payable from the West Virginia Broadband Middle Mile Infrastructure  
6 Revenue Debt Service Fund, and are subject to section seventeen-c of this article, and shall be secured  
7 in accordance with sections seventeen-c and eighteen-a of this article.

8 **§31-15A-23a. Broadband middle mile infrastructure revenue bonds not debt of state, county,**  
9 **municipality or any political subdivision.**

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

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

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