

**Senate Bill No. 488**

(By Senators Williams, Prezioso and Stollings)

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[Introduced February 13, 2013; referred to the Committee on Government Organization.]

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9 A BILL to repeal §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended; and  
10 to amend and reenact §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5 and §31-15C-9 of said  
11 code, all relating to modifying Broadband Deployment Council.

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

13 That §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended, be  
14 repealed; and that §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5 and §31-15C-9 of said code be  
15 amended and reenacted, all to read as follows:

16 **ARTICLE 15C. Broadband Deployment.**

17 **§31-15C-2. Definitions.**

18 For the purposes of this article:

19 (1) "Broadband" or "broadband service" means any service providing advanced  
20 telecommunications capability with the same downstream data rate and upstream data rate as is  
21 specified by the Federal Communications Commission and that does not require the end-user to dial  
22 up a connection that has the capacity to always be on, and for which the transmission speeds are

1 based on regular available bandwidth rates, not sporadic or burstable rates, with latency suitable for  
2 real-time applications and services such as VoIP and video conferencing, and with monthly usage  
3 capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban  
4 areas: *Provided*, That as the Federal Communications Commission updates the downstream data  
5 rate and the upstream data rate the council will publish the revised data rates in the State Register  
6 within sixty days of the federal update.

7 (2) "Broadband demand promotion project" means a statewide or regional project to  
8 undertake activities to promote demand for broadband services and broadband applications.

9 (3) "Broadband deployment project" means a project to provide broadband services in a type  
10 ~~2 or type 3 unserved area~~ areas as defined in section six of this article.

11 (4) "Council" means the Broadband Deployment Council.

12 (5) "Downstream data rate" means the transmission speed from the service provider source  
13 to the end-user.

14 (6) "Upstream data rate" means the transmission speed from the end-user to the service  
15 provider source.

16 (7) "Unserved area" means a community that has no access to broadband service.

17 **§31-15C-3. Broadband Deployment Council reestablished; members of council;**  
18 **administrative support.**

19 (a) The Broadband Deployment Council is hereby ~~established~~ reestablished. The council is  
20 a governmental instrumentality of the state. The exercise by the council of the powers conferred by  
21 this article and the carrying out of its purpose and duties are considered and held to be, and are  
22 hereby determined to be, essential governmental functions and for a public purpose. The council is

1 created under the Department of Commerce for administrative, personnel and technical support  
2 services only.

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

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

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

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

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

8 ~~(5) (4)~~ The State Superintendent of Schools or his or her designee; and

9 ~~(6) (5)~~ Five ~~Eleven~~ public members that serve at the will and pleasure of the Governor and

10 are appointed by the Governor with the advice and consent of the Senate, as follows:

11 (i) ~~One member~~ Three members representing ~~employees of communications and cable~~  
12 ~~providers who is a member or representative of a union representing communications workers; users~~  
13 of large amounts of broadband services in this state.

14 (ii) One member representing ~~the interests of the business community in this state;~~ rural  
15 business users in the state.

16 (iii) One member representing ~~incumbent local exchange carriers who provide broadband~~  
17 ~~services in this state;~~ rural residential users in this state.

18 (iv) One member representing ~~cable operators who provide broadband services in this state~~  
19 urban business users in this state.

20 (v) One member representing ~~competitive local exchange carriers who provide broadband~~  
21 ~~services in this state;~~ urban residential users in this state.

22 (vi) ~~One member representing broadband equipment or device manufacturers;~~ The Director

1 of WVNET who shall serve as chair of the council.

2 ~~(vii) One member representing higher education or secondary education; and~~

3 ~~(viii) (vii) Three members representing the general public who are residents of the state, one~~  
 4 ~~of whom shall represent rural communities, and who may not reside in the same congressional~~  
 5 ~~district.~~

6 ~~(7) (6)~~ In addition to the fifteen voting members of the council, the President of the Senate  
 7 shall name two senators from the West Virginia Senate, one from each party and the Speaker of the  
 8 House shall name two delegates from the West Virginia House of Delegates, one from each party  
 9 each to serve in the capacity of an ex officio, nonvoting advisory member of the council.

10 ~~(c) The Secretary of Commerce or his or her designee shall chair the council and appoint one~~  
 11 ~~of the other council members to serve as vice chair. In the absence of the Secretary of Commerce or~~  
 12 ~~his or her designee, the vice chair shall serve as chair. The council shall appoint a secretary-treasurer~~  
 13 ~~who need not be a member of the council and who, among other tasks or functions designated by the~~  
 14 ~~council, shall keep records of its proceedings.~~

15 In addition, the Governor may appoint six members who shall serve as nonvoting advisory  
 16 members from incumbent local exchange carriers who provide broadband services in this state,  
 17 cable operators who provide broadband services in this state, competitive local exchange carriers  
 18 who provide broadband services in this state and/or broadband equipment or device manufacturers;

19 ~~(d) (c)~~ The council may appoint committees or subcommittees to investigate and make  
 20 recommendations to the full council. Members of these committees or subcommittees need not be  
 21 members of the council.

22 ~~(e) (d)~~ Eight voting members of the council constitute a quorum and the affirmative vote of

1 at least the majority of those members present is necessary for any action taken by vote of the  
2 council.

3       ~~(f)~~ (e) The council is part time. Public members appointed by the Governor may pursue and  
4 engage in another business or occupation or gainful employment. Any person employed by, owning  
5 an interest in or otherwise associated with a broadband deployment project, project sponsor or  
6 project participant may serve as a council member and is not disqualified from serving as a council  
7 member because of a conflict of interest prohibited under section five, article two, chapter six-b of  
8 this code and is not subject to prosecution for violation of said section when the violation is created  
9 solely as a result of his or her relationship with the broadband deployment project, project sponsor  
10 or project participant so long as the member recuses himself or herself from board participation  
11 regarding the conflicting issue in the manner set forth in legislative rules promulgated by the West  
12 Virginia Ethics Commission.

13       ~~(g)~~ (f) No member of the council who serves by virtue of his or her office receives any  
14 compensation or reimbursement of expenses for serving as a member. The public members and  
15 members of any committees or subcommittees are entitled to be reimbursed for actual and necessary  
16 expenses incurred for each day or portion thereof engaged in the discharge of his or her official  
17 duties in a manner consistent with the guidelines of the Travel Management Office of the  
18 Department of Administration.

19 **§31-15C-4. Powers and duties of the council generally.**

20       (a) The council shall:

21       (1) Explore any and all ways to expand access to broadband services including, but not  
22 limited to, middle mile, last mile and wireless applications.

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

3           (‡) (3) Explore ways for encouraging state and municipal agencies to expand the  
4 development and use of broadband services for the purpose of better serving the public, including  
5 audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking;  
6 and

7           (‡) (4) Cooperate and assist in the expansion of electronic instruction and distance education  
8 services, ~~by July 2014.~~

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

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

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

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

19           (4) To make and execute contracts, commitments and other agreements necessary or  
20 convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to  
21 assist in the mapping of the state, categorization of areas within the state and evaluation of project  
22 applications: *Provided*, That the provisions of article three, chapter five-a of this code do not apply

1 to the agreements and contracts executed under the provisions of this article;

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

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

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

8 (c) The council shall exercise its powers and authority to bring broadband service to unserved  
9 and underserved areas. ~~The council may not duplicate or displace broadband service in areas already~~  
10 ~~served or where private industry feasibly can be expected to offer services in the reasonably~~  
11 ~~foreseeable future. In providing governmental funding for broadband deployment projects, the~~  
12 ~~council shall give priority to funding for projects in areas without access to broadband service of any~~  
13 ~~type or any speed before providing governmental funding for projects in areas with existing~~  
14 ~~broadband service below the minimum speeds specified in section two of this article.~~

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

19 **§31-15C-5. Creation of the Broadband Deployment Fund.**

20 All moneys collected by the council, which may, in addition to appropriations, include gifts,  
21 bequests or donations, shall be deposited in a special revenue account in the State Treasury known  
22 as the Broadband Deployment Fund. The fund shall be administered by and under the control of the

1 council. Expenditures from the fund shall be for the purposes set forth in this article and are not  
 2 authorized from collections but are to be made only in accordance with appropriation by the  
 3 Legislature and in accordance with the provisions of article two, chapter eleven-b of this code:  
 4 *Provided*, That for the fiscal year ending June 30, 2009, expenditures are authorized from collections  
 5 rather than pursuant to appropriations by the Legislature. *Provided, however, That any funds*  
 6 *remaining in the fund of the former Broadband Development Council shall be transferred to the*  
 7 *reestablished council.*

8 **§31-15C-9. Development of guidelines and application for funding assistance; emergency**  
 9 **rule-making authority.**

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

17 (b) ~~The guidelines shall include the following:~~

18 (1) ~~The cost-effectiveness of the project;~~

19 (2) ~~The economic development benefits of the project;~~

20 (3) ~~The availability of alternative sources of funding that could help finance the project,~~  
 21 ~~including, but not limited to, private grants or federal funding and the efforts undertaken to obtain~~  
 22 ~~such funding;~~



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

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

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

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

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

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

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

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

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

22           (1) The proposed location of the project;

- 1           ~~(2) If the project involves the construction of a network, the type(s) of unserved area(s) the~~
- 2 ~~project proposes to address;~~
- 3           ~~(3) The estimated total cost of the project;~~
- 4           ~~(4) The amount of funding assistance required and the specific uses of the funding;~~
- 5           ~~(5) Other sources of funding available or potentially available for the project;~~
- 6           ~~(6) Information demonstrating the need for the project;~~
- 7           ~~(7) That the proposed funding of the project is the most economically feasible and viable~~
- 8 ~~alternative to completing the project; and~~
- 9           ~~(8) Such other information as the council considers necessary.~~

NOTE: The purpose of this bill is to modify the Broadband Deployment Council.

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