

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 315**

BY SENATORS WALTERS, ASHLEY, BEACH, BOLEY, BOSO,  
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MAYNARD, MILLER, MULLINS, PALUMBO, PLYMALE,  
SNYDER, STOLLINGS, SYPOLT, TAKUBO, TRUMP,  
WILLIAMS AND BLAIR

[Originating in the Committee on Transportation and  
Infrastructure; reported on January 28, 2016]

1 A BILL to amend and reenact §31-15A-2, §31-15A-8, §31-15A-10, §31-15A-11 and §31-15A-17  
2 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto  
3 seventeen new sections, designated §31-15A-1a, §31-15A-9a, §31-15A-10a, §31-15A-  
4 11a, §31-15A-11b, §31-15A-12a, §31-15A-13a, §31-15A-14a, §31-15A-15a, §31-15A-  
5 17c, §31-15A-18a, §31-15A-19a, §31-15A-20a, §31-15A-21a, §31-15A-22a, §31-15A-23a  
6 and §31-15A-24a; and to amend and reenact §31-15C-4 of said code, all relating generally  
7 to development of infrastructure in the state; establishing purposes for the amendments  
8 to develop broadband infrastructure; providing for development of broadband middle mile  
9 infrastructure; defining new terms; creating a separate infrastructure fund for broadband  
10 middle mile infrastructure projects; providing for deposits and expenditures; requiring  
11 certain agencies to apply for grant funds in furtherance of broadband middle mile  
12 infrastructure projects; setting forth additional powers and duties for Water Development  
13 Authority and Broadband Enhancement Council; creating West Virginia Infrastructure  
14 Fund for Broadband Middle Mile Development; providing for disposition of funds on  
15 termination or dissolution of authority; authorizing issuance of broadband middle mile  
16 revenue bonds; creating West Virginia Broadband Middle Mile Infrastructure Revenue  
17 Debt Service Fund; providing for funding of debt service fund; specifying requirements for  
18 issuance of bonds; providing for contents of trust agreement and trustee for bonds;  
19 specifying remedies available to bondholders, noteholders and trustees; making  
20 broadband middle mile infrastructure revenue bonds lawful investments; providing for  
21 purchase, cancellation and refunding of bonds; declaring bonds are not state debts and  
22 are exempt from taxation; requiring periodic reporting; limiting personal liability; and  
23 permitting legislative and emergency rulemaking.

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

1 That §31-15A-2, §31-15A-8, §31-15A-10, §31-15A-11 and §31-15A-17 of the Code of  
2 West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by

3 adding thereto seventeen new sections, designated §31-15A-1a, §31-15A-9a, §31-15A-10a, §31-  
4 15A-11a, §31-15A-11b, §31-15A-12a, §31-15A-13a, §31-15A-14a, §31-15A-15a, §31-15A-17c,  
5 §31-15A-18a, §31-15A-19a, §31-15A-20a, §31-15A-21a, §31-15A-22a, §31-15A-23a and §31-  
6 15A-24a; and that §31-15C-4 of said code be amended and reenacted, all to read as follows:

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

**§31-15A-1a. Purpose of 2016 Amendments.**

1 The purpose of the 2016 Amendments is to promote the construction of broadband  
2 infrastructure throughout the State of West Virginia, which will ultimately result in increased  
3 access to broadband service for a greater number of unserved or underserved households and  
4 businesses. This is a particularly important need in West Virginia, due to high numbers of  
5 residents who live in rural areas that are unserved, or underserved, by broadband. Many residents  
6 lack access to crucial services, including health care. By increasing access to broadband  
7 throughout the state, the provision of telemedicine services to rural health facilities can be  
8 enhanced, whereby an individual may receive medical services from a health care provider  
9 without person-to-person contact with a provider. In addition, the enhancement of broadband can  
10 also make 911 and emergency alert systems more capable, allowing for better protection of West  
11 Virginia residents' lives and property. Also, emergency service providers in West Virginia could  
12 use broadband networks to disseminate vital information to the public during emergencies.

**§31-15A-2. Definitions.**

1 ~~For purposes of this article:~~

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

6 (b) Definitions. --

7 ~~(a)~~ (1) “Bond” or “infrastructure revenue bond” means a revenue bond, note, or other  
8 obligation issued by the Water Development Authority pursuant to this article, including bonds to  
9 refund such bonds and notes to renew such notes, and notes in anticipation of and payable from  
10 the proceeds of such bonds;

11 (2) “Broadband infrastructure” means all facilities, hardware and software and other  
12 intellectual property necessary to provide broadband services in this state, including, but not  
13 limited to, voice, video and data services;

14 (3) “Broadband infrastructure project” means any middle mile project that deploys  
15 equipment, fiber optic cables, facilities, or other technologies necessary to provide broadband  
16 transport services: *Provided*, That nothing in this article may be construed to provide jurisdiction  
17 or oversight over broadband infrastructure projects for the sole use of homeland security agencies  
18 in this state.

19 (4) “Broadband infrastructure revenue bond” means a revenue bond, note, or other  
20 obligation issued pursuant to this article to fund one or more broadband middle mile infrastructure  
21 projects, including bonds to refund such bonds and notes to renew such notes, and notes in  
22 anticipation of and payable from the proceeds of such bonds;

23 (5) “Broadband revenue” means all amounts deposited into the Infrastructure Fund for  
24 Broadband Middle Mile Development, any amounts received directly or indirectly from any source  
25 for the use of all, or any part of, any broadband project completed pursuant to this article and any  
26 other amounts received by the Water Development Authority for the purpose of broadband middle  
27 mile development.

28 ~~(b)~~ (6) “Code” means the Code of West Virginia, 1931, as amended;

29 ~~(c)~~ (7) “Cost” means, as applied to any project to be financed, in whole or in part, with  
30 infrastructure revenues or funds otherwise provided pursuant to this article, the cost of planning,  
31 acquisition, improvement and construction of the project; the cost of preliminary design and

32 analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility  
33 studies, assessments, applications, approvals, submissions or clearances; the cost of preparation  
34 of plans and specifications and other engineering services; the cost of acquisition of all land,  
35 rights-of-way, property rights, easements, franchise rights and any other interests required for the  
36 acquisition, repair, improvement or construction of the project; the cost of demolishing or removing  
37 any buildings or structures on land so acquired, including the cost of acquiring any lands to which  
38 buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of  
39 earth, demolishing or removing any buildings or structures; the cost of constructing any buildings  
40 or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery,  
41 furnishings and equipment; loan or origination fees and all finance charges and interest incurred  
42 prior to and during the construction and for no more than six months after completion of  
43 construction; the cost of all legal services and expenses; the cost of all plans, specifications,  
44 surveys and estimates of cost; all working capital and other expenses necessary or incident to  
45 determining the feasibility or practicability of acquiring, repairing, improving or constructing any  
46 project; the cost of placing any project in operation; and all other costs and expenses of any kind  
47 or nature incurred or to be incurred by the project sponsor developing the project that are  
48 reasonable and necessary for carrying out all works and undertakings necessary or incident to  
49 the accomplishment of any project: *Provided*, That costs shall may not include any amounts  
50 related to the ongoing operations of the owner or operator, depreciation thereof or any other cost  
51 which the council or the Water Development Authority has not determined to be consistent with  
52 the purposes and objectives of this article;

53 ~~(d)~~ (8) "Council" means the West Virginia Infrastructure and Jobs Development Council  
54 created in section three of this article;

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

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

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

63           ~~(g)~~ (12) “Economic Development Authority” means the Economic Development Authority  
64 established under article fifteen, chapter thirty-one of the code, or any successor to all or any  
65 substantial part of its powers and duties;

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

69           ~~(i)~~ (14) “Governmental agency” means any county; municipality; watershed improvement  
70 district; assessment district; soil conservation district; sanitary district; public service district;  
71 drainage district; regional governmental authority and any other state governmental agency,  
72 entity, political subdivision or public corporation or agency authorized to acquire, construct or  
73 operate water or wastewater facilities or infrastructure projects or broadband middle mile  
74 infrastructure projects;

75           ~~(j)~~ (15) “Housing Development Fund” means the West Virginia Housing Development  
76 Fund established under article eighteen of this chapter, or any successor to all or any substantial  
77 part of its powers and duties;

78           (16) “Includes” and “including”, when used in this article, do not exclude other things  
79 otherwise within the definition or the sentence in which the term is used;

80           ~~(k)~~ (17) “Infrastructure Fund” means the West Virginia Infrastructure Fund created and  
81 established in section nine of this article;

82           ~~(l)~~ (18) “Infrastructure project” means a project in the state which the council determines  
83 is likely to foster and enhance economic growth and development in the area of the state in which

84 the project is developed, for commercial, industrial, community improvement or preservation or  
85 other proper purposes, including, without limitation, tourism and recreational housing, land, air or  
86 water transportation facilities and bridges, industrial or commercial projects and facilities, mail  
87 order, warehouses, wholesale and retail sales facilities and other real and personal properties,  
88 including facilities owned or leased by this state or any other project sponsor, and includes,  
89 without limitation: (1) The process of acquiring, holding, operating, planning, financing,  
90 demolition, construction, improving, expanding, renovation, leasing or otherwise disposing of the  
91 project or any part thereof or interest therein; and (2) preparing land for construction and making,  
92 installing or constructing improvements on the land, including water or wastewater facilities or any  
93 part thereof, steam, gas, telephone and telecommunications and electric lines and installations,  
94 roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks,  
95 and drainage and flood control facilities, whether on or off the site;

96 ~~(m)~~ (19) "Infrastructure revenue" means all amounts appropriated by the Legislature; all  
97 amounts deposited into the Infrastructure Fund; any amounts received, directly or indirectly, from  
98 any source for the use of all or any part of any project completed pursuant to this article; and any  
99 other amounts received by the state Treasurer, council or the Water Development Authority for  
100 the purposes of this article: Provided, That funds for water and sewer infrastructure projects and  
101 funds for broadband middle mile infrastructure projects shall be kept separate;

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

107 (21) "Middle mile fiber threshold" means a fiber optic cable containing no less than one  
108 hundred forty-four individual strands of fiber with minimum performance characteristics consistent

109 with nonzero dispersion shifted single mode optical fiber cable as defined by the International  
110 Telecommunication Union standard ITU-T G.655;

111 ~~(n)~~ (22) “Need of the project sponsors” means there is a public need for a project. The  
112 council shall, for water and sewer projects, construe a population increase evidenced by the last  
113 two decennial censuses in a county in which a project is proposed, as a factor supporting the  
114 conclusion that a need exists for projects in that county;

115 (23) “Network access point” when used in the context of broadband means a direct  
116 connection to carriers that provide core interstate TCP/IP backbone networks that comprise or  
117 make up primary portions of the national Internet backbone system and which provide direct  
118 connectivity on a national scale throughout the United States in addition to direct or indirect  
119 connectivity to international networks throughout the world;

120 (24) “Open access” when used in the context of broadband means the equitable and  
121 nondiscriminatory use of the lines by all broadband service providers including the grant of  
122 indefeasible rights to use particular strands if the rights can be granted in an equitable and  
123 nondiscriminatory manner, subject to such appropriate limitations and restrictions as the Water  
124 Development Authority may determine.

125 (25) “Person” means any individual, corporation, partnership, firm, association, limited  
126 liability company or any other form of business organization or other legal entity.

127 ~~(e)~~ (26) “Project” means any wastewater facility, water facility project or any combination  
128 thereof, constructed or operated or to be constructed or operated by a project sponsor;

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

132 ~~(q)~~ (28) “Public Service Commission” means the Public Service Commission of West  
133 Virginia created and established under section three, article one, chapter twenty-four of this Code,  
134 or any successor to all or any substantial part of its powers and duties;



135 ~~(r)~~ “Person” means any individual, corporation, partnership, association, limited liability  
136 company or any other form of business organization;

137 ~~(s)~~ (29) “Public utility” means any person or persons, or association of persons, however  
138 associated, whether incorporated or not, including, without limitation, any governmental agency,  
139 operating a wastewater facility or water facility as a public service, which is regulated by the Public  
140 Service Commission as a public utility under chapter twenty-four of this code or which is required  
141 to file its tariff with the Public Service Commission;

142 (30) “Service provider” when used in the context of broadband means any service provider  
143 that provides broadband service and is certified to provide services in accordance with state and  
144 federal regulations;

145 ~~(t)~~ (31) “State Development Office” means the West Virginia Development Office  
146 established under article two, chapter five-b of this code, or any successor to all or any substantial  
147 part of its powers and duties;

148 ~~(u)~~ (32) “State Infrastructure Agency” means the Division of Health, ~~Division~~ Department  
149 of Environmental Protection, Housing Development Fund, Public Service Commission, State  
150 Development Office, Water Development Authority, Economic Development Authority and any  
151 other state agency, division, body, authority, commission, instrumentality or entity which now or  
152 in the future receives applications for the funding of, and provides funding or technical assistance  
153 to, the planning, acquisition, construction or improvement of a project;

154 (33) “Transport service” when used in the context of broadband means any service that  
155 provides a service provider or carrier with the ability to transport high-capacity voice, data,  
156 graphics or video between communities, community access points, network access points and  
157 carrier access points. Transport services do not include any last mile broadband services or other  
158 services provided directly to end-users;

159 ~~(v)~~ (34) “Wastewater facility” means all facilities, land and equipment used for or in  
160 connection with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding

161 wastewater, including, without limitation, facilities for the treatment and disposal of sewage,  
162 industrial wastes or other wastes, wastewater, and the residue thereof; facilities for the temporary  
163 or permanent impoundment of wastewater, both surface and underground; and sanitary sewers  
164 or other collection systems, whether on the surface or underground, designed to transport  
165 wastewater together with the equipment and furnishings therefor or thereof and their  
166 appurtenances and systems, whether on the surface or underground including force mains and  
167 pumping facilities therefor;

168 ~~(w)~~ (35) “Water Development Authority” means the West Virginia Water Development  
169 Authority continued pursuant to ~~the provisions of~~ article one, chapter twenty-two-c of this code, or  
170 any successor to all or any substantial part of its powers and duties; ~~and~~

171 ~~(x)~~ (36) “Water facility” means all facilities, land and equipment used for or in connection  
172 with the collection and/or storage of water, both surface and underground, transportation of water,  
173 storage of water, treatment of water and distribution of water all for the purpose of providing  
174 potable, sanitary water suitable for human consumption and use; and

175 (37) “Zone” means a predetermined section of the West Virginia broadband middle mile  
176 established by the Water Development Authority.

**§31-15A-8. Exemption of certain emergency projects from certificate of public convenience  
and necessity requirements; review of certain emergency projects by Public  
Service Commission; and exemption for North Fork Hughes River Watershed  
Project.**

1 (a) If the council determines a project to be an emergency and the emergency project will  
2 be funded solely with grant money for the extension of an existing certificated water facility or  
3 wastewater facility, and if the council finds in its recommendation that the construction and  
4 acquisition of the emergency project will have no effect on the public utility’s customer rates and  
5 will have no significant effect on its operational costs as a result of the project cost, then the  
6 emergency project is exempt from the requirement to obtain a certificate of public convenience

7 and necessity under section eleven, article two, chapter twenty-four of this code. If the public  
8 utility is a public service district, it is exempt from the approval of the Public Service Commission  
9 required under section twenty-five, article thirteen-a, chapter sixteen of this code.

10 (b) Any public utility, and any other entity that will operate as a public utility, must obtain a  
11 certificate of public convenience and necessity pursuant to section eleven, article two, chapter  
12 twenty-four of this code for any emergency project that is not exempt under subsection (a) of this  
13 section. The Public Service Commission shall render its final decision on any application for a  
14 certificate within one hundred twenty days of the filing of the application: *Provided*, That the thirty-  
15 day prefiling requirement is not required. If the project sponsor is a public service district, then  
16 the project will be exempted from the approval requirements of section twenty-five, article thirteen-  
17 a, chapter sixteen of this code.

18 (c) Projects that are not emergency projects are subject to the requirements of section  
19 eleven, article two, chapter twenty-four of this code to the extent they would be otherwise.

20 (d) The North Fork Hughes River Watershed Project, proposed to enhance economic  
21 growth and development through tourism as provided in subdivision (18), subsection ~~(†)~~ (b),  
22 section two of this article and to include a water facility project as defined in subdivision (36),  
23 subsection ~~(†)~~ (b), section two of this article, is hereby specifically exempted from any requirement  
24 imposed by this article, except that the provisions of subsection (a) of this section are specifically  
25 made applicable to the project. The project is hereby specifically authorized and the public land  
26 corporation shall have and may exercise the power of eminent domain and all authority otherwise  
27 prescribed by law to acquire necessary land and rights-of-way, to include approximately four  
28 hundred seventy-eight acres, in connection with the project. Funding for the project shall be  
29 provided by the federal government from the Appalachian Regional Commission through the  
30 United States soil conservation service. Upon completion of the project, the property acquired  
31 shall be transferred to the state park system. The commissioner of the Division of Tourism and  
32 parks or the successor to the commissioner's powers and duties is directed to expand the

33 boundaries of North Bend state park to include the project area and to operate the expanded park  
34 property, including improved recreational facilities, from funds appropriated for that purpose.

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

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

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

9 (2) Any appropriations, grants, gifts, contributions, loan proceeds or other revenues  
10 received by the West Virginia Infrastructure Fund for Broadband Middle Mile Development from  
11 any source, public or private;

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

14 (4) Insurance proceeds payable to the West Virginia Infrastructure Fund for Broadband  
15 Middle Mile Development in connection with any broadband middle mile infrastructure project;  
16 and

17 (5) All income earned on moneys held in the West Virginia Infrastructure Fund for  
18 Broadband Middle Mile Development.

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

23 (c) Amounts in the West Virginia Infrastructure Fund for Broadband Middle Mile  
24 Development shall be segregated and administered by the Water Development Authority  
25 separate and apart from its other assets and programs. Amounts in the West Virginia  
26 Infrastructure Fund for Broadband Middle Mile Development may not be transferred to any other  
27 fund or account or used, other than indirectly, for the purposes of any other program of the Water  
28 Development Authority.

29 (d) Notwithstanding any provision of this code to the contrary, amounts in the West Virginia  
30 Infrastructure Fund for Broadband Middle Mile Development shall be deposited by the Water  
31 Development Authority in one or more banking institutions: *Provided*, That any moneys so  
32 deposited shall be deposited in a banking institution located in this state. The banking institution  
33 shall be selected by the Water Development Authority by competitive bid. Pending the  
34 disbursement of any money from the West Virginia Infrastructure Fund for Broadband Middle Mile  
35 Development as authorized under this section, the Water Development Authority shall invest and  
36 reinvest the moneys subject to the limitations set forth in section twelve, article six, chapter twelve  
37 of this code.

38 (e) Notwithstanding any provision of this chapter to the contrary, the Broadband  
39 Enhancement Council shall oversee and approve disbursements of all amounts in the West  
40 Virginia Infrastructure Fund for Broadband Middle Mile Development received through grants,  
41 including but not limited to grants received pursuant to section eleven-b of this article.  
42 Disbursements of amounts received through grants for broadband infrastructure projects must be  
43 in compliance with grant provisions. Priority in funding for broadband infrastructure projects shall  
44 be based on compliance with the provisions of each grant and then in order of projects fulfilling  
45 the greatest need as determined by the Broadband Enhancement Council.

**§31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for  
engineering assistance.**

1 (a) To further accomplish the purpose and intent of this article, the Water Development  
2 Authority shall use the moneys in the infrastructure fund created pursuant to section nine of this  
3 article, upon receipt of one or more recommendations from the council pursuant to section five of  
4 this article, to make loans, with or without interest, loan guarantees or grants and to provide other  
5 assistance, financial, technical or otherwise, to finance all or part of the costs of infrastructure  
6 projects or projects to be undertaken by a project sponsor: *Provided*, That any moneys disbursed  
7 from the infrastructure fund in the form of grants shall not exceed twenty percent of the total funds  
8 available for the funding of projects. No loan, loan guarantee, grant or other assistance shall be  
9 made or provided except upon a determination by the council that the loan, loan guarantee, grant  
10 or other assistance and the manner in which it will be provided are necessary or appropriate to  
11 accomplish the purposes and intent of this article, based upon an application submitted to the  
12 council: *Provided, however*, That no grant shall be made to a project sponsor that is not a  
13 governmental agency or a not for profit corporation under the provisions of Section 501(c) of the  
14 Internal Revenue Code of 1986, as amended. Applications for loans, loan guarantees, grants or  
15 other assistance may be submitted by a project sponsor for one or more infrastructure projects  
16 on preliminary application forms prepared by the council pursuant to section four of this article.  
17 Any recommendation of the council approving a loan, loan guarantee, grant or other assistance  
18 shall include a finding and determination by the council that the requirements of this section have  
19 been met. The council shall base any decisions to loan money for projects to project sponsors  
20 pursuant to this article solely on the need of the project sponsors.

21 (b) The council has the authority in its sole discretion to make grants to project sponsors  
22 if it finds that: (1) The level of rates for the users would otherwise be an unreasonable burden  
23 given the users' likely ability to pay; or (2) the absence of a sufficient number of users prevents  
24 funding of the project except through grants: *Provided*, That no project sponsor shall receive  
25 infrastructure grant money in an amount in excess of fifty percent of the total cost of the project.  
26 Therefore, the council may consider the economic or financial conditions of the area to be served.

27 As a condition for receipt of a grant under this subsection, the council may require, in addition to  
28 any other conditions, that the applicant pursue other state or federal grant or loan programs. Upon  
29 a recommendation by the council, the Water Development Authority shall provide the grant in  
30 accordance with the recommendation. The council shall develop criteria to be considered in  
31 making grants to project sponsors which shall require consideration of the economic or financial  
32 conditions of the area to be served and the availability of other funding sources. The council shall  
33 adopt procedural rules regarding the manner in which grants will be awarded in conformity with  
34 this section. The procedural rules shall be adopted pursuant to article three, chapter twenty-nine-  
35 a of this code.

36 (c) Notwithstanding any other provision of this article to the contrary, the council shall apply  
37 a mandatory minimum end user utility rate that must be met by the project sponsor before funding  
38 assistance may be awarded. The mandatory minimum end utility rate shall be based upon a  
39 uniform statewide percentage of the median household income in a particular geographic area  
40 and said rate shall not exceed six tenths of one percent: *Provided*, That funding assistance made  
41 from the proceeds of any general obligation bonds and revenue bonds issued after March 15,  
42 1998, after transfer required to make the state match for the water and wastewater revolving loan  
43 programs pursuant to article two, chapter twenty-two-c and article thirteen-c, chapter sixteen of  
44 this code, shall be provided by the council on a pro rata basis divided equally among the  
45 congressional districts of this state as delineated in accordance with section three, article two,  
46 chapter one of this code: *Provided, however*, That infrastructure projects as defined in subdivision  
47 (18), subsection ~~(4)~~ (b), section two of this article shall not be subject to pro rata distribution. When  
48 determining median household income of a geographic area of the project to be served, the  
49 council shall consider any surveys of the income of the households that will be served by the  
50 project.

51 (d) No loan or grant funds may be made available for a project if the project to be funded  
52 will provide subsidized services to certain users in the service area of the project.

53 (e) Notwithstanding any other provision of this article to the contrary, engineering studies  
54 and requirements imposed by the council for preliminary applications shall not exceed those  
55 engineering studies and requirements which are necessary for the council to determine the  
56 economic feasibility of the project. If the council determines that the engineering studies and  
57 requirements for the preapplication would impose an undue hardship on any project sponsor, the  
58 council may provide funding assistance to project sponsors to defray the expenses of the  
59 preapplication process from moneys available in the Infrastructure Fund for making loans:  
60 *Provided*, That the council may only provide funding assistance in an amount equal to \$5,000 or  
61 fifty percent of the total preapplication cost of the project, whichever amount is greater. If the  
62 project is ultimately approved for a loan by the council, the amount of funding assistance provided  
63 to the project sponsor for the preapplication process shall be included in the total amount of the  
64 loan to be repaid by the project sponsor. If the project is not ultimately approved by the council,  
65 then the amount of funding assistance provided to the project sponsor will be considered a grant  
66 by the council and the total amount of the assistance shall be forgiven. In no event may the  
67 amount of funding assistance provided to all project sponsors exceed, in the aggregate, \$100,000  
68 annually.

69 (f) The council shall report to the Governor, the Speaker of the House of Delegates and  
70 the President of the Senate during each regular and interim session of the Legislature, on its  
71 activities and decisions relating to distribution or planned distribution of grants and loans under  
72 the criteria to be developed pursuant to this article.

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

1 (a) The West Virginia Broadband Middle Mile Infrastructure, to include more than two  
2 thousand miles of fiber optic cable, shall be owned and operated by the State of West Virginia.  
3 The network provided or enhanced by the broadband middle mile infrastructure project shall be



4 open access. Existing broadband infrastructure which meets the required specifications of middle  
5 mile fiber threshold with a minimum of one hundred forty-four strands of fiber may be purchased  
6 as part of the middle mile infrastructure project. Internet services provided through the broadband  
7 middle mile shall be available to both business and residential users as well as to governmental  
8 agencies. The cost for access to the middle mile will be the cost of constructing, maintaining and  
9 administering the middle mile network as determined by the Water Development Authority. The  
10 network shall provide free broadband, data and phone service to schools, universities and  
11 government buildings in the state who directly connect to the states middle mile. Notwithstanding  
12 the open access requirement, Water Development Authority shall reserve at least eight strands  
13 of fiber for exclusive use by the state, its instrumentalities and political subdivisions.

14 (b) The Water Development Authority shall establish zones in the broadband middle mile  
15 infrastructure. Each zone of the middle mile infrastructure shall be let for bid separately, to  
16 encourage participation by multiple project sponsors. A project sponsor may bid to construct part  
17 or all of a zone of the middle mile infrastructure project. As a condition of a contract, a project  
18 sponsor may be granted indefeasible rights to use up to twenty percent of the fibers in any number  
19 of zones of the broadband middle mile, but may not use more than twenty percent of the fibers in  
20 any one zone. No single provider may use more than twenty percent of the fibers in any one  
21 zone.

22 (c) The Water Development Authority shall report to the Governor, the Legislative  
23 Manager, the Speaker of the House of Delegates and the President of the Senate during each  
24 regular session of the Legislature on the status of the broadband middle mile project and, to the  
25 extent known, the economic activity and jobs created as a result of the broadband middle mile  
26 infrastructure project.

**§31-15A-11. Reservation of funds for projects and infrastructure projects.**

1 Eighty percent of the funds deposited in the West Virginia Infrastructure Fund shall be  
2 dedicated for the purpose of providing funding for the cost of projects as defined in subdivision

3 ~~(26)~~, subsection ~~(a)~~ (b), section two of this article. Twenty percent of the funds deposited in the  
4 West Virginia Infrastructure Fund shall be dedicated for the purpose of providing funding for costs  
5 of infrastructure projects as defined in subdivision (18), subsection ~~(a)~~ (b), section two of this  
6 article. Project sponsors of infrastructure projects shall follow the application process as  
7 established by this article: *Provided*, That notwithstanding any provision of this article to the  
8 contrary, all applications for any infrastructure project shall be submitted to the executive director  
9 of the West Virginia Development Office for review, recommendation and approval regarding  
10 infrastructure project funding.

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

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

4 (b) No bonds may be issued under this article for broadband infrastructure projects until  
5 such time as the Legislature has provided for sufficient revenue to meet debt service on the bonds:  
6 *Provided*, That bonds may be issued if the Water Development Authority is able to identify a  
7 repayment source for the bonds, including income from operation of the broadband middle mile.

**§31-15A-11b. Application for federal grants in furtherance of broadband middle mile infrastructure.**

8 (a) In furtherance of the development of broadband middle mile infrastructure projects  
9 throughout the state:

10 (1) The West Virginia Department of Education shall apply for grants from the Federal  
11 Communications Commission and the United States Department of Education to close the  
12 “Homework Gap,” and for the purposes of this article:

13 (2) The West Virginia Department of Health and Human Resources shall apply for grants  
14 from the Federal Communications Commission and the United States Department of Health and

15 Human Services to expand the provision of telemedicine and to connect our rural health clinics  
16 with our state hospitals; and

17 (3) The West Virginia Division of Homeland Security shall apply for grants from the  
18 Federal Communications Commission and the United States Department of Homeland Security  
19 to create a secure wired telecommunications system for emergency response and preparedness.

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

1 To accomplish the purpose and intent of this article, the Water Development Authority is  
2 hereby empowered, in addition to all other powers granted to it under this code; to:

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

5 (2) Receive or administer on behalf of any federal or state agency grants, subsidies or  
6 other payments to be applied to the costs of any broadband middle mile infrastructure project,  
7 including, but not limited to, payments to be applied to operating costs and debt service or  
8 obligations of any project sponsor;

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

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

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

1           No part of the West Virginia Infrastructure Fund for Broadband Middle Mile Development  
2 or the West Virginia Broadband Middle Mile Infrastructure Revenue Debt Service Fund inures to  
3 the benefit of or is distributable to the Water Development Board directors or officers of the Water  
4 Development Authority except that the Water Development Authority is authorized and  
5 empowered to pay reasonable compensation, other than to members of the Water Development  
6 Board, including the chairman, vice chairman and secretary-treasurer, for services rendered and  
7 to make loans and exercise its other powers as previously specified in furtherance of its corporate  
8 purpose: *Provided*, That no loans may be made, and no property may be purchased or leased  
9 from, or sold, leased or otherwise disposed of, to any Water Development Board member or  
10 officer of the Water Development Authority.

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

1           Upon the termination or dissolution of the Water Development Authority, all rights and  
2 properties of the authority with respect to the West Virginia Infrastructure Fund for Broadband  
3 Middle Mile Development shall pass to and be vested in the state, subject to the rights of lien  
4 holders and other creditors.

**§31-15A-15a. Competitive bid requirements.**

1           (a) The state and its subdivisions shall, except as provided in subsection (c) of this section,  
2 solicit competitive bids as provided in article five-a, chapter twenty-one of this code for the  
3 construction of every broadband middle mile infrastructure project funded pursuant to this article  
4 exceeding \$25,000 in total cost. Following the solicitation of the bids, a construction contract shall  
5 be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance  
6 and payment bond: *Provided*, That the state and its subdivisions may reject all bids and solicit  
7 new bids on the project.

8           (b) This section does not:

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

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

15           (3) Apply to emergency repairs: *Provided*, That the term "emergency repairs" means  
16 repairs that, if not made immediately, will seriously impair the use of the infrastructure or  
17 broadband service;

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

24           (5) Apply to privately owned broadband middle mile infrastructure projects.

**§31-15A-17. Water Development Authority empowered to issue infrastructure revenue bonds and refunding bonds; creation of Infrastructure Revenue Debt Service Fund; funding of Infrastructure Revenue Debt Service Fund; requirements and manner of such issuance.**

1           (a) To accomplish the purpose and intent of this article, the Water Development Authority  
2 is hereby empowered at the written request of the council to issue from time to time infrastructure  
3 revenue bonds of the state in such principal amounts as the council deems necessary to make  
4 loans and loan guarantees and other forms of financial assistance to project sponsors for one or  
5 more projects or infrastructure projects: *Provided*, That the Water Development Authority may  
6 not issue any such bonds, other than refunding bonds, unless the council by resolution determines

7 that the aggregate cost of the projects or infrastructure projects expected to be constructed during  
8 any annual period exceeds (1) the projected annual infrastructure revenues for the same period,  
9 and (2) the principal and interest payments not otherwise pledged to the Infrastructure Revenue  
10 Debt Service Fund that are due the Water Development Authority on all outstanding loans  
11 previously made by the Water Development Authority pursuant to the provisions of this article.

12 (b) The proceeds of infrastructure revenue bonds shall be used solely for the purpose of  
13 making loans and loan guarantees and other forms of financial assistance to sponsors of one or  
14 more projects or infrastructure projects, and shall be deposited in one or more special accounts  
15 with the trustee under the trust agreement securing such bonds and disbursed from time to time  
16 for projects or infrastructure projects in accordance with this article: *Provided, That*  
17 notwithstanding any provision of this code to the contrary, twenty percent of the funds deposited  
18 in the special account shall be dedicated for the purpose of providing funding for costs of  
19 infrastructure projects as defined in subdivision (18), subsection ~~(4)~~ (b), section two~~7~~, of this article.

20 (c) The Water Development Authority may not authorize the disbursement of any proceeds  
21 of infrastructure revenue bonds unless it has received documentation from the council pursuant  
22 to the provisions of section ten of this article.

23 (d) There is hereby created in the Water Development Authority a special fund which shall  
24 be designated and known as the "West Virginia Infrastructure Revenue Debt Service Fund," into  
25 which shall be transferred solely from the loan repayments deposited in the Infrastructure Fund  
26 the amounts certified by the director of the Water Development Authority as necessary to pay the  
27 principal, premium, if any, and interest on infrastructure revenue bonds and any reserve  
28 requirements, subject to the terms of any agreement with the holders of the infrastructure revenue  
29 bonds. All amounts deposited in the West Virginia Infrastructure Revenue Debt Service Fund  
30 shall be pledged to the repayment of the principal, interest and redemption premium, if any, on  
31 any infrastructure revenue bonds authorized by this article: *Provided, That* amounts on deposit  
32 in the fund may be used to establish or maintain reserves created for the purposes of securing

33 such infrastructure revenue bonds. The pledge shall be valid and binding from the time the pledge  
34 is made, and the West Virginia Infrastructure Revenue Debt Service Fund so pledged shall  
35 immediately be subject to the lien of the pledge without any physical delivery thereof or further  
36 act, and the lien of any such pledge shall be valid and binding as against all parties having claims  
37 of any kind in tort, contract or otherwise against the Water Development Authority irrespective of  
38 whether the parties have notice thereof.

39 (e) Except as may otherwise be expressly provided in this article or by resolution of the  
40 Water Development Authority, every issue of infrastructure revenue bonds shall be special  
41 obligations of the Water Development Authority payable solely from amounts in the West Virginia  
42 Infrastructure Revenue Debt Service Fund, and the reserves created for this purpose by the Water  
43 Development Authority, without preference or priority among the bonds regardless of when  
44 issued, subject only to any agreements with the holders of any bonds to the contrary. All such  
45 bonds are hereby declared to be negotiable instruments.

46 (f) Infrastructure revenue bonds shall be authorized by resolution of the Water  
47 Development Authority. These bonds shall bear such dates and shall mature at such times, in  
48 case of any note or renewal thereof not exceeding five years from the date of issue of the original  
49 note, and in the case of any bond not exceeding fifty years from the date of issue, as the resolution  
50 may provide. Infrastructure revenue bonds shall bear interest at a rate or rates, including variable  
51 rates, shall be taxable or tax-exempt, shall be in the denominations, shall be in registered form,  
52 shall carry the registration privileges, shall be payable in the medium and place of payment, and  
53 shall be subject to the terms of redemption as the Water Development Authority may authorize.  
54 Infrastructure revenue bonds may be sold by the Water Development Authority at public or private  
55 sale at the price the Water Development Authority determines in consultation with the council.  
56 Infrastructure revenue bonds shall be executed by the chairman and the vice chairman of the  
57 Water Development Authority, either or both of whom may use a facsimile signature. The official  
58 seal of the Water Development Authority or a facsimile thereof shall be affixed thereto or printed

59 thereon and attested by manual or facsimile signature by the secretary-treasurer of the Water  
60 Development Authority. If any officer whose signature, or a facsimile of whose signature appears  
61 on any infrastructure revenue bond ceases to be such officer before delivery of such bond, such  
62 signature or facsimile is nevertheless sufficient for all purposes to the same extent as if he or she  
63 had remained in office until such delivery, and if the seal of the Water Development Authority has  
64 been changed after a facsimile has been imprinted on such bond, the facsimile will continue to be  
65 sufficient for all purposes.

66 (g) Any resolution authorizing any infrastructure revenue bonds may contain provisions,  
67 subject to any agreement with bondholders or noteholders which may then exist, which  
68 agreements shall be part of the contract with the holder thereof, with respect to the pledge of or  
69 other use and disposition of amounts in the infrastructure revenue debt service fund; the setting  
70 aside of reserve funds; the disposition of any assets of the Water Development Authority;  
71 limitations on the purpose to which the proceeds of sale of bonds may be applied; the  
72 authorization of notes issued in anticipation of the issuance of bonds; an agreement of the Water  
73 Development Authority to do all things necessary for the authorization, issuance and sale of such  
74 bonds in such amounts as may be necessary for the timely retirement of such notes; limitations  
75 on the issuance of additional bonds; the terms upon which additional bonds may be issued and  
76 secured; the refunding of outstanding bonds and the renewal of outstanding notes; the  
77 procedures, if any, by which the terms of any contract with bondholders or noteholders may be  
78 amended or abrogated; the amount of bonds the holders of which must consent thereto and the  
79 manner in which such consent may be given; and any other matter which in any way affects the  
80 security for or protection of the bonds.

81 (h) In the event that the sum of all reserves pledged to the payment of the bonds is less  
82 than the minimum reserve requirements established in any resolution or resolutions authorizing  
83 the issuance of the bonds, the chairman or the director of the Water Development Authority shall  
84 certify, on or before December 1, of each year, the amount of such deficiency to the Governor of



85 the state for inclusion, if the Governor shall so elect, of the amount of such deficiency in the budget  
86 to be submitted to the next session of the Legislature for appropriation to the Water Development  
87 Authority to be pledged for payment of such bonds: *Provided*, That the Legislature shall not be  
88 required to make any appropriations so requested, and the amount of such deficiencies shall not  
89 constitute a debt or liability of the state.

90 (i) Neither the officers or board members of the Water Development Authority, nor any  
91 person executing the infrastructure revenue bonds, shall be liable personally on the bonds or be  
92 subject to any personal liability or accountability by reason of the issuance thereof.

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

1 (a) To accomplish the purpose and intent of this article, the Water Development Authority  
2 is hereby empowered to issue from time to time broadband middle mile infrastructure revenue  
3 bonds of the state in such principal amounts as it deems necessary to pay for expected broadband  
4 middle mile construction projects.

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

14           (c) There is hereby created in the Water Development Authority a special fund which shall  
15 be designated and known as the “West Virginia Broadband Middle Mile Infrastructure Revenue  
16 Debt Service Fund,” into which shall be transferred solely from income from operation of the  
17 broadband middle mile, and deposited in the West Virginia Infrastructure Fund for Broadband  
18 Middle Mile Development, the amounts certified by the authority as necessary to pay the principal,  
19 premium, if any, and interest on broadband middle mile infrastructure revenue bonds and any  
20 reserve requirements, subject to the terms of any agreement with the holders of the broadband  
21 middle mile infrastructure revenue bonds. All amounts deposited in the West Virginia Broadband  
22 Middle Mile Infrastructure Revenue Debt Service Fund shall be pledged to the repayment of the  
23 principal, interest and redemption premium, if any, on any broadband middle mile infrastructure  
24 revenue bonds authorized by this article: *Provided*, That amounts on deposit in the fund may be  
25 used to establish or maintain reserves created for the purposes of securing the broadband middle  
26 mile infrastructure revenue bonds. The pledge is valid and binding from the time the pledge is  
27 made, and the West Virginia Broadband Middle Mile Infrastructure Revenue Debt Service Fund  
28 so pledged is immediately subject to the lien of the pledge without any physical delivery thereof  
29 or further act, and the lien of any such pledge is valid and binding as against all parties having  
30 claims of any kind in tort, contract or otherwise against the Water Development Authority  
31 irrespective of whether the parties have notice thereof.

32           (d) Except as may otherwise be expressly provided in this article or by resolution of the  
33 Water Development Authority, every issue of broadband middle mile infrastructure revenue bonds  
34 are special obligations of the Water Development Authority payable solely from amounts in the  
35 West Virginia Broadband Middle Mile Infrastructure Revenue Debt Service Fund, and the  
36 reserves created for this purpose by the Water Development Authority, without preference or  
37 priority among the bonds regardless of when issued, subject only to any agreements with the  
38 holders of any bonds to the contrary. All such bonds are hereby declared to be negotiable  
39 instruments.

40 (e) Broadband middle mile infrastructure revenue bonds shall be authorized by resolution  
41 of the Water Development Authority. These bonds shall bear such dates and shall mature at such  
42 times, in case of any note or renewal thereof not exceeding five years from the date of issue of  
43 the original note, and in the case of any bond not exceeding fifty years from the date of issue, as  
44 the resolution may provide. Broadband middle mile infrastructure revenue bonds shall bear  
45 interest at a rate or rates, including variable rates, shall be taxable or tax-exempt, shall be in the  
46 denominations, shall be in registered form, shall carry the registration privileges, shall be payable  
47 in the medium and place of payment, and shall be subject to the terms of redemption as the Water  
48 Development Authority may authorize. Broadband middle mile infrastructure revenue bonds may  
49 be sold by Water Development Authority at public or private sale. Broadband middle mile  
50 infrastructure revenue bonds shall be executed by the chairman and the vice chairman of the  
51 Water Development Authority, either or both of whom may use a facsimile signature. The official  
52 seal of the Water Development Authority or a facsimile thereof shall be affixed thereto or printed  
53 thereon and attested by manual or facsimile signature by the secretary-treasurer of the Water  
54 Development Authority. If any officer whose signature, or a facsimile of whose signature appears  
55 on any broadband infrastructure revenue bond ceases to be such officer before delivery of such  
56 bond, such signature or facsimile is nevertheless sufficient for all purposes to the same extent as  
57 if he or she had remained in office until such delivery, and if the seal of the Water Development  
58 Authority has been changed after a facsimile has been imprinted on such bond, the facsimile will  
59 continue to be sufficient for all purposes.

60 (f) Any resolution authorizing any broadband infrastructure revenue bonds may contain  
61 provisions, subject to any agreement with bondholders or noteholders which may then exist,  
62 which agreements shall be part of the contract with the holder thereof, with respect to the pledge  
63 of or other use and disposition of amounts in the West Virginia Broadband Middle Mile  
64 Infrastructure Revenue Debt Service Fund; the setting aside of reserve funds; the disposition of  
65 any assets of the Water Development Authority; limitations on the purpose to which the proceeds

66 of sale of bonds may be applied; the authorization of notes issued in anticipation of the issuance  
67 of bonds; an agreement of the Water Development Authority to do all things necessary for the  
68 authorization, issuance and sale of such bonds in such amounts as may be necessary for the  
69 timely retirement of such notes; limitations on the issuance of additional bonds; the terms upon  
70 which additional bonds may be issued and secured; the refunding of outstanding bonds and the  
71 renewal of outstanding notes; the procedures, if any, by which the terms of any contract with  
72 bondholders or noteholders may be amended or abrogated; the amount of bonds the holders of  
73 which must consent thereto and the manner in which such consent may be given; and any other  
74 matter which in any way affects the security for or protection of the bonds.

75 (g) In the event that the sum of all reserves pledged to the payment of the bonds is less  
76 than the minimum reserve requirements established in any resolution or resolutions authorizing  
77 the issuance of the bonds, the chairman of the Water Development Authority shall certify, on or  
78 before December 1 of each year, the amount of such deficiency to the Governor of the state for  
79 inclusion, if the Governor shall so elect, of the amount of such deficiency in the budget to be  
80 submitted to the next session of the Legislature for appropriation to be pledged for payment of  
81 such bonds: *Provided*, That the Legislature shall not be required to make any appropriations so  
82 requested, and the amount of the deficiencies does not constitute a debt or liability of the state.

83 (h) Neither the officers or board members of the Water Development Authority, nor any  
84 person executing the broadband middle mile infrastructure revenue bonds, are liable personally  
85 on the bonds or be subject to any personal liability or accountability by reason of the issuance  
86 thereof.

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

1 (a) Any broadband middle mile infrastructure revenue bonds issued by the Water  
2 Development Authority under this article shall be secured by a trust agreement between the Water

3 Development Authority and a corporate trustee, which trustee may be any trust company or  
4 banking institution having the powers of a trust company within this state.

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

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

1 Any holder of broadband middle mile infrastructure revenue bonds issued pursuant to this  
2 article and the trustee under any trust agreement, except to the extent the rights given by this  
3 article may be restricted by the applicable resolution or trust agreement, may by civil action,

4 mandamus or other proceedings protect and enforce any rights granted under the laws of this  
5 state or granted under this article, by the trust agreement or by the resolution in the issuance of  
6 the bonds, and may enforce and compel the performance of all duties required by this article,  
7 pursuant to the trust agreement or resolution, to be performed by the Water Development  
8 Authority or any officer thereof.

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

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

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

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

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

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

1 Any broadband middle mile infrastructure revenue bonds issued pursuant to this article  
2 and at any time outstanding may at any time and from time to time be refunded by the Water  
3 Development Authority by the issuance of its refunding revenue bonds in an amount it deems

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

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

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

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

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

**ARTICLE 15C. BROADBAND ENHANCEMENT.**

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

- 1        (a) The council shall:
- 2            (1) Explore any and all ways to expand access to broadband services, including, but not  
3 limited to, middle mile, last mile and wireless applications;
- 4            (2) Gather data regarding the various speeds provided to consumers in comparison to  
5 what is advertised. The council may request the assistance of the Legislative Auditor in gathering  
6 this data;
- 7            (3) Explore the potential for increased use of broadband service for the purposes of  
8 education, career readiness, workforce preparation and alternative career training;
- 9            (4) Explore ways for encouraging state and municipal agencies to expand the  
10 development and use of broadband services for the purpose of better serving the public, including  
11 audio and video streaming, voice-over Internet protocol, teleconferencing and wireless



12 networking; ~~and~~

13 (5) Cooperate and assist in the expansion of electronic instruction and distance education  
14 services; and

15 (6) Oversee and approve disbursements of all amounts in the West Virginia Infrastructure  
16 Fund for Broadband Middle Mile Development received through grants and determine funding  
17 priorities as provided in section nine-a, article fifteen-a of this chapter.

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

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

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

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

28 (4) To make and execute contracts, commitments and other agreements necessary or  
29 convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to  
30 assist in the mapping of the state and categorization of areas within the state;

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

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

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

37 (c) The council shall exercise its powers and authority to advise the Legislature on bringing

38 broadband service to unserved and underserved areas.

39 (d) The council shall report to the Joint Committee on Government and Finance on or  
40 before January 1 of each year. The report shall include the action that was taken by the council  
41 during the previous year in carrying out the provisions of this article. To the extent the report  
42 addresses data gathered in connection with subdivision (2), subsection a, section four of this  
43 article, a copy of the report shall be provided to the Attorney General. The council shall also make  
44 any other reports as may be required by the Legislature or the Governor.

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NOTE: The 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 requires certain agencies to apply for grants in furtherance of the article, provides additional powers to the Water Development Authority and creates the West Virginia 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 a heading or the present law, and underscoring indicates new language that would be added.