

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

### **SECOND**

### **ENGROSSMENT**

#### **Committee Substitute**

**for**

#### **House Bill 2002**

BY DELEGATES LINVILLE, CAPITO, HOLSTEIN, FERRELL,  
MILLER, RILEY, BARNHART, SYPOLT, STATLER, ROWAN,

AND REED

[Introduced February 10, 2021; referred to the  
Committee on the Judiciary]



1 A BILL to repeal §17-2E-6 of the Code of West Virginia, 1931, as amended; to repeal §31G-1-6,  
2 §31G-1-9, and §31G-1-12 of said code; to amend and reenact §17-2E-2, §17-2E-3, §17-  
3 2E-5, §17-2E-7, §17-2E-8, and §17-2E-9 of said code; to amend and reenact §24D-1-1,  
4 §24D-1-2, §24D-1-9, §24D-1-15, §24D-1-16, §24D-1-21, and §24D-1-26 of said code; to  
5 amend and reenact §31G-1-2 and §31G-1-4 of said code; to amend and reenact §31G-4-  
6 1 and §31G-4-2 of said code; to amend said code by adding thereto a new article,  
7 designated §31G-1A-1, §31G-1A-2, §31G-1A-3, §31G-1A-4, §31G-1A-5, §31G-1A-6,  
8 §31G-1A-7, §31G-1A-8, §31G-1A-9, and §31G-1A-10; to amend said code by adding  
9 thereto a new section, designated §31G-3-3; and to amend said code by adding thereto a  
10 new article, designated §31G-6-1, §31G-6-2, and §31G-6-3 of said code, all relating to  
11 providing statutory framework to support, encourage, and expedite the expansion of  
12 broadband throughout the state of West Virginia; modifying the definition of “permit”;  
13 establishing requirements for agreements between the Division of Highways and an entity  
14 seeking to install telecommunications facilities; providing that if such installation can be  
15 accommodated as a utility pursuant to federal and state law, the division will issue a permit  
16 for access to, and occupation of, division’s right-of-way consistent with this section and  
17 applicable division policy; requiring that, the division will, within sixty business days, advise  
18 applicant in writing of any major deficiencies with the planned project; providing the  
19 applicant may correct any deficiencies and resubmit the application, which shall be  
20 reviewed by the division and either approved or denied within thirty days of the resubmittal;  
21 providing that if the division approves a permit application, the division shall issue a  
22 specific district level construction authorization for the approved project within ten  
23 business days; requiring that compliance with applicable environmental laws shall at all  
24 times be the responsibility of the applicant; providing that division will create and make  
25 available for potential applicants an informational notice specific to in-ground  
26 telecommunications facility construction and installation that explains routine issues for

27 such projects including legal, regulatory and division requirements; requiring notice to the  
28 Office of Broadband of a telecommunication entity's intent to seek construction in  
29 division's right-of-way; providing the Office of Broadband is responsible for ensuring  
30 compliance with certain terms and will provide the Division of Highways and the applicant  
31 with certification of such compliance; allowing a utility to apply to share trench with  
32 telecommunications carrier; providing for dispute resolution by informal complaint process  
33 by the Public Service Commission; providing the Office of Broadband the authority to issue  
34 certificates of compliance to the Division of Highways and applicant; providing Division of  
35 Highways the authority to allow carriers the use of excess telecommunications facilities;  
36 allowing Division of Highways to transfer or assign ownership of excess  
37 telecommunications facilities to another state agency upon approval by Governor;  
38 providing rulemaking authority to Division of Highways; adding broadband  
39 telecommunications to Chapter on cable television and cable television system act for  
40 certain purposes; defining "broadband" or "broadband service" and "broadband operator";  
41 establishing requirements for broadband operators related to installation and construction;  
42 requiring broadband operators to indemnify the state for installation, operation, and  
43 maintenance; establishing requirements for broadband operator related to easement;  
44 providing installations in railroad rights of way and trackways do not have any greater or  
45 lesser requirement to comply with stated railroad safety requirements; providing  
46 requirements for broadband operators to restore interrupted service; providing electric  
47 utilities that lease fiber to broadband providers shall not be required to provide refunds to  
48 broadband providers who lease the fiber for service outages; requiring broadband  
49 operator to credit subscribers for interruptions in service of more than 24 hours;  
50 establishing that broadband providers may not deny access based upon certain factors;  
51 providing that a cable or broadband system operator shall provide subscribers 30 days  
52 advance written notice of any changes to rates or charges, including the expiration of any

53 promotion or special pricing that would result in an increase in the subscribers billing or  
54 cost of service; providing that a broadband system operator shall inform subscribers and  
55 provide written notice to subscribers that disputes regarding interrupted or substandard  
56 service or billing issues, which are unresolved to satisfaction of the subscriber, can be  
57 filed as a complaint with the consumer protection division of the WV Attorney General's  
58 Office; providing that broadband service is not a utility or subject to utility regulation;  
59 defining "applicable codes", "unserved area", and "underserved"; defining powers and  
60 duties of Broadband Enhancement Council; providing the Broadband Enhancement  
61 Council and Office of Broadband coordinate on bringing broadband service to unserved  
62 and underserved areas; providing Broadband Enhancement Council publicly report to the  
63 Secretary of Commerce on or before December 1 annually; creating the Office of  
64 Broadband within the Economic Development Office and under the Department of  
65 Commerce; creating the position of, and requirements for, the Director of the Office of  
66 Broadband; establishing the powers and duties of the Office of Broadband; requiring the  
67 Office of Broadband report annually to the Joint Committee on Government and Finance;  
68 requiring the Office of Broadband to map broadband in the state and establish an  
69 interactive public map; requiring certain executive agencies to cooperate and provide  
70 information to the Office of Broadband regarding AREA maps; requiring Office of  
71 Broadband Report to the Joint Committee on Technology regarding AREA maps at  
72 specified times; allowing Office of Broadband to retain outside expert consultants;  
73 providing authority to Office of Broadband to educate public on broadband service issues;  
74 allowing Office of Broadband to establish a voluntary data collection program; providing  
75 that information collected in program not subject to the Freedom of Information Act;  
76 establishing, by Office of Broadband, requirements of data collection program to be  
77 submitted to the Legislature; requiring the Office of Broadband to create guidelines for  
78 voluntary donation of rights away and similar structures to facilitate broadband

79 development; allowing Office of Broadband to create guidelines and recommend to  
80 legislature an easement program to facilitate broadband service; allowing Office of  
81 Broadband to seek funding and grants; establishing process to protect proprietary  
82 business information provided to the Office of Broadband; excluding proprietary business  
83 information from production under the Freedom of Information Act; providing criminal  
84 penalties for unauthorized disclosure of confidential and proprietary information; providing  
85 rulemaking authority to the Office of Broadband; establishing requirements for counties,  
86 municipalities, and political subdivisions regarding installation of conduit; defining  
87 “applicable codes” and “digital equality of opportunity”; requiring that an ILEC pole owner  
88 who requires and accepts payment for make-ready work, and fails to perform that work  
89 within 45 days, shall immediately return and refund the moneys paid for that work which  
90 was not completed, and providing remedies and exceptions in such instances; providing  
91 for preemption of West Virginia Code and Code of State Rules and ordinances relating to  
92 installation of certain broadband equipment; providing private agreements, promulgated  
93 or effective after the effective date of this legislation, may not regulate or prevent the  
94 exterior installation of antennas and equipment necessary to or typically utilized for  
95 broadband deployment; providing for scheme of construction of such language in favor of  
96 encouraging and assisting broadband installation and deployment; providing for  
97 preemption of West Virginia Code and Code of State Rules and ordinances relating to  
98 pole attachment of certain broadband equipment; providing for scheme of construction of  
99 language of private agreements relating to pole attachment; and requiring broadband  
100 operators receiving public funds to testify, upon request, under oath before the Legislature.

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

## **CHAPTER 17. ROADS AND HIGHWAY.**

### **ARTICLE 2E. DIG ONCE POLICY.**

**§17-2E-2. Definitions.**

1 In this article, unless the context otherwise requires:

2 (1) "Broadband conduit" or "conduit" means a conduit, innerduct, or microduct for fiber  
3 optic cables that support facilities for broadband service.

4 (2) "Broadband service" has the same meaning as defined in §31G-1-2 of this code.

5 (3) "Council" means the Broadband Enhancement Council.

6 (4) "Direct bury" means the burying of telecommunications wire or cable directly into the  
7 ground by means of plowing or direct insertion without the opening of a trench and without the  
8 installation of conduit or innerduct.

9 (5) "Division" means the Division of Highways.

10 (6) "Longitudinal access" means access to or the use of any part of a right-of-way that  
11 extends generally parallel to the traveled right-of-way.

12 (7) "Permit" means an encroachment permit issued by the commissioner of the division  
13 under the authority of this code, and pursuant to the Accommodation of Utilities on Highway Right-  
14 of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects Policy, or  
15 equivalent policy, as may be currently enforced by the division, that specifies the requirements  
16 and conditions for performing work in a right-of-way ~~and where such work involves the creation~~  
17 ~~or opening of a trench for the installation of telecommunications facilities in a right-of-way.~~

18 (8) "Right-of-way" means land, property, or any interest therein acquired or controlled by  
19 the division for transportation facilities or other transportation purposes or specifically acquired for  
20 utility accommodation.

21 (9) "Telecommunications carrier" means a telecommunications carrier:

22 (A) As determined by the Public Service Commission of West Virginia; or

23 (B) That meets the definition of telecommunications carrier with respect to the Federal  
24 Communications Commission, as contained in 47 U.S.C. §153.

25 (10) "Telecommunications facility" means any cable, line, fiber, wire, conduit, innerduct,  
26 access manhole, handhole, tower, hut, pedestal, pole, box, transmitting equipment, receiving  
27 equipment, power equipment, or other equipment, system, or device that is used to transmit,  
28 receive, produce or distribute a signal for telecommunications purposes via wireline, electronic,  
29 or optical means.

30 (11) "Utility" has the meaning ascribed to it in §17-2A-17a of this code.

31 (12) "Wireless access" means access to, and use of, a right-of-way for the purpose of  
32 constructing, installing, maintaining, using, or operating telecommunications facilities for wireless  
33 telecommunications.

**§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. §710.403 and 23 C.F.R. §710.405. The~~  
12 ~~agreement shall be approved by the Commissioner of Highways in order to be effective and,~~  
13 ~~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;~~

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

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

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

29 ~~(2) Competitively neutral;~~

30 ~~(3) Nondiscriminatory;~~

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

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

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

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

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

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

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

49 (a) If in-ground construction or installation of a telecommunications facility in right-of-way  
50 owned or controlled by the division serves a public purpose and may be accommodated as a  
51 utility pursuant to federal and state law, the division will receive applications and issue a permit to  
52 the owner of the facility for access to, and occupation of, division's right-of-way consistent with  
53 this section and applicable division policy with respect to requirements and conditions for  
54 performing work in division right-of-way.

55 (b) Upon receipt of a complete application as specified in the Accommodation of Utilities  
56 on Highway Right-of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects  
57 Policy, or equivalent policy, as may be currently enforced by the division, that specifies the  
58 requirements and conditions for performing work in a right-of-way, the division will, within sixty  
59 business days, advise applicant in writing of any deficiencies with the planned project that: (1)  
60 adversely affect the safety, design, construction, operation, maintenance or stability of the state  
61 road system; (2) interfere with or impair the present use or planned future expansion of any  
62 affected highway or bridge; (3) conflict with applicable division policy with respect to requirements  
63 and conditions for performing work in division right-of-way; or (4) violate applicable federal or state  
64 law. The applicant may correct any deficiencies and resubmit the application, which shall be

65 reviewed by the division and either approved or denied within thirty days of the resubmittal. Any  
66 denial of a resubmittal shall be in writing and explain any deficiencies as provided in this  
67 subsection. After the division approves a permit application, and notwithstanding any other  
68 provision of this code to the contrary, the division shall issue a specific district level construction  
69 authorization for the approved project within ten business days unless specific logistical issues  
70 reasonably prevent commencement.

71 (c) Compliance with applicable environmental laws shall at all times be the responsibility  
72 of the applicant. If any environmental clearance must be performed by the division before an  
73 application is approved, the division will notify the applicant in writing of all necessary  
74 requirements for such clearance within fifteen working days of receiving a complete application.  
75 Division will also provide a list of all known federal and state entities with whom an applicant may  
76 also need to consult and coordinate for environmental clearance purposes.

77 (d) The division will create and make available for potential applicants an informational  
78 notice specific to in-ground telecommunications facility construction and installation that explains  
79 routine issues for such projects including a consolidated checklist or flow chart of all state or  
80 federal regulatory requirements, including but not limited to permits, agency required reviews,  
81 agency required approvals, and agency required forms, that may apply. The division shall  
82 annually update such informational notice for accuracy and completeness by coordination with  
83 each state or federal agency having required regulatory action in the permitting process legal,  
84 regulatory and division requirements and may request the assistance of the Office of Broadband  
85 in preparing this informational notice.

86 (g) (e) The provisions of this article shall not apply to the relocation or modification of  
87 existing telecommunications facilities in a right-of-way, nor shall these provisions apply to aerial  
88 telecommunications facilities or associated apparatus or equipment in a right-of-way. Relocation

89 of telecommunications facilities within rights-of-way for state highways shall be in accordance with  
90 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, the applying telecommunications carrier applicant shall notify, by email, the ~~council~~ Office of  
3 Broadband and all other telecommunications carriers on record with the council of the application.  
4 Other telecommunications carriers have 15 calendar days to notify the applicant of their interest  
5 to share the applicant's trench. This requirement extends to all underground construction  
6 technologies.

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

11 (c) If a competing telecommunications carrier or other utility provides notice of interest to  
12 share the applicant's trench, an agreement between the two (or more) telecommunications  
13 carriers or other utilities shall be executed by those entities within 30 days of the notice of interest,  
14 outlining the responsibilities and financial obligations of each, with respect to the installation within  
15 the right-of-way. The financial obligations of each carrier shall be based on the proportionate  
16 sharing of costs between each carrier for joint trenching or trench sharing based on the amount  
17 of conduit or innerduct space or excess conduit that is authorized in the agreements entered into  
18 pursuant to this article. If the division use a trench, it shall also pay its proportional share unless  
19 it is utilizing the trench as in-kind payment for use of the right-of-way, or the division has otherwise  
20 determined, in its sole discretion, that including the division in the apportionment of costs is not  
21 warranted. A copy of the executed agreement shall be provided to the division.

22 (d) Should a dispute arise between the initial applying telecommunications carrier or utility  
23 and a competing telecommunications carrier or utility, including a failure to execute an agreement

24 required by subsection (c) of this section, the dispute shall ~~be adjudicated by the Public Service~~  
25 ~~Commission. All disputes brought to the Public Service Commission under this article shall be~~  
26 ~~adjudicated within 45 days~~ addressed in a Public Service Commission informal complaint process  
27 and the Public Service Commission shall attempt to resolve the dispute within 45 days. If a dispute  
28 is not resolved informally within 45 days, the commission will adjudicate the dispute within 60  
29 days of the date that the informal process concluded without a resolution: *Provided, That the*  
30 Public Service Commission does not have jurisdiction to award damages, and: *Provided,*  
31 *however,* the Public Service Commission does not have jurisdiction to adjudicate disputes in  
32 which the Division of Highways is a party.

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

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

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

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

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

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

44 (4) made available for lease to competing telecommunications carriers on a  
45 nondiscriminatory basis at rates established by the rules of the Federal Communications  
46 Commission Projects where the telecommunications carrier or utility installs an amount of spare  
47 conduit or innerduct equal to what is being installed for its own use and which ~~is~~ shall be given to  
48 the Office of Broadband. Such spare conduit or innerduct shall be made available for sale or lease  
49 to competing telecommunications carriers on a nondiscriminatory basis at rates apportioned on

50 the basis of the cost of the installation thereof, to other telecommunications providers; and, the  
51 revenues derived from such sale, less any costs associated therewith, shall be remitted to the  
52 telecommunications carrier or utility that installed such spare conduit or innerduct ~~established by~~  
53 ~~the rules of the Federal Communications Commission~~ in a manner consistent with all applicable  
54 state and federal law and regulations. All carriers installing spare conduit or innerduct shall notify  
55 the council and the Office of Broadband of the location and capacity of such spare conduit and  
56 innerduct upon completion of the project, and the council shall make such information publicly  
57 available for competing telecommunications carriers.

58 (g) The Office of Broadband is responsible for ensuring compliance with this section and  
59 will provide the division and the applicant with certification of compliance at such time as the  
60 applicant has met all of the requirements of this section.

**§17-2E-6. In-kind compensation.**

1 [Repealed].

**§17-2E-7. ~~Multiple carriers in a single trench.~~ Use of telecommunications facilities owned**  
**or controlled by Division of Highways.**

1 ~~(a) If the Division of Highways enters into an agreement with two or more~~  
2 ~~telecommunications carriers, a consortium or other entity whose members, partners or other~~  
3 ~~participants are two or more telecommunications carriers, or, if the Division requires or allows two~~  
4 ~~or more telecommunications carriers to share a single trench, the agreements entered into~~  
5 ~~pursuant to this article shall require that the telecommunications carriers share the obligation of~~  
6 ~~compensating the Division of Highways on a fair, reasonable and equitable basis, taking into~~  
7 ~~consideration the proportionate uses and benefits to be derived by each telecommunications~~  
8 ~~carrier from the trench, conduits, and other telecommunications facilities installed under the~~  
9 ~~agreements.~~

10           ~~(b) The provisions of §17-2E-7(a) of this code do not prevent the Division of Highways~~  
11 ~~from requiring every participating telecommunications carrier to bear joint and several liability for~~  
12 ~~the obligations owed to the Division of Highways under the agreements.~~

13           ~~(c) Any agreement requiring two or more telecommunications carriers to share the~~  
14 ~~obligation of compensating the Division of Highways shall provide the Division the right to review~~  
15 ~~and audit the records and contracts of and among the participating carriers to ensure compliance~~  
16 ~~with §17-2E-7(a) of this code~~

17           The division may enter into an agreement and issue a permit consistent with the  
18 requirements of §17-2E-3 of this code to allow any carrier to use excess telecommunications  
19 facilities owned or controlled by the division: *Provided*, That this section shall be subject to the  
20 provisions of the Vertical Real Estate Management and Availability Act and no excess  
21 telecommunications facilities owned or controlled by the division subject to §31G-5-1 *et seq.* of  
22 this code shall be governed by the provisions of this section.

**§17-2E-8. Existing policies. Disposal of in-kind compensation; excess telecommunications facilities.**

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, 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 Upon written approval of the Governor, the division may transfer or assign the ownership,  
22 control, or any rights related to any excess telecommunications facilities owned or controlled by  
23 the division to any other state agency.

**§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 of this code as may be necessary to carry out the purpose of this article,~~  
3 ~~and as may have been specifically delineated within this article~~

4 The commissioner of the division may promulgate rules pursuant to the provisions of  
5 §29A-3-1 et seq. of this code as may be necessary to carry out the purpose of this article.

**CHAPTER 24D. CABLE TELEVISION AND BROADBAND**

**TELECOMMUNICATIONS.**

**ARTICLE 1. CABLE TELEVISION AND BROADBAND TELECOMMUNICATIONS**  
**SYSTEMS ACT.**

**§24D-1-1. Legislative findings.**

1 The Legislature finds that television and broadband telecommunications ~~is~~ are an  
2 important source of information and entertainment affecting the welfare and economy of the state,



3 and that cable television services and broadband internet have become widespread, often  
4 providing the only access to quality television signals in many areas of the state. The Legislature  
5 finds that it is in the public interest to establish uniform standards within the State of West Virginia  
6 for the issuance, renewal and transfer of cable television franchises; to establish uniform  
7 standards for the provision of cable and broadband internet service; to establish uniform  
8 procedures for the investigation and resolution of complaints concerning cable service; and to  
9 establish just, reasonable and nondiscriminatory rates and charges for the provision of cable and  
10 broadband internet service to the extent that the service is not subject to effective competition.  
11 The purpose of the article is to promote such goals by all available means not in conflict with  
12 federal law, rules or regulations

**§24D-1-2. Definitions.**

1 As used in this chapter:

2 (1) "Applicant" means a person who initiates an application or proposal.

3 (2) "Application" means an unsolicited filing for a cable franchise.

4 (3) "Basic cable service" means any service tier which includes the retransmission of local  
5 television broadcast signals.

6 (4) "Broadband" or "broadband service" means any service providing advanced  
7 telecommunications capability with the same downstream data rate and upstream data rate as is  
8 specified by the Federal Communications Commission and that does not require the end-user to  
9 dial up a connection, that has the capacity to always be on, and for which the transmission speeds  
10 are based on regular available bandwidth rates, not sporadic or burstable rates, with latency  
11 suitable for real-time applications and services such as voice-over Internet protocol and video  
12 conferencing, and with monthly usage capacity reasonably comparable to that of residential  
13 terrestrial fixed broadband offerings in urban areas: *Provided*, That as the Federal  
14 Communications Commission updates the downstream data rate and the upstream data rate the

15 council will publish the revised data rates in the State Register within 60 days of the federal  
16 update.

17 (5) "Broadband operator" means any person or group of persons: (A) Who provides  
18 broadband service and directly or through one or more affiliates owns a significant interest in the  
19 broadband system; or (B) who otherwise controls or is responsible for, through any arrangement,  
20 the management and operation of a broadband system.

21 ~~(4)~~ (6) "Cable franchise" or "franchise" means a nonexclusive initial authorization or  
22 renewal thereof issued pursuant to this chapter, whether the authorization is designated as a  
23 franchise, permit, order, contract, agreement or otherwise, which authorizes the construction or  
24 operation of a cable system.

25 ~~(5)~~ (7) "Cable operator" means any person or group of persons: (A) Who provides cable  
26 service over a cable system and directly or through one or more affiliates owns a significant  
27 interest in the cable system; or (B) who otherwise controls or is responsible for, through any  
28 arrangement, the management and operation of a cable system.

29 ~~(6)~~ (8) "Cable service" means: (A) The one-way transmission to subscribers of video  
30 programming or other programming service; and (B) subscriber interaction, if any, which is  
31 required for the selection of video programming or other programming service.

32 ~~(7)~~ (9) "Cable system" means any facility within this state consisting of a set of closed  
33 transmission paths and associated signal generation, reception and control equipment that is  
34 designed to provide cable service which includes video programming and which is provided to  
35 multiple subscribers within a community, but does not include: (A) A facility that serves only to  
36 retransmit the television signals of one or more television broadcast stations; (B) a facility that  
37 serves only subscribers in one or more multiple unit dwellings under common ownership, control  
38 or management, unless that facility or facilities uses any public right-of-way; or (C) a facility of a  
39 public utility subject, in whole or in part, to the provisions of chapter twenty-four of this code,  
40 except to the extent that those facilities provide video programming directly to subscribers.

41           ~~(8)~~ (10) “Commission” or “Public Service Commission” means the Public Service  
42 Commission of West Virginia.

43           ~~(9)~~ (11) “County commission” means the commissioners composing the county  
44 commission in pursuance of section nine, article IX of the Constitution of this state within whose  
45 jurisdiction there exists a cable or broadband system or where such cable or broadband system  
46 is hereafter constructed, operated, acquired or extended.

47           ~~(40)~~ (12) “Facility” includes all real property, antennas, poles, supporting structures, wires,  
48 cables, conduits, amplifiers, instruments, appliances, fixtures and other personal property used  
49 by a cable or broadband operator in providing service to its subscribers.

50           ~~(44)~~ (13) “Franchising authority” means a municipality, a county commission or the Public  
51 Service Commission empowered by federal, state or local law to grant a cable or broadband  
52 franchise.

53           ~~(42)~~ (14) “Institution of higher education” means an academic college or university  
54 accredited by the north central association of colleges and schools.

55           ~~(43)~~ (15) “Municipality” means any municipal corporation duly chartered in the State of  
56 West Virginia within whose jurisdiction there exists a cable or broadband system or where such  
57 cable or broadband system is hereafter constructed, operated, acquired or extended.

58           ~~(44)~~ (16) “Other programming service” means information that a cable or broadband  
59 operator makes available to all subscribers generally.

60           ~~(45)~~ (17) “Person” means an individual, partnership, association, joint stock company,  
61 trust, corporation or governmental agency.

62           ~~(46)~~ (18) “Proposal” means a filing solicited by the franchising authority for a cable or  
63 broadband franchise.

64           ~~(47)~~ (19) “Public, educational or governmental access facilities” means: (A) Channel  
65 capacity designated for public, educational or governmental uses; and (B) facilities and equipment  
66 for the use of that channel capacity.

67           ~~(18)~~ (20) “Public place” includes any property, building, structure or water to which the  
68 public has a right of access and use.

69           ~~(19)~~ (21) “School” means an academic and noncollege type regular or special education  
70 institution of learning established and maintained by the Department of Education and the arts or  
71 licensed and supervised by that department.

72           ~~(20)~~ (22) “Service area” means that geographic area for which a cable or broadband  
73 operator has been issued a cable or broadband franchise.

74           ~~(24)~~ (23) “Video programming” means programming provided by, or generally considered  
75 comparable to programming provided by, a television broadcast station.

**§24D-1-9. Cable or broadband system installation, construction, operation, removal,  
general provisions.**

1           (a) A cable franchise or broadband operator shall be construed to authorize the  
2 construction or operation of a cable or broadband system: (i) Over public rights-of-way; and (ii)  
3 through easements, which are within the area to be served by the cable or broadband system  
4 and which have been dedicated for compatible uses.

5           (b) The technical specifications, general routes of the distribution system and the schedule  
6 for construction of the cable system are subject to the approval of the franchising authority.

7           (c) In installing, operating and maintaining facilities, the cable or broadband operator shall  
8 avoid all unnecessary damage and injury to any trees, structures and improvements in and along  
9 the routes ~~authorized by the franchising authority~~ utilized for the system.

10           (d) The cable or broadband operator shall indemnify and hold the state, county and  
11 municipality harmless at all times from any and all claims for injury and damage to persons or  
12 property, both real and personal, caused by the installation, operation or maintenance of its cable  
13 or broadband system, notwithstanding any negligence on the part of the state, county and/or  
14 municipality, their employees or agents. Upon receipt of notice in writing from the state, county  
15 and/or municipality, the cable or broadband operator shall, at its own expense, defend any action

16 or proceeding against the state, county and/or municipality in which it is claimed that personal  
17 injury or property damage was caused by activities of the cable or broadband operator in the  
18 installation, operation or maintenance of its cable or broadband system.

19 (e) The cable operator shall provide a cable drop and basic cable service at no cost to any  
20 school or institution of higher education within its service area if service is actually being delivered  
21 within ~~a reasonable distance~~ 1000 feet from the school or institution of higher education which  
22 may request service.

23 (f) The cable operator shall be required to designate at least 10 percent but not more than  
24 three of all of its channels for public, educational or governmental use.

25 (g) Upon termination of the period of the cable permit or of any renewal thereof, by  
26 passage of time or otherwise, the cable operator shall remove its facilities from the highways and  
27 other public places in, on, over, under or along which they are installed if so ordered by the  
28 franchising authority and shall restore the areas to their original or other acceptable condition or  
29 otherwise dispose of its facilities. If removal is not completed within six months of the termination,  
30 any property not removed shall be deemed to have been abandoned and the cable operator shall  
31 be liable for the cost of its removal.

32 (h) The use of public highways and other public places shall be subject to

33 (1) All applicable state statutes, municipal ordinances and all applicable rules and orders  
34 of the commission governing the construction, maintenance, and removal of overhead and  
35 underground facilities of public utilities.

36 (2) For county highways, all applicable rules adopted by the governing body of the county  
37 in which the county highways are situated; and

38 (3) For state or federal-aid highways, all public welfare rules adopted by the secretary of  
39 the Department of Transportation.

40 (4) For use of any railroad right-of-way, or, in the crossing of the trackway of any railroad,  
41 nothing in this article shall be construed to provide any greater or any lesser compliance with any

42 safety policy or procedure established by the railroad dealing with use of such right-of-way or the  
43 crossing of a trackway and which is applicable to any other similarly situated utility, whether  
44 utilizing aerial or buried lines.

45 (i) In the use of easements dedicated for compatible uses, the cable or broadband  
46 operator shall ensure:

47 (1) That the safety, functioning and appearance of the property and the convenience and  
48 safety of other persons is not adversely affected by the installation or construction of facilities  
49 necessary for a cable or broadband system;

50 (2) That the cost of the installation, construction, operation or removal of facilities is borne  
51 by the cable or broadband operator or subscribers, or a combination of both; and

52 (3) That the owner of the property is justly compensated by the cable or broadband  
53 operator for any damages caused by the installation, construction, operation or removal of  
54 facilities by the cable or broadband operator.

55 (4) An “easement dedicated for compatible uses” is a public or private easement for  
56 electric, gas, telephone, or other utility transmission.

**§24D-1-15. Procedures for restoring interrupted service and improving substandard service.**

1 (a) Each cable or broadband operator, for the purpose of restoring interrupted service and  
2 improving substandard service, shall be able to receive calls 24 hours a day, seven days a week,  
3 and shall have one or more qualified persons as may be necessary to repair the cable or  
4 broadband system, facilities and equipment owned by the cable or broadband operator and  
5 located on a subscriber’s premises, including, but not limited to, cable or broadband receiving  
6 equipment and directly associated equipment.

7 (b) Each cable or broadband operator shall restore interrupted service not later than 24  
8 hours after being notified by a subscriber that service has been interrupted, unless:

9 (1) Service cannot be restored until another company repairs facilities owned by such  
10 company and leased to, or required for the operation of, the cable service;

11 (2) The interruption was caused by an act of nature; or

12 (3) The cable operator is unable to restore service within 24 hours due to extenuating  
13 circumstances. In the event of such extenuating circumstances, the cable or broadband company  
14 shall restore service as soon as feasible. ~~and~~ A cable operator shall then submit a written notice  
15 to the commission indicating that service has been restored and explaining the nature of the  
16 extenuating circumstances.

**§24D-1-16. Credit or refund for interrupted service.**

1 (a) If cable or broadband service to a subscriber is interrupted for more than 24 continuous  
2 hours, such subscriber shall, upon request, receive a credit or refund from the cable or broadband  
3 operator in an amount that represents the proportionate share of such service not received in a  
4 billing period, provided such interruption is not caused by the subscriber. Electric utilities that  
5 lease fiber to broadband providers shall not be required to provide refunds to broadband providers  
6 who lease the fiber for service outages.

7 (b) The commission may promulgate rules establishing a viewing time reliability standard  
8 for cable operators and requiring such companies to file with the commission information on  
9 service interruptions not caused by subscribers.

**§24D-1-21. Rights of individuals.**

1 (a) A cable television or broadband system operator may not deny service, deny access,  
2 or otherwise discriminate against subscribers, channel users, or any other citizens on the basis  
3 of age, race, religion, sex, physical handicap, political affiliation, political views, or exercise of  
4 other speech protected by the 1st Amendment to the United States Constitution, or country of  
5 natural origin.

6 (b) A cable or broadband system operator shall provide subscribers 30 days advance  
7 written notice of any changes to rates or charges, including the expiration of any promotion or  
8 special pricing that would result in an increase in the subscribers billing or cost of service.

9 (c) A broadband system operator shall inform subscribers and provide written notice to  
10 subscribers that disputes regarding interrupted or substandard service or billing issues, which are  
11 unresolved to satisfaction of the subscriber, can be filed as a complaint with the consumer  
12 protection division of the WV Attorney General's Office.

**§24D-1-26. Cable television and broadband industry industries not regulated as a utility.**

1 No provision of this article may be construed to grant the commission the power to regulate  
2 the cable television industry or the broadband industry as a utility.

**CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION  
POLICIES.**

**ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.**

**§31G-1-2. Definitions.**

1 For the purposes of this article:

2 (1) "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical  
3 codes adopted by a recognized national code organization, including, but not limited to, the  
4 National Electrical Safety Code, or any local amendments to those codes: *Provided*, That  
5 notwithstanding any other provisions of these applicable codes, the Code of West Virginia and/or  
6 the West Virginia Code of State Rules, variances for the installation and maintenance of  
7 broadband service infrastructure on utility poles, if these are agreed upon between infrastructure  
8 owners, shall be allowed.

9 ~~(4)~~ (2) "Broadband" or "broadband service" means any service providing advanced  
10 telecommunications capability with the same downstream data rate and upstream data rate as is  
11 specified by the Federal Communications Commission and that does not require the end-user to



12 dial up a connection, that has the capacity to always be on, and for which the transmission speeds  
13 are based on regular available bandwidth rates, not sporadic or burstable rates, with latency  
14 suitable for real-time applications and services such as voice-over Internet protocol and video  
15 conferencing, and with monthly usage capacity reasonably comparable to that of residential  
16 terrestrial fixed broadband offerings in urban areas: *Provided*, That as the Federal  
17 Communications Commission updates the downstream data rate and the upstream data rate the  
18 council will publish the revised data rates in the State Register within 60 days of the federal  
19 update.

20 (2) (3) "Council" means the Broadband Enhancement Council.

21 (3) (4) "Digital Equality of Opportunity" means a condition in which all individuals and  
22 communities have the information technology capacity needed for full participation in our society,  
23 democracy and economy.

24 (5) "Downstream data rate" means the transmission speed from the service provider  
25 source to the end-user.

26 (4) (6) "Internet protocol address" or "IP address" means a unique string of numbers  
27 separated by periods that identifies each computer using the internet protocol to communicate  
28 over a network.

29 (5) (7) "Upstream data rate" means the transmission speed from the end-user to the  
30 service provider source.

31 (6) (8) "Unserved area" means ~~a community that has no access to broadband~~ an area  
32 lacking broadband internet service from at least one broadband internet service provider offering  
33 all of the following in at least one service plan to residential consumers:

34 (A) an actual downstream data rate of 25 megabits per second; and

35 (B) an actual upstream data rate of three megabits per second; and

36 (C) unlimited data usage without overage charges; and

37 (D) unlimited data usage without “throttling” or reduction of downstream or upstream data  
38 rate due, in whole or in part, to the amount of data transferred in any period.

39 (9) “Underserved” means an area lacking broadband internet service from at least two  
40 broadband internet service providers offering all of the following in at least one service plan to  
41 residential consumers:

42 (A) an actual downstream data rate of 100 megabits per second; and

43 (B) an actual upstream data rate of 50 megabits per second; and

44 (C) unlimited data usage without overage charges; and

45 (D) unlimited data usage without “throttling” or reduction of downstream or upstream data  
46 rate due, in whole or in part, to the amount of data transferred in any period.

**§31G-1-4. 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; and

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) explore ways to achieve digital equality of opportunity throughout the state.

16 (b) In addition to the powers set forth elsewhere in this article, the council is hereby  
17 granted, ~~has and may exercise the following powers authority necessary or appropriate to carry~~  
18 ~~out and effectuate the purpose and intent of this article, as enumerated herein to:~~ The council  
19 shall have the power and capacity to

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

22 ~~(2) (1) Promote awareness of public facilities that have community broadband access that~~  
23 ~~can be used for distance education and workforce development;~~

24 ~~(3) (2) Advise on deployment of e-government portals such that all public bodies and~~  
25 ~~political subdivisions have homepages, encourage one-stop government access and that all~~  
26 ~~public entities stream audio and video of all public meetings;~~

27 ~~(4) (3) Make and execute contracts, commitments and other agreements necessary or~~  
28 ~~convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to~~  
29 ~~perform the duties of the council assist in the mapping of the state and categorization of areas~~  
30 ~~within the state;~~

31 ~~(5) (4) Acquire by gift or purchase, hold or dispose of real property and personal property~~  
32 ~~in the exercise of its powers and performance of its duties as set forth in this article; and to~~

33 ~~(4) (5) Receive and dispense funds appropriated for its use by the Legislature or other~~  
34 ~~funding 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.~~

36 ~~(7) to oversee the use of conduit installed pursuant to section two of article three of this~~  
37 ~~chapter; and to~~

38 ~~(8) Perform any and all other activities in furtherance of its purpose~~

39 (c) The council shall ~~exercise its powers and authority to~~ advise and make  
40 recommendations to the Legislature Office of Broadband and shall coordinate with that Office on

41 bringing broadband service to unserved and underserved areas, as well as to propose statutory  
42 changes that may enhance and expand broadband in the state.

43 (d) The council shall report to the Secretary of Commerce ~~Joint Committee on Government~~  
44 ~~and Finance~~ on or before January December 1 of each year. The report shall include the action  
45 that was taken by the council during the previous year in carrying out the provisions of this article,  
46 and shall be a public document. The council shall also make any other reports as may be required  
47 by the Legislature or the Governor.

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

1 [Repealed]

**§31G-1-9. Collection of data.**

1 [Repealed]

**§31G-1-12. Grants.**

1 [Repealed]

**ARTICLE 1A. OFFICE OF BROADBAND.**

**§31G-1A-1. Office of Broadband; Director of Office; qualifications for Director.**

1 (a) There shall be created an Office of Broadband which shall be organized within the  
2 Economic Development Office under the authority of the Secretary of Commerce. The Office of  
3 Broadband shall be given a dedicated annual appropriation within the state budget.

4 (b) The Director of the Office of Broadband shall have a minimum of a baccalaureate  
5 degree in a relevant field of finance, economics, or technology, and shall have a minimum of 10  
6 years of experience in the broadband industry.

**§31G-1A-2. Powers and duties of the Office of Broadband generally.**

1 (a) The Office of Broadband 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) Cooperate and assist in the expansion of electronic instruction and distance education  
8 services;

9           (4) Gather and report data regarding the adoption by broadband services, by speed, and  
10 by community, separately for residential and non-residential consumers;

11           (5) Gather and report data regarding prices charged for broadband services to residential  
12 and non-residential consumers (including, but not limited to one-time fees, monthly fees,  
13 termination fees, equipment fees, and other fees); and

14           (6) Incorporate the goal of digital equity in its fulfillment of responsibilities.

15           (b) In addition to the powers set forth elsewhere in this article, the Office of Broadband is  
16 hereby granted, has and may exercise the powers necessary or appropriate to carry out and  
17 effectuate the purpose and intent of this article, as enumerated herein. The Office of Broadband  
18 shall have the power and capacity to:

19           (1) Explore any and all ways to expand access to broadband services, including, but not  
20 limited to, middle mile, last mile, and wireless applications;

21           (2) Make and execute contracts, commitments, and other agreements necessary or  
22 convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to  
23 assist in the mapping of the state and categorization of areas within the state;

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

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

29           (5) To oversee the use of conduit installed pursuant to §31G-3-2 of this code; and to

30 (6) Perform any and all other activities in furtherance of its purpose.

31 (c) The Office of Broadband shall exercise its powers and authority to advise and make  
32 recommendations to the Legislature on bringing broadband service to unserved and underserved  
33 areas, as well as to propose statutory changes that may enhance and expand broadband in the  
34 state.

35 (d) The Office of Broadband shall report to the Joint Committee on Government and  
36 Finance of the West Virginia Legislature on or before January 1 of each year. The report shall  
37 include the action that was taken by the Office of Broadband during the previous year in carrying  
38 out the provisions of this article. The Office of Broadband shall also make any other reports as  
39 may be required by the Legislature or the Governor.

**§31G-1A-3. Mapping of areas within state.**

1 (a) Based on its analysis of data, broadband demand, and other relevant information, the  
2 Office of Broadband shall establish a mapping of broadband services in the state. The council  
3 shall publish an annual assessment and map of the status of broadband, including specific  
4 designations of unserved areas of the state. With respect to unserved areas of the state, the  
5 Office of Broadband shall, to the extent it is able, map project areas with funding provided by  
6 public entities.

7 (b) To the extent possible, and subject to limitations contained in subsection (f) of this  
8 section, the Office of Broadband shall additionally establish an interactive public map reflecting  
9 estimated or actual downstream data rate and upstream data rate in a particular region, area,  
10 community, street or location. Any such mapping may only specify data rates at a particular street  
11 address or physical location, and shall not make public the IP address or the name of the specific  
12 individual at such location. This map shall be known as the West Virginia Broadband Availability  
13 Map.

14 (c) To the extent possible, and subject to limitations contained in subsection (f) of this  
15 section, the Office of Broadband shall additionally establish an interactive public map reflecting

16 the adoption of broadband services, separately by estimated or actual downstream data rate and  
17 upstream data rates, in a particular region, area, community, street or location. Any such mapping  
18 shall provide data separately for residential connections and non-residential connections. This  
19 map shall be known as the West Virginia Broadband Adoption Map.

20 (d) The mapping provided for in this section may be based on information collected or  
21 received by the Broadband Council and Office of Broadband, including, but not limited to, data  
22 collected from:

23 (1) State and federal agencies or entities that collect data on broadband services;

24 (2) Industry provided information;

25 (3) Consumer data provided to the Broadband Council or Office of Broadband pursuant to  
26 §31G-1A-6 and §31G-1A-9 of this code; and

27 (4) Other data sources procured by or provided to the Office of Broadband or the  
28 Broadband Council.

29 (e) Any entity that has received or hereinafter receives state or federal moneys, and which  
30 has used those moneys to install infrastructure used for broadband services, shall furnish detailed  
31 information concerning the location, type, and extent of such infrastructure to the Office of  
32 Broadband for use in mapping and shall furnish the location, type, and prices of any broadband  
33 services subscribed to by residential (and separately non-residential) consumers as a result of  
34 the installed infrastructure.

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

37 (g) In addition to the provisions of §31G-1A-13 of this code, the mapping of broadband  
38 services may exclude from public accessibility and availability:

39 (1) The location or identity of any critical infrastructure used by public or private entities in  
40 furtherance of their internet services;

41 (2) Personal name and personal IP addresses connected with particular data rates; and

42 (3) Information designated as confidential for public security reasons by either state or  
43 federal homeland security agencies: *Provided*, That it shall be duty of the public and private  
44 entities to make the Office of Broadband aware of such confidential designation: *Provided*,  
45 *however*, That unless the Office of Broadband determines good cause exists, the actual or  
46 estimated upstream and downstream data rates of an area or region of the state shall not be  
47 excluded from public or private availability.

48 (h) All executive agencies which have permitting and/or regulatory approval authority over  
49 any project permitted or reviewed and approved pursuant to §17-2E-3 of this code shall cooperate  
50 with and provide all necessary information to the Office of Broadband to determine the feasibility  
51 and federal allowability of creating Advanced Regulatory Environment Analysis (AREA) maps.  
52 AREA maps will pre-survey likely routes for middle-mile infrastructure so all relevant information  
53 can be included in a centralized GIS mapping system to be maintained by the Office of Broadband  
54 for utilization by the private sector when extending new fiber infrastructure pursuant to Chapter  
55 17, Article 2E of this code. AREA mapping shall also include, but is not limited to, any areas  
56 already granted Finding of No Significant Impact (“FONSI”), categorical exclusions (“CATEX”),  
57 areas prior approved by the West Virginia State Historic Preservation Office (“SHPO”), and all  
58 West Virginia Division of Highways mapping for permits that include installation of infrastructure.  
59 The Office of Broadband shall report to the legislature’s interim Joint Committee on Technology  
60 within 180 days following the amendment and reenactment of this article during the Regular  
61 Session of the Legislature in 2021, and shall regularly report on AREA mapping to the legislature’s  
62 interim Joint Committee on Technology annually during the November interim session of following  
63 years.

64 (i) (1) If in analyzing the consumer-supplied speed data for an area of 2 square miles or  
65 more, the Office of Broadband finds that speeds supplied by a provider are less than 80% of the  
66 lowest speed tier advertised by the provider in more than 40% of the tests in that area in a calendar  
67 year, then the Office of Broadband shall notify the Consumer Protection Division of the Attorney



68 General's Office; and shall transmit such records of any relevant speed tests in their custody to  
69 the Consumer Protection Division of the Attorney General's Office.

70 (2) A customer experiencing such a status as described above will be due a proportional  
71 service credit.

72 (3) There shall be a rebuttable presumption that such customer is entitled to such credit:  
73 Provided, such presumption is rebuttable with speed tests supplied by the provider demonstrating  
74 performance.

**§31G-1A-4. Retention of outside expert consultant.**

1 (a)(1) In order to assist the Office of Broadband with the highly technical task of  
2 categorizing the areas of the state, the Office of Broadband may retain outside expert consultants  
3 to assist in the purposes of this article. The experts may assist the Office of Broadband to map  
4 the state on the basis of broadband availability, to evaluate and categorize data, to assist in public  
5 outreach and education in order to stimulate demand and to provide other support and assistance  
6 as necessary to accomplish the purposes of this article. To the extent necessary to carry out the  
7 provisions of this article, any expert consultants retained by the Broadband Council shall also be  
8 made available to the Office of Broadband whether through the direction of the Broadband Council  
9 or transfer of existing agreements to the Office of Broadband. All work products, reports, and  
10 correspondence between the Broadband Council and any expert consultants shall be provided to  
11 the Office of Broadband.

12 (2) To the extent funds are made available for such a purpose and where necessary to  
13 carry out the provisions of this article, any expert consultants retained by the Office of Broadband  
14 shall also be made available to the Broadband Council in furtherance of its mission.

15 (b) The retention and contracting of all expert consultants shall be transparent, including  
16 specifically, making publicly available any contracts, retention agreements, payments and  
17 invoicing for services.

**§31G-1A-5. Public awareness and education.**

1           In order to implement and carry out the intent of this article, the Office of Broadband may  
2 take such actions as it deems necessary or advisable in order to increase awareness of issues  
3 concerning broadband services and to educate and inform the public.

**§31G-1A-6. Collection of data.**

1           (a) In order to ascertain, categorize, analyze, map, and update the status of broadband in  
2 the state, as well as to enable the Office of Broadband to make informed policy and legislative  
3 recommendations, the Office of Broadband may establish a voluntary data collection program.  
4 The program may include voluntarily submitted data from internet service providers, including any  
5 home or region data rate meters utilized by the provider. The program may also utilize and collect  
6 voluntarily submitted data rate information submitted by any person reflecting the person's  
7 personal data rate at a particular IP address. This personal data rate may be based upon a web-  
8 based test or analysis program.

9           (b) Any and all data collected by the Office of Broadband shall not be deemed public  
10 information and is not subject to public release or availability pursuant to §29B-1-1 et seq. of this  
11 code.

12           (c) Any data collection program established by the Office of Broadband shall:

13           (1) Make clear to those providers or persons submitting information that the data rate  
14 speed may become public, including specific reference to the person's physical address;

15           (2) Make clear this is a voluntary data collection program and that submission of  
16 information shall be deemed consent to use and make public such data rate information; and

17           (3) Not include any person's personal web history or search information, or otherwise  
18 publicly identify the person's name in connection with an IP address or physical address.

19           (d) The Office of Broadband may establish guidelines and additional rules governing a  
20 data collection program through the legislative rulemaking process, pursuant to the provisions of  
21 §29A-3-1 et seq.

**§31G-1A-7. Voluntary donation and easement programs.**

1           (a) The Office of Broadband shall create guidelines for, and recommend to the Legislature  
2 a means of implementing a voluntary donation program to allow for pipeline, railroad, and other  
3 similar structures and rights-of-way in the state to be donated to the state for use by public or  
4 private entities to facilitate broadband service and availability through placement of fiber.

5           (b) The Office of Broadband shall create guidelines for, and recommend to the Legislature  
6 a means of implementing a program to allow for an easement program to be established to allow  
7 public or private entities to facilitate broadband service and availability through placement of fiber.

**§31G-1A-8. Grants.**

1           In furtherance of the purposes of this article, the Office of Broadband is permitted to seek  
2 non-state funding and grants. The Office of Broadband may utilize funding and grants to support  
3 the responsibilities, initiatives, and projects set forth in this article. The Office of Broadband may  
4 additionally disburse such moneys to fund projects and initiatives in furtherance of the  
5 enhancement and expansion of broadband services in this state, and the other purposes of this  
6 article.

**§31G-1A-9. Protection of proprietary business information.**

1           (a) Broadband deployment information provided to the Office of Broadband or its  
2 consultants and other agents, including, but not limited to, physical plant locations, subscriber  
3 levels, and market penetration data, constitutes proprietary business information and, along with  
4 any other information that constitutes trade secrets, shall be exempt from disclosure under the  
5 provisions of §29B-1-1 et seq. of this code: *Provided*, That the information is identified as  
6 confidential information when submitted to the Office of Broadband.

7           (b) Trade secrets or proprietary business information obtained by the council or the Office  
8 of Broadband from broadband providers and other persons or entities shall be secured and  
9 safeguarded by the state. Such information or data shall not be disclosed to the public or to any  
10 firm, individual or agency other than officials or authorized persons of the state. Any person who

11 makes any unauthorized disclosure of such confidential information or data is guilty of a  
12 misdemeanor and, upon conviction thereof, may be fined not more than \$5,000 or confined in jail  
13 not more than one year, or both fined and confined.

14 (c) The official charged with securing and safeguarding trade secrets and proprietary data  
15 for the Office of Broadband is the Secretary of Commerce, who is authorized to establish and  
16 administer appropriate security measures. The Office of Broadband shall designate two additional  
17 persons to share the responsibility of securing trade secrets or proprietary information. No person  
18 will be allowed access to trade secrets or proprietary information without written approval of a  
19 minimum of two of the three authorized persons specified above.

**§31G-1A-10. Legislative rule-making authority.**

1 In order to implement and carry out the intent of this article, the Secretary of the  
2 Department of Commerce, at the direction and recommendation of the Office of Broadband, may  
3 propose rules for legislative approval, pursuant to the provisions of §29A-3-1 et seq. of this code.

**ARTICLE 3. CONDUIT INSTALLATION; MICROTRENCHING.**

**§31G-3-3. Conduit installation or fiber installation by counties, municipalities, and other**  
**political subdivisions.**

1 (a) Notwithstanding any other provision of this code, any county, municipality, or other  
2 political subdivision of the State of West Virginia may:

3 (1) Contract with any entity to make payment necessary for that entity to install conduit,  
4 fiber or broadband facilities as defined in §31G-1-2 of this code throughout that political  
5 subdivision; or

6 (2) Acting as a county, municipality, or political subdivision, install such conduit, fiber, or  
7 broadband facilities as defined in §31G-1-2 of this code throughout that political subdivision; or

8 (3) Partner with:

9 (i) Any nonprofit organization; or

10 (ii) Cooperative association; or

11 (iii) Another county, municipality, or political subdivision; or  
12 (iv) With any private corporations, company, or person; or,  
13 (v) With any public-private partnership; or  
14 (vi) Any combination of such entities;  
15 to install such conduit or fiber throughout that county, municipality, or political subdivision;  
16 and,  
17 (4) Additionally, any county, municipality, or political subdivision of the State of West  
18 Virginia may partner with any of the previously mentioned entities, or any combination of the  
19 same, which operate a network operations center, to operate a fiber network: *Provided*, That,  
20 such network must be open for access to all carriers and content providers in a manner:  
21 (i) Which is consistent with all applicable state and federal law; and  
22 (ii) Which is neutral and nondiscriminatory, making all services offered available to all  
23 carriers and content providers on the same terms.  
24 (b) All work performed must be in accordance with all applicable codes, as defined in  
25 §31G-1-2 of this code.

#### **ARTICLE 4. MAKE-READY POLE ACCESS.**

##### **§31G-4-1. Definitions.**

1 As used in this article, the following terms are defined as follows:

2 (1) “Applicable codes” means the same as set forth in §31G-1-2(1) of this code.

3 ~~(4)~~ (2) “Attacher” means any person, corporation, or other entity, or the agents or  
4 contractors of such seeking to permanently or temporarily fasten or affix any type of equipment,  
5 antenna, line or facility of any kind to a utility pole in the right of way or its adjacent ground space.

6 ~~(2)~~ (3) “Attachment Application” means the application made by an Attacher to a Pole  
7 Owner for attachment of equipment, antenna, line or facility of any kind to a utility pole. It shall  
8 include:

9 (A) Proof of insurance; or

10 (B) An indemnification agreement prepared by the Pole Owner.

11 ~~(3)~~ (4) "Make Ready Costs" means the costs incurred by an Attacher associated with the  
12 transfer of the facilities, antenna, lines or equipment of a Pre-Existing Third Party User,  
13 undertaken by an Attacher to enable attachment to the utility pole or similar structure. Make-  
14 Ready Costs that are to be paid by an Attacher include, without limitation, all costs and expenses  
15 to relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be  
16 necessary to accommodate an Attacher's attachment.

17 ~~(4)~~ (5) "Pole Owner" means a person, corporation or entity having ownership of a pole or  
18 similar structure in the right of way to which utilities, including without limitation, electric and  
19 communications facilities, are located or may be located whether such ownership is in fee simple  
20 or by franchise.

21 ~~(5)~~ (6) "Pre-Existing Third Party User" means the owner of any currently operating  
22 facilities, antenna, lines or equipment on a pole or its adjacent ground space in the right of way.

**§31G-4-2. Attachment to third party facilities.**

1 (a) Upon approval of an Attachment Application, an Attacher may relocate or alter the  
2 attachments or facilities of any Pre-Existing Third Party User as may be necessary to  
3 accommodate an Attacher's attachment using Pole Owner approved contractors; provided,  
4 however, that an Attacher will not effectuate a relocation or alteration of a Pre-Existing Third Party  
5 User's facilities that causes or would reasonably be expected to cause a customer outage without  
6 first providing 45 days prior written notice to the Pre-Existing Third Party User, in order to permit  
7 the Pre-Existing Third Party User to relocate its facilities on its own.

8 (b) In the event the Pre-Existing Third Party Users of such other facilities fail to transfer or  
9 rearrange their facilities within forty-five days from receipt of notice of relocation or alteration of a  
10 Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a  
11 customer outage, an Attacher may undertake such work.

12 (c) Within 30 days of the completion of any relocation or alteration, an Attacher shall send  
13 notice of the move and as-built reports to the Pre-Existing Third Party User and the owner of all  
14 poles or other structures on which such relocations or alterations were made. The as-built reports  
15 shall include a unique field label identifier, and an address or coordinates.

16 (d) Upon receipt of the as-built reports, the Pre-Existing Third Party User and pole or  
17 structure owner(s) may conduct an inspection within 14 days at an Attacher's expense. An  
18 Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing  
19 Third Party User and pole or structure owner for the inspection. If any such relocation or alteration  
20 results in the facilities of the Pre-Existing Third Party User on the pole or other structure failing to  
21 conform with the applicable safety Pole Owner's standards, the Pre-Existing Third Party User  
22 shall, within seven days of the inspection, notify an Attacher of such failure to conform.

23 (e) In a notice, the Pre-Existing Third Party User may elect to either:

24 (1) Perform the correction itself and bill the Attacher for the actual, reasonable and  
25 documented costs of the correction, or

26 (2) Instruct the Attacher to correct such conditions at Attacher's expense. Any post-  
27 inspection corrections performed by the Attacher must be completed within 30 days of such  
28 notification.

29 (f) As a condition of exercising the ability to relocate, rearrange, or alter a Pre-Existing  
30 Third Party User's facilities pursuant to this section, an Attacher shall indemnify, defend and hold  
31 harmless the owner or owners of all poles or other structures on which such relocation,  
32 rearrangement or alteration takes place, the affiliates of such owner or owners, and the officers,  
33 directors and employees of such owner or owners and their affiliates, each being deemed an  
34 Indemnitee, from and against all third party damage, loss, claim, demand, suit, liability, penalty or  
35 forfeiture of every kind and nature, including, but not limited to, costs and expenses of defending  
36 against the same, payment of any settlement or judgment therefor and reasonable attorney's  
37 fees, that are actually and reasonably incurred by an Indemnitee, by reason of any claim by an

38 affected Pre-Existing Third Party User or any person or entity claiming through such Pre-Existing  
39 Third Party User arising from such relocation, rearrangement or alteration.

40 (g) All work performed must be in accordance with applicable codes as set forth in §31G-  
41 1-2(1) of this code: including, but not limited to, the National Electrical Safety Code and other  
42 generally accepted safety codes: *Provided*, That the variances to applicable codes as set forth in  
43 §31G-1-2(1) of this code and to private agreements as set forth in §31G-6-1 of this code shall  
44 apply to this section.

45 (h) In the event an ILEC pole owner requires and accepts payment for make-ready work,  
46 and fails to perform that work within 45 days, the ILEC pole owner which has been paid and which  
47 has failed to perform the work, shall immediately return and refund the moneys paid for that work  
48 which was not completed. Failure to return those funds within 14 calendar days shall be cause  
49 for a fine, payable to the Public Service Commission, equal to the amount of the payment and a  
50 cause of action in circuit court for return of the payment and is subject to treble damages,  
51 reasonable attorney's fees, and any applicable court costs. Good-cause and good-faith efforts to  
52 have performed the work shall be a defense against the imposition of any fine: *Provided*, that the  
53 provisions of this subsection shall not apply to any make-ready work where a pole replacement  
54 is necessary.

**ARTICLE 6. PRE-EMPTION OF CONFLICTING LOCAL ORDINANCES AND PRIVATE  
RESTRICTIONS; REPORTING REQUIREMENTS FOR WEST VIRGINIA  
PROJECTS RECEIVING FEDERAL OR STATE FUNDING.**

**§31G-6-1. Pre-emption in favor of broadband services; construction of language in  
agreements.**

1 (a) Notwithstanding any other provision of the West Virginia Code and/or the West Virginia  
2 Code of State Regulations, any ordinance of any political subdivision relating to broadband  
3 service is hereby pre-empted to the extent necessary in favor of such broadband installation.



4 (b) No corporate, organizational, or institutional policy, agreement, contract, or other like  
5 document, including the rules and regulations of any Home Owners Association, or any similar  
6 entity or organization, promulgated or effective after the effective date of this legislation, may  
7 regulate or prevent the exterior installation of antennas and equipment necessary to or typically  
8 utilized for broadband deployment and the terms of any such document shall be strictly construed  
9 in favor of encouraging and assisting broadband installation and deployment.

**§31G-6-2. Pre-emption in favor of broadband service in pole attachments; construction of language in pole attachment agreements.**

1 (a) Notwithstanding any other provision of the West Virginia Code and/or the West Virginia  
2 Code of State Regulations, any ordinance of any political subdivision regarding pole attachment  
3 spacing, positioning, or order by or between any Investor Owned Utility (“IOU”) and any Incumbent  
4 Local Exchange Carrier (“ILEC”) and/or Competitive Local Exchange Carrier (“CLEC”) which  
5 would seek to provide broadband service, is hereby pre-empted to the extent necessary in favor  
6 of such broadband installation or deployment.

7 (b) Any corporate policy, individual agreement, organizational policy, contract or like  
8 document relating to pole attachment spacing, positioning, or order by or between any Investor  
9 Owned Utility (“IOU”) and any Incumbent Local Exchange Carrier (“ILEC”) and/or Competitive  
10 Local Exchange Carrier (“CLEC”) shall be strictly construed in favor of encouraging and assisting  
11 broadband installation and deployment.

**§31G-6-3. Reporting Requirements.**

1 Reporting, under oath, from executives of companies receiving federal or state funding  
2 for broadband expansion in the State of West Virginia may be required at the directive of the  
3 Senate Committee on Transportation and Infrastructure, the House Committee on Technology  
4 and Infrastructure and/or the Joint Interim Committee on Technology.

Sec. Eng. CS for HB 2002

NOTE: The purpose of this bill is to create the statutory framework to support, encourage, and expedite the expansion of broadband throughout the State of West Virginia.

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