

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Committee Substitute**

**for**

**Senate Bill 16**

BY SENATORS ASHLEY, PLYMALE, WILLIAMS, MILLER,

STOLLINGS AND UNGER

[Originating in the Committee on Finance;

reported on February 12, 2016]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5, §11-  
3 13DD-6 and §11-13DD-7, all relating generally to providing tax credit for providing  
4 broadband service and wireless broadband service to unserved areas; requiring Tax  
5 Commissioner to propose rules for legislative approval to administer this article; providing  
6 definitions; specifying amount, application, restrictions, timing and cap on tax credit; and  
7 permitting a carryover of credit to subsequent tax year.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
2 article, designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5, §11-  
3 13DD-6 and §11-13DD-7, all to read as follows:

**ARTICLE 13DD. TAX CREDIT FOR PROVIDING BROADBAND TO UNSERVED  
AREAS.**

**§11-13DD-1. Legislative purpose.**

1 The Legislature finds that encouraging the deployment of broadband in all parts of West  
2 Virginia, including those areas where the cost to provide broadband service is not economically  
3 feasible, is in the public interest and promotes the general welfare of the state. In order to help  
4 offset the high cost of providing broadband service to locations within unserved areas in the state,  
5 there is hereby provided a tax credit for broadband providers that make broadband service  
6 available to locations within unserved areas in West Virginia. Broadband providers seeking the  
7 benefit of the tax credits provided by this article must follow the procedures outlined herein and  
8 as subsequently adopted by the Tax Commissioner.

**§11-13DD-2. Definitions.**

1 (a) General. – When used in this article, or in the administration of this article, terms  
2 defined in subsection (b) of this section have the meanings ascribed to them by this section.

3 unless a different meaning is clearly required by either the context in which the term is used, or  
4 by specific definition, in this article.

5 (b) Terms defined. –

6 (1) “Broadband” or “broadband service” means any internet access service, enabled by  
7 any technology, with the same downstream data rate, upstream data rate, and other technical  
8 functionalities as are specified by the Federal Communications Commission at 47 C. F. R.  
9 §54.309(a) (2015).

10 (2) “Broadband provider” means any provider that provides broadband service or wireless  
11 broadband service to end users.

12 (3) “Commissioner” and “Tax Commissioner” are used interchangeably herein and mean  
13 the Tax Commissioner of the State of West Virginia or his or her designee.

14 (4) “Eligible taxpayer” means a broadband provider that has made broadband service  
15 available to locations in unserved areas within West Virginia as defined in this article.

16 (5) “Location” means a household or business located within an unserved area.

17 (6) “Unserved area” means a location within West Virginia that does not have broadband  
18 service available as of July 1, 2016.

**§11-13DD-3. Amount of credit.**

1 There shall be allowed to any eligible taxpayer a credit against the corporate net income  
2 tax imposed by article twenty-four of this chapter for providing broadband service to a location in  
3 the amount of \$500 for each location to which the eligible taxpayer has made broadband service  
4 available. This tax credit is subject to the following restrictions:

5 (1) Any tax credits available under this article may not reduce the tax liability of any eligible  
6 taxpayer below zero;

7 (2) The tax credit for each location to which an eligible taxpayer has made broadband  
8 service available shall be reduced by all amounts such eligible taxpayer has received or is  
9 expected to receive through any other state or federal funding for that location; and

10 (3) The amount of tax credit allowed by this article may not exceed \$1 million in any one  
11 tax year for all eligible taxpayers in the aggregate;

12 (4) When the total amount of otherwise approved tax credits applied for by all eligible  
13 taxpayers in aggregate would exceed \$1 million, the \$500 credit shall be reduced to a proportional  
14 amount such as would total \$1 million for all approved locations for all eligible broadband service  
15 providers.

**§11-13DD-4. Procedures for applying for credit.**

1 Any eligible taxpayer seeking the benefit of the tax credits provided under this article shall  
2 provide the following information to the Tax Commissioner:

3 (a) A certification of the number of locations within each unserved area in the state to  
4 which the eligible taxpayer has deployed broadband service during the preceding calendar year  
5 together with a description of each unserved area;

6 (b) A certification that the taxpayer has not received any other state or federal funding for  
7 locations for which a credit is claimed or, if such funding was received or is expected to be  
8 received, the amount of such funding; and

9 (c) Any other information required by the Tax Commissioner pursuant to a rule adopted  
10 pursuant to this article.

**§11-13DD-5. When credit may be taken.**

1 An eligible taxpayer may claim a credit allowed under this article against its tax liability for  
2 the taxable year for which it receives approval from the Tax Commissioner of its application for  
3 tax credits pursuant to this article.

**§11-13DD-6. Application of credit.**

1 If any portion of the tax credit which the eligible taxpayer may be due is not used during  
2 the taxable year in which the eligible taxpayer receives approval of the tax credit from the Tax  
3 Commissioner pursuant to this article, the unused tax credit may be carried over to the

4 subsequent year as a tax credit as allowed by section three of this article and shall be applied as  
5 a credit before any other credits for that year are applied.

6 **§11-13DD-7. Rule-making authority.**

1 The Tax Commissioner shall propose rules for legislative approval in accordance with  
2 article three, chapter twenty-nine-a of this code that the Tax Commissioner considers necessary  
3 to administer this article.