

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 390

SENATORS MAYNARD, TARR, PLYMALE, CLINE, AND

SYPOLT, original sponsors

[Originating in the Committee on Economic

Development; Reported on January 25, 2019]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. MAKE-READY POLE ACCESS.

**§31G-4-4. Electric power utilities; feasibility study for providing broadband services;
Public Service Commission to assist; proposed legislation to be developed; report.**

1 (a) For purposes of this section:
2 (1) "Commission" shall mean the West Virginia Public Service Commission;
3 (2) "Council" shall mean the Broadband Enhancement Council, as defined in §31G-1-1 et
4 seq. of this code;
5 (3) "Electric utility" shall mean any electric utility operating within this state that is regulated
6 by the commission;
7 (4) "Project" shall mean a middle-mile broadband infrastructure expansion project
8 proposed by an electric utility.
9 (b) Each electric utility may investigate the feasibility of constructing and operating a
10 project within the electric utility's distribution system and, if it so elects, may submit a feasibility
11 study of a proposed project to the council on or before December 1, 2019. Additional feasibility
12 studies may be submitted to the council after December 1, 2019 without penalty.

13 (c) The council and the commission shall assist each such electric utility in its preparation
14 of such a feasibility study.

15 (d) The feasibility study shall include an evaluation of the following:

16 (1) The scope of the proposed project for which the feasibility study is conducted, which
17 shall include but not be limited to:

18 (A) The route of the middle-mile infrastructure proposed for the project; the number of fiber
19 strands that would be utilized in connection with the proposed project and dedicated to serve as
20 the middle-mile; the location of the electric utility's distribution infrastructure that will be utilized in
21 connection with the proposed project; the capacity of the middle-mile broadband infrastructure
22 that will be available to lease to last-mile broadband Internet providers upon completion of the
23 proposed project;

24 (B) The estimated cost of the proposed project, including, but not limited to, engineering
25 costs, construction costs, permitting costs, materials and labor, right-of-way costs, and a
26 reasonable rate of return to the electric utility;

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

28 (D) The method of attachment and connection of the middle-mile broadband fiber assets
29 to the electric utility's distribution infrastructure;

30 (2) The regulatory and legal barriers to an electric utility's constructing a project and
31 operating middle-mile broadband infrastructure to provide access to unserved areas of the state,
32 as defined in §31G-1-2 of this code, and any underserved areas of the state, and proposed
33 legislation to address such regulatory barriers;

34 (3) Whether it is in the public interest and the interest of the electric utility to make
35 improvements to the distribution grid in furtherance of providing such middle-mile broadband
36 Internet services in conjunction with its program of electric distribution projects;

37 (4) Whether it is in the public interest and the interest of the electric utility to operate
38 middle-mile broadband Internet assets to provide access to unserved and underserved areas of
39 the state;

40 (5) Whether it is in the public interest and the interest of the electric utility to permit a third-
41 party to lease such capacity to provide last-mile broadband Internet services to unserved and
42 underserved areas of the state;

43 (6) Whether construction of middle-mile broadband Internet infrastructure utilizing electric
44 utility distribution systems is feasible with respect to the maturity of the relevant technology, the
45 compatibility of such services with existing electric services, and the financial requirements to
46 undertake such project;

47 (7) The anticipated level of rate adjustment necessary to allow the electric utility to recover
48 its costs associated with the proposed project, and a reasonable rate of return, on an expedited
49 basis, that will be recovered by the electric utility through a rate adjustment at the commission;
50 and

51 (8) Such other information that is pertinent to the project.

52 (e) Upon receipt of a feasibility study, the council shall render a determination, by a
53 majority vote of the council, as to the feasibility of the proposed project.

54 (f) In its consideration of the feasibility of a project, the council shall identify one or more
55 last-mile broadband Internet providers that may lease the middle-mile broadband Internet
56 capacity created by the proposed project pursuant to lease terms and conditions set by the
57 council.

58 (g) The council shall render such feasibility determination within 60 days from the date the
59 feasibility study is submitted to the council.

60 (h) Commencing January 1, 2020, and each year thereafter, the council shall give a report
61 of its consideration of feasibility studies submitted pursuant to this section to the Governor, the
62 President of the Senate, the Speaker of the House of Delegates, and the Joint Committee on
63 Government and Finance.

NOTE: The purpose of this bill is to give the option to electric utilities to submit feasibility studies of potential middle-mile broadband Internet service projects to the Broadband Enhancement Council for the council's consideration.