

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 390

BY SENATORS MAYNARD, TARR, PLYMALE, CLINE, AND

SYPOLT

[Introduced January 22, 2019; Referred
to the Committee on Economic Development]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §31G-5-1 and §31G-5-2, all relating to determining the feasibility of electric
 3 utilities constructing and operating middle-mile broadband Internet projects to serve
 4 certain unserved and underserved areas; defining certain terms; delineating the factors
 5 that must be contained in certain feasibility studies; requiring the Broadband Enhancement
 6 Council and the Public Service Commission to assist electric utilities in determining the
 7 feasibility of certain proposed middle-mile broadband development projects; requiring that
 8 the Broadband Enhancement Council render a judgment as to the feasibility of middle-
 9 mile broadband Internet projects within a certain period of time; and requiring certain
 10 reports be submitted to certain officials and committees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PROJECT FEASIBILITY STUDY.

§31G-5-1. Definitions.

1 For purposes of this article:

2 (a) "Commission" means the West Virginia Public Service Commission.

3 (b) "Council" means the Broadband Enhancement Council, as defined in article 1 of this
 4 chapter.

5 (c) "Electric Utility" means any electric utility operating within this state that is regulated by
 6 the Commission.

7 (d) "Project" means a middle-mile broadband infrastructure expansion project proposed
 8 by an electric utility.

§31G-5-2. Mandatory feasibility study; Evaluation.

1 (a) Each Electric Utility shall investigate the feasibility of constructing and operating a
 2 project within Electric Utility's distribution system and submit a feasibility study of a proposed
 3 project to the council on or before December 1, 2019.

4 (b) The council and the commission shall assist each such Electric Utility in its preparation

5 of such a feasibility study.

6 (c) A feasibility study shall include an evaluation of the following:

7 (i) The scope of the proposed project for which the feasibility study is conducted, which
8 shall include, but not be limited to:

9 (A) The route of the middle-mile Infrastructure proposed for the project, the number of fiber
10 strands that would be utilized in connection with the proposed project and dedicated to serve as
11 the middle mile, the location of the Electric Utility's distribution infrastructure that will be utilized
12 in connection with the proposed project, the capacity of the middle mile broadband infrastructure
13 that will be available to lease to last-mile broadband Internet providers upon completion of the
14 proposed project

15 (B) The estimated cost of the proposed project, including, but not limited to, engineering
16 costs, construction costs, permitting costs, materials and labor, right of way costs, and a
17 reasonable rate of return to the Electric Utility;

18 (C) The proposed schedule of construction of the proposed project.; and

19 (D) The method of attachment and connection of the middle-mile broadband fiber assets
20 to the Electric Utility's distribution Infrastructure;

21 (ii) The regulatory barriers to an Electric Utility constructing a project and operating middle-
22 mile broadband infrastructure to provide access to unserved and underserved areas of the state,
23 and proposed legislation to address such regulatory barriers;

24 (iii) Whether it is in the public interest and the interest of the Electric Utility to make
25 improvements to the distribution grid in furtherance of providing such middle-mile broadband
26 Internet services in conjunction with its program of electric distribution projects;

27 (iv) Whether it is in the public interest and the interest of the Electric Utility to operate
28 middle-mile broadband Internet assets to provide access to unserved and underserved areas of
29 the state;

30 (v) Whether it is in the public interest and the interest of the Electric Utility to permit a third-

31 party to lease such capacity to provide last-mile broadband Internet services to unserved and
32 underserved areas of the state:

33 (vi) Whether construction of middle-mile broadband Internet infrastructure utilizing Electric
34 Utility distribution systems is feasible with respect to the maturity of the relevant technology, the
35 compatibility of such services with existing electric services, and the financial requirements to
36 undertake such project;

37 (vii) The anticipated level of rate adjustment necessary to allow the Electric Utility to
38 recover its costs associated with the proposed project, and a reasonable rate of return, on an
39 expedited basis, that will be recovered by the Electric Utility through a rate adjustment at the
40 commission; and

41 (viii) Such other information that is pertinent to the project.

42 (d) Upon receipt of a feasibility study, the council shall render a determination, by a
43 majority vote of the council, as to the feasibility of the proposed project.

44 (e) In its consideration of the feasibility of a project, the council shall identify one or more
45 last-mile broadband Internet providers that will lease the middle-mile broadband Internet capacity
46 created by the proposed project pursuant to lease terms and conditions set by the council.

47 (f) The council shall render such feasibility determination within 60 days from the date the
48 feasibility study is submitted to the council.

49 (g) Commencing January 1, 2020, and each year thereafter, the council shall give a report
50 of its consideration of feasibility studies submitted pursuant to this section of the code to the
51 Governor, the President of the Senate, the Speaker of the House of Delegates, and the Joint
52 Committee on Government and Finance.

NOTE: The purpose of this bill is to require Electric Utilities to submit feasibility studies of potential middle-mile broadband internet service projects to the Broadband Enhancement Council for the council's consideration.

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