

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4015

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(MR. SPEAKER), QUEEN, PACK AND NELSON

[Introduced January 09, 2020; Referred to the
Committee on Technology and Infrastructure then the
Judiciary.]

1 A BILL to amend and reenact §17-2E-3, §17-2E-5, §17-2E-6, §17-2E-8, and §17-2E-9 of the Code
2 of West Virginia, 1931, as amended; to amend said code by adding thereto two new
3 sections, designated §17-2E-6a and §17-2E-6b; to amend and reenact §31-15-8 of said
4 code; to amend and reenact §31G-1-3 and §31G-1-6 of said code; and to amend said
5 code by adding thereto a new article, designated §31G-5-1, §31G-5-2, §31G-5-3 and
6 §31G-5-4, all relating generally to economic development; providing a timetable for
7 Division of Highways to approve or deny applications for right-of-way access; providing
8 that telecommunications carriers may satisfy an obligation to provide the notice to other
9 telecommunications carriers under this section by requesting the assistance and
10 coordination of the Broadband Enhancement Council; providing the Broadband
11 Enhancement Council is responsible for ensuring compliance with certain requirements;
12 setting the fair market value for purposes of this article at \$0 in monetary compensation if
13 the division is required by law to accept compensation for use of the division's right-of-
14 way; providing the division may receive in-kind compensation; explaining what the division
15 may consider when valuing in-kind compensation; delineating that in-kind compensation
16 may be used only for state purposes; setting forth that where two or more providers share
17 the obligation of compensating the division they shall do so on a fair, reasonable and
18 equitable basis; providing that subject to the provisions of the Vertical Real Estate
19 Management and Availability, the division may enter into an agreement and issue a permit
20 to allow any carrier to use excess telecommunications facilities owned or controlled by the
21 division; providing that with gubernatorial approval, the division may transfer or assign the
22 rights related to a telecommunications facilities owned or controlled by the division to any
23 other state agency; allowing the commissioner to establish a policy to provide for
24 installation of conduit on bridges; changing language relating to the commissioner's rule-
25 making authority; permitting the existing insurance fund to insure additional broadband
26 internet service; giving the Governor authority to name the chair of the Broadband

27 Enhancement Council; providing that executive agencies shall cooperate with and provide
28 all necessary information to the council to determine the feasibility and federal allowability
29 of creating Advanced Regulatory Environment Analysis (AREA) maps; enacting the
30 Vertical Real Estate Management and Availability Act; requiring the Department of
31 Administration to coordinate with the Governor to seek proposals to manage state-owned
32 vertical real estate; establishing how the vertical real estate is to be managed; defining
33 “vertical real estate” as any structure that is suitable for the mounting of communications
34 equipment and associated ground facilities; providing for a distribution of funds from
35 leasing state-owned vertical real estate; and, setting forth certain exceptions to the
36 availability for management of state-owned vertical real estate.

Be it enacted by the Legislature of West Virginia:

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2E. DIG ONCE POLICY.

~~§17-2E-3. Use of rights-of-way; broadband conduit installation in rights-of-way; permits; agreements; compensation; valuation of compensation. Telecommunications facilities construction and installation in rights-of-way.~~

1 (a) Before obtaining a permit for the construction or installation of a telecommunications
2 facility in a right-of-way, a telecommunications carrier must enter into an agreement with the
3 division consistent with the requirements of this article.

4 (b) Before granting a permit for longitudinal access or wireless access to a right-of-way,
5 the division shall:

6 (1) First enter into an agreement with a telecommunications carrier that is competitively
7 neutral and nondiscriminatory as to other telecommunications carriers; and

8 (2) Upon receipt of any required approval or concurrence by the Federal Highway
9 Administration the division may issue a permit granting access under this section: *Provided*, That
10 the division shall comply with all applicable federal regulations with respect to approval of an

11 agreement, including, but not limited to, 23 C.F.R. §645, 23 C.F.R. §710.403 and 23 C.F.R.
12 §710.405. The agreement shall be approved by the ~~Commissioner of Highways~~ commissioner in
13 order to be effective and, without limitation:

- 14 (A) Specify the terms and conditions for renegotiation of the agreement;
- 15 (B) Set forth the maintenance requirements for each telecommunications facility;
- 16 (C) Be nonexclusive; ~~and~~
- 17 (D) Be for a term of not more than 30 years; and
- 18 (E) Provide for in-kind contribution as authorized herein.

19 (c) Unless specifically provided for in an agreement entered into pursuant to subsection
20 (a) of this section, the division may not grant a property interest in a right-of-way pursuant to this
21 article.

22 ~~(d) A telecommunications carrier shall compensate the division for the use of spare conduit~~
23 ~~or related facilities owned or controlled by the division as part of any longitudinal access or~~
24 ~~wireless access granted to a right of way pursuant to this section. The compensation must be,~~
25 ~~without limitation:~~

26 ~~(1) At fair market value: *Provided*, That because the social, environmental, and economic~~
27 ~~benefits from such use of state highway rights of way is of overwhelming value to the citizens of~~
28 ~~this state and is in the overall public interest, the division shall establish the fair market value for~~
29 ~~purposes of this article at \$0 in monetary compensation;~~

30 ~~(2) Competitively neutral;~~

31 ~~(3) Nondiscriminatory;~~

32 ~~(4) Open to public inspection;~~

33 ~~(5) Determined based on the geographic region of this state, taking into account the~~
34 ~~population and the impact on private right of way users in the region; and once determined, set~~
35 ~~at an amount that encourages the deployment of digital infrastructure within this state; and~~

36 ~~(6) Paid with in-kind compensation.~~

37 ~~(e) The division may consider adjustments for areas the division, in conjunction with the~~
38 ~~council, determines are underserved or unserved areas of the state and may consider the value~~
39 ~~to such areas for economic development, enhancing the transportation system, expanding~~
40 ~~opportunities for digital learning, and telemedicine.~~

41 ~~(f) For the purpose of determining the amount of in-kind compensation a~~
42 ~~telecommunications carrier must pay the division for the use of spare conduit or excess conduit~~
43 ~~or related facilities of the division as part of any longitudinal access or wireless access granted to~~
44 ~~a right-of-way pursuant to this section, the division may:~~

45 ~~(1) Conduct an analysis once every five years, in accordance with the rules, policies, or~~
46 ~~guidelines of the division, to determine the fair market value of a right-of-way to which access has~~
47 ~~been granted pursuant to this section; and~~

48 ~~(2) Determine the fair market value of the in-kind compensation based on the incremental~~
49 ~~costs for the installation of conduit and related facilities.~~

50 (d) After an agreement has been executed and a unified, complete, single permit
51 application has been received that is completed in accordance with the division's requirements
52 for such applications as set forth in the division's regulations, the division shall have 60 days to
53 either approve or deny the application. A denial shall be in writing and include the reasons
54 therefor. The carrier may correct any deficiencies and resubmit the application which shall be
55 reviewed and either approved or denied within 30 days of the resubmittal. If the division fails to
56 notify the applicant of approval or denial within 60 days, or fails to notify the applicant of approval
57 or denial after 30 days following any resubmittal, then such application or resubmittal shall be
58 deemed approved, and the division shall issue any permits requested in such application:
59 Provided, That after the division's approval of a permit application, and notwithstanding any other
60 provision of this code to the contrary, the division shall have no more than 14 days to issue a
61 specific district level construction authorization for the approved project.

62 (g) (e) The provisions of this article shall not apply to the relocation or modification of
63 existing telecommunications facilities in a right-of-way, nor shall these provisions apply to aerial
64 telecommunications facilities or associated apparatus or equipment in a right-of-way. Relocation
65 of telecommunications facilities within rights-of-way for state highways shall be in accordance with
66 the provisions of §17-4-17b of this code.

§17-2E-5. Telecommunications carrier initiated construction and joint use.

1 (a) Upon application for a permit for construction and installation in the division's right-of-
2 way meeting the requirements for such applications set forth in §17-2E-3(d), the applying
3 telecommunications carrier shall notify, by email, the ~~council~~ Broadband Enhancement Council
4 and all other telecommunications carriers on record with the council of the application: Provided,
5 That, the applying telecommunications carrier may satisfy its obligation to provide the notice to
6 other telecommunications carriers under this section by requesting the assistance and
7 coordination of the Broadband Enhancement Council to provide such notice to other
8 telecommunications carriers as may be on record. Other telecommunications carriers have 15
9 calendar days to notify the applicant of their interest to share the applicant's trench. This
10 requirement extends to all underground construction technologies.

11 (b) If no competing telecommunications carrier provides notice of interest to share the
12 applicant's trench within 15 calendar days of notice of the project, the carrier applying for the
13 permit shall ~~affirm that fact to the division prior to being issued a permit~~ provide written certification
14 in accordance with §17-2E-5(g).

15 (c) If a competing telecommunications carrier provides notice of interest to share the
16 applicant's trench, an agreement between the two (or more) telecommunications carriers shall be
17 executed by those entities within 30 days of the notice of interest, outlining the responsibilities
18 and financial obligations of each, with respect to the installation within the right-of-way. The
19 financial obligations of each carrier shall be based on the proportionate sharing of costs between
20 each carrier for joint trenching or trench sharing based on the amount of conduit innerduct space

21 or excess conduit that is authorized in the agreements entered into pursuant to this article. If the
22 division uses a trench, it shall also pay its proportional share unless it is utilizing the trench as in-
23 kind payment for use of the right-of-way. A copy of the executed agreement shall be provided to
24 the division.

25 (d) Should a dispute arise between the initial applying telecommunications carrier and a
26 competing telecommunications carrier, including a failure to execute an agreement required by
27 subsection (c) of this section, the dispute shall be adjudicated by the Public Service Commission.
28 All disputes brought to the Public Service Commission under this article shall be adjudicated
29 within 45 days.

30 (e) If two or more telecommunications carriers are required or authorized to share a single
31 trench, each carrier in the trench must share the cost and benefits of the trench in a fair,
32 reasonable, competitively neutral, and nondiscriminatory manner. This requirement extends to all
33 underground construction technologies.

34 (f) The commissioner of the division ~~shall~~ may promulgate rules governing the relationship
35 between the telecommunications carriers, as hereinafter provided in this article.

36 (g) The provisions of this section do not apply to the following projects:

37 (1) Projects where the total length of the trench is ~~less~~ no more than 1,000 feet in length;

38 (2) Projects that use the direct bury of cable or wire facilities;

39 (3) Projects that are solely for the service of entities involved in national security matters
40 or where the disclosure or sharing of a trench location would be against federal policy; or

41 (4) Projects where the telecommunications carrier installs an amount of spare conduit or
42 innerduct equal to what is being installed for its own use and which is made available for lease to
43 competing telecommunications carriers on a nondiscriminatory basis at rates established by the
44 rules of the Federal Communications Commission. All carriers installing spare conduit or
45 innerduct shall notify the council of the location and capacity of such spare conduit and innerduct

46 upon completion of the project, and the council shall make such information publicly available for
47 competing telecommunications carriers.

48 (h) The Broadband Enhancement Council is responsible for ensuring compliance with this
49 section and will provide the division and the applicant with certification of compliance at such time
50 as the applicant has met all of the requirements of this section.

§17-2E-6. In-kind compensation.

1 (a) If the division is required by law to accept compensation for use of the division's right-
2 of-way as part of any agreement entered into pursuant to this article, the Legislature declares that
3 the social, environmental, and economic benefits from such use of state highway rights-of-way is
4 of overwhelming value to the citizens of this state and is in the overall public interest, and the
5 division shall, therefore, establish the fair market value for purposes of this article at \$0 in
6 monetary compensation, but may receive in-kind compensation as provided herein.

7 (b) In valuing in-kind compensation, the division may consider:

8 (1) adjustments for areas the division, in conjunction with the council, determines are
9 underserved or unserved areas of the state and may consider the value to such areas for
10 economic development, enhancing the transportation system, expanding opportunities for digital
11 learning, and telemedicine;

12 (2) applicable federal law;

13 (3) neutrality and nondiscrimination toward all carriers;

14 (4) consideration of the geographic regions of this state, the population, and service needs
15 of each region;

16 (5) principles that encourage the deployment of digital infrastructure within this state; and

17 (6) consideration of the underserved or unserved areas of the state and the value to such
18 areas for economic development, enhancing the transportation system, expanding opportunities
19 for digital learning, and telemedicine.

20 (c) Carriers and the Chief Information Officer of the state shall cooperate in assisting and
21 providing information to the division for purposes of valuing in-kind compensation.

22 (d) The in-kind compensation paid to the division under an agreement entered into
23 pursuant to this article may include, without limitation:

24 (1) Conduit or excess conduit;

25 (2) Innerduct;

26 (3) Dark fiber;

27 (4) Access points;

28 (5) Telecommunications equipment or services;

29 (6) Bandwidth; and

30 (7) Other telecommunications facilities as a component of the present value of the
31 trenching.

32 ~~(b) The division shall value any in-kind compensation based on fair market value at the~~
33 ~~time of installation or review, and may also consider any valuation or cost information provided~~
34 ~~by the telecommunications carrier.~~

35 ~~(c) In-kind compensation paid to the division may be disposed of if both of the following~~
36 ~~conditions are met:~~

37 ~~(1) The telecommunications facility received as in-kind payment has not been used within~~
38 ~~10 years of its installation; and~~

39 ~~(2) The commissioner of the division determines that the division does not have an~~
40 ~~immediately foreseeable need for the telecommunications facility.~~

41 ~~(d) Upon determining that it is appropriate to dispose of the telecommunications facility,~~
42 ~~the division shall determine its current fair market value. The division shall offer the provider or~~
43 ~~providers who made the in-kind payment the option to purchase any telecommunications facility~~
44 ~~obtained from such provider. If the provider or providers do not purchase the telecommunications~~

45 ~~facility, it shall be offered for public auction in the same manner as the division auctions excess~~
46 ~~rights of way.~~

47 ~~(e) Notwithstanding the provisions of subsections (c) and (d) of this section, the division~~
48 ~~may, upon written approval of the Governor, transfer or assign the ownership, control, or any~~
49 ~~rights related to any in-kind compensation received by the division to any other state agency.~~

50 Any in-kind compensation may be used only for state purposes.

51 (f) (1) If the division accepts in-kind compensation as part of an agreement with two or
52 more telecommunications carriers, a consortium or other entity whose members, partners or other
53 participants are two or more telecommunications carriers, or, if the division requires or allows two
54 or more telecommunications carriers to share a single trench, the agreement or agreements
55 entered into pursuant to this article shall require that the telecommunications carriers share the
56 obligation of compensating the division on a fair, reasonable and equitable basis, taking into
57 consideration the proportionate uses and benefits to be derived by each telecommunications
58 carrier from the trench, conduits, and other telecommunications facilities installed under the
59 agreements.

60 (2) The provisions of this section do not prevent the division from requiring every
61 participating telecommunications carrier to bear joint and several liability for the obligations owed
62 to the division under an agreement.

63 (3) Any agreement requiring two or more telecommunications carriers to share the
64 obligation of compensating the division shall provide the division the right to review and audit the
65 records and contracts of and among the participating carriers to ensure compliance with the
66 provisions of this section.

§17-2E-6a. Use of telecommunications facilities owned or controlled by Division of
Highways.

1 The division may enter into an agreement and issue a permit consistent with the
2 requirements of §17-2E-3 and §17-2E-6 to allow any carrier to use excess telecommunications

3 facilities owned or controlled by the division: *Provided*, That the provisions of §17-2E-6a of this
4 code shall be subject to the provisions of the Vertical Real Estate Management and Availability
5 Act, §31G-5-1 *et seq.* of this code.

§17-2E-6b. Title to and disposal of in-kind compensation; excess telecommunications facilities.

1 Upon written approval of the Governor, the division may transfer or assign the ownership,
2 control, or any rights related to any in-kind compensation or excess telecommunications facilities
3 owned or controlled by the division to any other state agency.

§17-2E-8. Existing policies.

1 (a) The requirements set forth in this article do not alter existing rules, policies, and
2 procedures relating to other utility facilities within a right-of-way or for accommodating utility
3 facilities or other facilities under the control of the Division of Highways.

4 (b) The Division of Highways may consider the financial and technical qualifications of a
5 telecommunications carrier when determining specific insurance requirements for contractors
6 authorized to enter a right-of-way to construct, install, inspect, test, maintain, or repair
7 telecommunications facilities with longitudinal access or wireless access to the right-of-way.

8 (c) If the Division of Highways authorizes longitudinal access, wireless access, or the use
9 of, and access to, conduit or related facilities of the Division for construction and installation of a
10 telecommunications facility, the Division may require an approved telecommunications carrier to
11 install the telecommunications facility in the same general location as similar facilities already in
12 place, coordinate their planning and work with other contractors performing work in the same
13 geographic area, or install in a joint trench when two or more telecommunications carriers are
14 performing installations at the same time and equitably share costs between such carriers.

15 (d) The placement, installation, maintenance, repair, use, operation, replacement, and
16 removal of telecommunications facilities with longitudinal access or wireless access to a right-of-

17 way or that use or access conduit or related facilities of the Division shall be accommodated only
18 when in compliance with this code and Division of Highways rules, policies and guidelines.

19 (e) Access to a right-of-way must be administered in compliance with the
20 Telecommunications Act of 1996, 47 U.S.C. §151, *et seq.*, as amended.

21 (f) The commissioner, in his or her sole discretion, may establish a policy to provide for
22 installation of conduit on bridges during construction, repair or other projects that present an
23 appropriate opportunity to do so.

§17-2E-9. Rule-making authority.

1 The Commissioner ~~of the Division of Highways~~ may promulgate rules pursuant to the
2 provisions of §29A-3-15 1, et seq. of this code as may be necessary to carry out the purpose of
3 this article, ~~and as may have been specifically delineated within this article.~~

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-8. Insurance fund.

1 (a) There is hereby created an insurance fund which shall be a continuing, nonlapsing,
2 revolving fund that consists of:

3 (1) Moneys appropriated by the state to the insurance fund;

4 (2) Premiums, fees, and any other amounts received by the authority with respect to
5 financial assistance provided by the authority from the insurance fund;

6 (3) Upon the satisfaction of any indebtedness or other obligation owed on any property
7 held or acquired by the authority, such proceeds as designated by the authority from the sale,
8 lease, or other disposition of such property;

9 (4) Income from investments made from moneys in the insurance fund; and

10 (5) Any other moneys transferred to the insurance fund or made available to it for the
11 purposes described under this section, under this article or pursuant to any other provisions of
12 this code.

13 Subject to the provisions of any outstanding insurance agreements entered into by the
14 authority under this section, the authority may enter into covenants or agreements with respect to
15 the insurance fund, and establish accounts within the insurance fund which may be used to
16 implement the purposes of this article. If the authority elects to establish separate accounts within
17 the insurance fund, the authority may allocate its revenues and receipts among the respective
18 accounts in any manner the authority considers appropriate.

19 If the authority at any time finds that more money is needed to keep the reserves of the
20 insurance fund at an adequate level, the authority, with the consent of the chair, shall send a
21 written request to the Legislature for additional funds.

22 (b) The insurance fund shall be used for the following purposes by the authority to
23 financially assist projects so long as such financial assistance will, as determined by the authority,
24 fulfill the public purposes of this article:

25 (1) To insure the payment or repayment of all or any part of the principal of, redemption
26 or prepayment premiums or penalties on, and interest on bonds or notes whether issued under
27 this article or under the Industrial Development and Commercial Development Bond Act, the West
28 Virginia Hospital Finance Authority Act or, with respect to health care facilities only, §8-33-1 *et*
29 *seq.* of this code;

30 (2) To insure the payment or repayment of all or any part of the principal of, redemption
31 or prepayment premiums or penalties on, and interest on any instrument executed, obtained, or
32 delivered in connection with the issuance and sale of bonds or notes whether under this article or
33 under the Industrial Development and Commercial Development Bond Act, the West Virginia
34 Hospital Finance Authority Act or, with respect to health care facilities only, §8-33-1 *et seq.* of this
35 code;

36 (3) To insure the payment or repayment of all or any part of the principal of, prepayment
37 premiums or penalties on, and interest on any form of debt instrument entered into by an
38 enterprise, public body or authority of the state with a financial institution, including, but not limited

39 to, banks, insurance companies, and other institutions in the business of lending money, which
40 debt instruments shall include, but not be limited to, instruments relating to loans for working
41 capital and to the refinancing of existing debt: *Provided*, That nothing contained in this subsection
42 or any other provision of this article shall be construed as permitting the authority to insure the
43 refinancing of existing debt except when such insurance will result in the expansion of the
44 enterprise whose debt is to be refinanced or in the creation of new jobs;

45 (4) To pay or insure the payment of any fees or premiums necessary to obtain insurance,
46 guarantees, letters of credit, or other credit support from any person or financial institution in
47 connection with financial assistance provided by the authority under this section;

48 (5) To pay any and all expenses of the authority, including, but not limited to:

49 (i) Any and all expenses for administrative, legal, actuarial, and other services related to
50 the operation of the insurance fund; and

51 (ii) All costs, charges, fees, and expenses of the authority related to the authorizing,
52 preparing, printing, selling, issuing, and insuring of bonds or notes (including, by way of example,
53 bonds or notes, the proceeds of which are used to refund outstanding bonds or notes) and the
54 funding of reserves; and

55 (6) To insure, for up to 20 years, the payment or repayment of all or any part of the principal
56 of and interest on any form of debt instrument entered into by an enterprise, public body, or
57 authority of the state with a financial institution, including, but not limited to, banks, insurance
58 companies, and other institutions in the business of lending money, which debt instruments are
59 to be solely for capital costs relating to:

60 (i) Providing broadband service, as defined in §31G-1-1 of this code, to a household or
61 business located in an unserved area, as defined in ~~section two of said article~~ §31G-1-2 of this
62 code, or in an area with access to Internet service, by wireline or fixed wireless technology, but
63 that 15 percent or more of households and businesses in the area are served by Internet service
64 with an actual downstream data rate less than ~~ten~~ 40 megabits per second and an upstream data

65 rate less than ~~one megabit~~ seven megabits per second, and no part of the area has three or more
66 wireline or fixed wireless broadband service providers; or

67 (ii) Building a segment of a telecommunications network that links a network operator's
68 core network to a local network plant that serves: ~~either an~~ (1) An unserved area, as defined in
69 §31G-1-2 of this code; (2) an area in which no more than three wireline providers are operating
70 which are providing service with an actual downstream data rate less than 40 megabits per
71 second and an upstream data rate less than seven megabits per second; or (3) an area in which
72 no more than two wireline providers are operating; or

73 (iii) Providing internet service with an actual downstream data rate of one gigabit per
74 second.

75 In order to determine whether or not this level of service exists, the authority shall use the
76 mapping data compiled by the Broadband Enhancement Council under the authority of §31G-1-
77 6 of this code: *Provided*, That to be used by the authority such mapping data must: (1) Have data
78 from a subscriber of each reported provider within a given area; or (2) there must be a statement
79 which reports that no provider exists in that area.

80 The authority may not insure the payment or repayment of any part of the principal of and
81 interest on any form of debt instrument under this subdivision, unless the participating financial
82 institution provides written certification to the authority that, but for the authority's insuring the debt
83 instrument, the financial institution would not otherwise make the loan based solely on the
84 creditworthiness of the loan applicant: *Provided*, That nothing contained in this subsection or any
85 other provision of this article may be construed as permitting the authority to insure the refinancing
86 of existing debt.

87 Upon the filing of an application for loan insurance under this subsection, the broadband
88 provider shall cause to be published as a Class II legal advertisement in compliance with §59-3-
89 1 *et seq.* of this code, notice of the filing of the application and that the authority may approve the
90 same unless within 10 business days after completion of publication a written objection is received

91 by the authority from a person or persons challenging that the proposed broadband project does
92 not satisfy the provisions of this subsection. The publication area for such notice is to be the
93 county or counties in which any portion of the proposed broadband project is to be constructed.
94 The notice shall be in such form as the authority shall direct, and shall include a map of the area
95 or areas to be served by the proposed broadband project. The applicant shall also cause to be
96 mailed by first class, on or before the first day of publication of the notice, a copy of the notice to
97 all known current providers of broadband service within the area proposed to be served. If a
98 challenge under this paragraph is timely received by the authority, the authority shall advise the
99 Broadband Enhancement Council, established in §31G-1-1 *et seq.* of this code, in writing within
100 five business days. The council shall set the matter for hearing on a date within 30 days of receipt
101 of notice from the authority. The Broadband Enhancement Council shall issue a decision on
102 whether the proposed project satisfies the requirements of this subsection or not within 30 days
103 of completion of such hearing. Any party participating in said hearing may appeal the council's
104 decision within 30 days of the issuance of said decision to the Circuit Court of Kanawha County.
105 This provision shall apply to all applicants except to those broadband providers that plan on
106 providing a downstream data rate of at least one gigabyte per second to the end user.

107 (c) Except as relating to insured portions of debt instruments under subdivision (6),
108 subsection (b) of this section, the total aggregate amount of insurance from the insurance fund
109 with respect to the insured portions of principal of bonds or notes or other instruments may not
110 exceed at any time an amount equal to five times the balance in the insurance fund.

111 (d) The authority may, in its sole and absolute discretion, set the premiums and fees to be
112 paid to it for providing financial assistance under this section. The premiums and fees set by the
113 authority shall be payable in the amounts, at the time, and in the manner that the authority, in its
114 sole and absolute discretion, requires. The premiums and fees need not be uniform among
115 transactions, and may vary in amount: (1) Among transactions; and (2) at different stages during
116 the terms of transactions.

117 (e) The authority may, in its sole and absolute discretion, require the security it believes
118 sufficient in connection with its insuring of the payment or repayment of any bonds, notes, debt,
119 or other instruments described in subdivisions (1), (2), (3), and (4), subsection (b) of this section.

120 (f) The authority may itself approve the form of any insurance agreement entered into
121 under this section or may authorize the chair or his or her designee to approve the form of any
122 such agreement. Any payment by the authority under an agreement entered into by the authority
123 under this section shall be made at the time and in the manner that the authority, in its sole and
124 absolute discretion, determines.

125 (g) The obligations of the authority under any insurance agreement entered into pursuant
126 to this article shall not constitute a debt or a pledge of the faith and credit or taxing powers of this
127 state or of any county, municipality or any political subdivision of this state for the payment of any
128 amount due thereunder or pursuant thereto, but the obligations evidenced by such insurance
129 agreement shall be payable solely from the funds pledged for their payment. All such insurance
130 agreements shall contain on the face thereof a statement to the effect that such agreements and
131 the obligations evidenced thereby are not debts of the state or any county, municipality, or political
132 subdivision thereof but are payable solely from funds pledged for their payment.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§31G-1-3. Broadband Enhancement Council; members of council; administrative support.

1 (a) The Broadband Enhancement Council is hereby established and continued. The
2 current members, funds, and personnel shall continue in effect and be wholly transferred; except
3 as may be hereinafter provided. With regard to the terms of the public members appointed under
4 subdivision five, of subsection (d) of this section, at the next regular meeting of the council
5 following July 1, 2017, the currently serving public members shall draw by lot for the length of

6 their terms, three members to serve for one additional year, three members to serve for two
7 additional years and the last three members to serve for three additional years, with all public
8 members in future to serve for the duration of the term described below.

9 (b) The council is a governmental instrumentality of the State. The exercise by the council
10 of the powers conferred by this article and the carrying out of its purpose and duties are
11 considered and held to be, and are hereby determined to be, essential governmental functions
12 and for a public purpose. The council is created under the Department of Commerce for
13 administrative, personnel, and technical support services only.

14 (c) The council shall consist of ~~thirteen~~ 13 voting members, designated as follows:

15 (1) The Secretary of Commerce or his or her designee;

16 (2) The Chief Technology Officer or his or her designee;

17 (3) The Vice Chancellor for Administration of the Higher Education Policy Commission or
18 his or her designee;

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

20 (5) Nine public members that shall serve three-year terms from the date of their
21 appointment and are appointed by the Governor with the advice and consent of the Senate, as
22 follows:

23 (i) One member representing users of large amounts of broadband services in this state;

24 (ii) One member from each congressional district representing rural business users in this
25 state;

26 (iii) One member from each congressional district representing rural residential users in
27 this state;

28 (iv) One member representing urban business users in this state; and

29 (v) One member representing urban residential users in this state; and

30 (6) ~~In addition to the thirteen voting members of the council~~ Additionally, the President of
31 the Senate shall name two Senators from the West Virginia Senate, one from each party, and the

32 Speaker of the House shall name two Delegates from the West Virginia House of Delegates, one
33 from each party, each to serve in the capacity of an ex officio, nonvoting advisory members of the
34 council.

35 (d) ~~The Secretary of Commerce~~ Governor shall appoint the chair ~~the first meeting at which~~
36 ~~time a chair and vice chair shall be elected from the members~~ of the council with the advice and
37 consent of the Senate. The chair shall serve at the will and pleasure of the Governor. If the chair
38 is removed by the Governor, the Governor may appoint a replacement chair with the advice and
39 consent of the Senate. The vice chair shall be elected by the members of the council. In the
40 absence of the chair, the vice chair shall serve as chair. The council shall appoint a secretary-
41 treasurer who need not be a member of the council and who, among other tasks or functions
42 designated by the council, shall keep records of its proceedings. All appointments described in
43 this subsection, as well as in §31G-1-3(c)(5)(i)-(v) shall be at the will and pleasure of the Governor
44 for terms of three years from the date of their appointment. All re-appointments shall be with the
45 advice and consent of the Senate, except those ex-officio members named by the President of
46 the Senate and the Speaker of the House of Delegates.

47 (e) The council may appoint committees or subcommittees to investigate and make
48 recommendations to the full council. Members of these committees or subcommittees need not
49 be members of the council.

50 (f) Seven voting members of the council constitute a quorum and the affirmative vote of a
51 simple majority of those members present is necessary for any action taken by vote of the council.

52 (g) The gubernatorial appointed members shall be deemed part-time public officials, and
53 may pursue and engage in another business or occupation or gainful employment. Any person
54 employed by, owning an interest in, or otherwise associated with a broadband deployment project,
55 project sponsor, or project participant may serve as a council member and is not disqualified from
56 serving as a council member because of a conflict of interest prohibited under §6B-2-5 of this
57 code and is not subject to prosecution for violation of ~~said~~ that section when the violation is created

58 solely as a result of his or her relationship with the broadband deployment project, project sponsor,
59 or project participant so long as the member recuses himself or herself from board participation
60 regarding the conflicting issue in the manner set forth in §6B-2-5 of this code and the legislative
61 rules promulgated by the West Virginia Ethics Commission.

62 (h) No member of the council who serves by virtue of his or her office may receive any
63 compensation or reimbursement of expenses for serving as a member. The public members and
64 members of any committees or subcommittees are entitled to be reimbursed for actual and
65 necessary expenses incurred for each day or portion thereof engaged in the discharge of his or
66 her official duties in a manner consistent with the guidelines of the Travel Management Office of
67 the Department of Administration.

68 (i) No person is subject to antitrust or unfair competition liability based on membership or
69 participation in the council, which provides an essential governmental function and enjoys state
70 action immunity.

§31G-1-6. Mapping of areas within state.

1 (a) Based on its analysis of data, broadband demand, and other relevant information, the
2 council shall establish a mapping of broadband services in the state. The council shall publish an
3 annual assessment and map of the status of broadband, including specifically designations of
4 unserved and underserved areas of the state.

5 (b) To the extent possible, and subject to limitations contained in subsection (f) of this
6 section, the council may additionally establish an interactive public map reflecting estimated
7 downstream data rate and upstream data rate in a particular region, area, community, street or
8 location. Any such mapping may only specify data rates at a particular street address or physical
9 location, and shall not make public the IP address or the name of the specific individual at such
10 location. Such mapping may also contain data concerning capacity, based upon fiber count.

11 (c) The mapping provided for in this section may be based on information collected or
12 received by the council, including but not limited to, data collected from (1) state and federal

13 agencies or entities that collect data on broadband services; (2) industry provided information;
14 and (3) consumer data provided to the council pursuant to section nine of this article.

15 (d) Any entity that has received or hereinafter receives state or federal moneys, and which
16 has used those moneys to install infrastructure used for broadband services, shall furnish detailed
17 information concerning the location, type, and extent of such infrastructure to the council for use
18 in mapping.

19 (e) The mapping and designations provided for under this section may be revised on a
20 continuing basis by the council as warranted by the data and information provided.

21 (f) In addition to the provisions of section thirteen of this article, the mapping of broadband
22 services may exclude from public accessibility and availability: (1) The location or identity of any
23 critical infrastructure used by public or private entities in furtherance of their internet services; (2)
24 personal name and personal IP addresses connected with particular data rates; and (3)
25 information designated as confidential for public security reasons by either state or federal
26 homeland security agencies: *Provided*, That it shall be duty of the public and private entities to
27 make the council aware of such confidential designation: *Provided, however*, That unless the
28 council determines good cause exists, the actual or estimated upstream and downstream data
29 rates of an area or region of the state shall not be excluded from public or private availability.

30 (g) All executive agencies which have permitting and/or regulatory approval authority over
31 any project permitted or reviewed and approved pursuant to §17-2E-3(d) of this code shall
32 cooperate with and provide all necessary information to the council to determine the feasibility
33 and federal allowability of creating Advanced Regulatory Environment Analysis (AREA) maps.
34 AREA maps will pre-survey likely routes for middle-mile infrastructure so all relevant information
35 can be included in a centralized GIS mapping system to be maintained by the council for utilization
36 by the private sector when extending new fiber infrastructure pursuant to Chapter 17, Article 2E
37 of this code. The council shall report to the legislature's interim joint committee on Technology
38 within 180 days following the amendment and reenactment of this article during the regular

39 session of the Legislature in 2020, and shall regularly report on AREA mapping to the legislature's
40 interim joint committee on Technology annually during the November interim session of following
41 years.

ARTICLE 5. VERTICAL REAL ESTATE MANAGEMENT AND AVAILABILITY ACT.

§31G-5-1. Short title.

1 This article shall be known and cited as the Vertical Real Estate Management and
2 Availability Act.

§31G-5-2. Definitions.

1 For the purposes of this article unless the context otherwise requires:

2 “Ground facilities” means any shed, buildings, server rooms, or other ancillary structure
3 providing essential services to a tower, including, but not limited to, distributing power, providing
4 communications backhaul, or other service necessary to carry out the purposes of the tower.

5 “Tower” means a structure which hosts an antenna or other equipment used for the
6 purposes of transmitting cellular or wireless signals for communications purposes, including
7 telephonically, or, for computing purposes, including any antenna and all associated equipment;
8 and

9 “Vertical Real Estate” means any communication or broadcast tower, or any other
10 structure or similar installation mounted on a rooftop or other prominent place, and any other such
11 facilities associated with that structure, upon which is suitable to mount communications
12 equipment thereon, and the associated ground facilities necessary to accommodate that
13 communications purpose, or other real estate suitable for the installation of a telecommunications
14 vertical asset: *Provided*, That any excess telecommunications facilities owned or controlled by the
15 West Virginia Division of Highways that do not meet this definition of Vertical Real Estate, shall
16 be subject to the provisions of §17-2E-6a of this code: *Provided further*, That nothing in this
17 definition may serve to prohibit terrestrial, middle-mile or last-mile broadband or high speed
18 internet wiring or facilities installation pursuant to §17-2E-1 *et seq.* nor may classification as such

19 facilities serve to prevent utility installation including, but not limited to, water, electric and sewer
20 services.

§31G-5-3. Management of vertical real estate.

1 (a) Beginning on July 1, 2020, the Department of Administration shall coordinate with the
2 executive to issue a request for proposals to manage state-owned vertical real estate. This
3 request for proposals shall contain at a minimum the following information from each prospective
4 manager:

5 (1) A standard method for valuation of space on each tower that is reasonable and
6 customary for the reach of and the numbers of the population served by the vertical real estate.

7 (2) A clause which forbids any vendor to enter into an exclusive arrangement with any
8 person for the right to use the vertical real estate, unless no other entity is interested, and a clause
9 which forbids the sharing of information, backhaul, or any other resources gleaned from managing
10 the assets competitively with any competitors.

11 (3) A clause forbidding the vendor from engaging in any preferential treatment to their own
12 operations as a competing provider of wireless broadband access.

13 (4) A minimum of 50 percent rental reduction for any entity whose utilization of that vertical
14 real estate is providing broadband access which is rate unlimited or unthrottled; subject to current
15 load/demand network management.

16 (b) There is hereby created in the state treasury a special account to be known as the
17 Technology Infrastructure Reinvestment Fund to be administered by the Office of Technology. All
18 revenue derived from the management of the vertical real estate shall be deposited into the fund
19 pursuant to §31G-5-3 of this code. Expenditures from the fund shall be made by the Office of
20 Technology for the purpose of reinvestment in the vertical real estate or technology infrastructure
21 supporting broadband on state-owned property. Expenditures are not authorized from collections
22 but are to be made in accordance with appropriation by the Legislature pursuant to the provisions
23 of §12-3-1, et seq. of this code and upon the fulfillment of the provisions of §11B-2-1, et seq. of
24 this code.

25 (c) The Office of Technology shall remit to the manager the compensation as per the
26 contract and then on June 30 each year shall distribute any funds received in excess of the
27 compensation due the manager as follows:

28 (1) Fifty percent to the Technology Infrastructure Reinvestment Fund,

29 (2) Fifty percent will go to the Broadband Expansion Fund established in §31G-1-5 of this
30 code in control of the Broadband Enhancement Council with the specific purpose of:

31 (A) Funding the ongoing operations of the Broadband Enhancement Council, and

32 (B) To provide funds to match federal grants.

33 (d) Counties, municipalities and other political subdivisions, as applicable, may join or
34 participate in an awarded agreement with a successful manager under the same terms and
35 conditions: *Provided*, That distribution of funds attributable to their assets may be expended at
36 the discretion of their governing body.

§31G-5-4. Exceptions to the management of vertical real estate.

1 Any vertical real estate shall be exempted from management if:

2 (A) The rental of that vertical real estate would potentially affect the operations of any
3 public safety, emergency management or homeland security operations: *Provided*, That if there
4 is a showing that a reasonable, technically feasible, nondiscriminatory design can prevent such
5 adverse effect on any public safety, emergency management or homeland security operations
6 then such management may occur; or

7 (B) It would have an adverse effect on historic preservation of a property: *Provided*, That
8 if there is a showing that a reasonable, technically feasible, nondiscriminatory, and technologically
9 neutral design or concealment measures can prevent such adverse effect on the property's
10 historic preservations then such management may occur.