WEST virginia legislature

2021 regular session

Originating

House Bill 3302

By Delegates Linville and Garcia

[Originating in the Committee on Technology and Infrastructure; reported on March 23, 2021]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §31G-6-1, §31G-6-2, §31G-6-3, and §31G-6-4, all relating generally to broadband enhancement and expansion policies; providing for the creation and administration of four funds in the State Treasury known as the Broadband Open Access Middle Mile Fund, the Broadband Grant Matching Fund, the Wired Wonderful West Virginia Fund, and the Broadband Provider Expansion Fund, all to be administered by and under the control of the Office of Broadband; providing for state budgeting and legislative appropriations concerning the funds; providing for the separate purposes of each of the funds and the separate conditions under which moneys in each fund may be expended, being generally broadband expansion in this state.

Be it enacted by the Legislature of West Virginia:

**chapter 31g. broadband enhancement and expansion policies.**

ARTICLE 6. the west virginia broadband funds.

§31G-6-1. Creation and Administration of the Broadband Open Access Middle Mile Fund.

(a) There is hereby created in the State Treasury a fund known as the Broadband Open Access Middle Mile Fund. The fund shall be administered by and under the control of the Office of Broadband. Expenditures from the fund shall be for the purposes set forth in this section and are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.

(b) The fund shall consist of moneys appropriated by the Legislature. For fiscal year 2023 and each fiscal year thereafter, the Office of Broadband shall include in their budget requests and the Governor shall include in each budget bill submitted to the Legislature, an appropriation for the purposes of the fund in an amount not less than $1,000,000. The amount appropriated shall be transferred to the fund to be used solely for the purposes provided by this section.

(c) Expenditures from the fund shall be for the purposes of constructing open access middle mile fiber broadband to unserved and unfunded areas on the broadband availability map as so designated by the Office of Broadband and pursuant to this code.

§31G-6-2. Creation and Administration of the Broadband Grant Matching Fund.

(a) There is hereby created in the State Treasury a fund known as the Broadband Grant Matching Fund. The fund shall be administered by and under the control of the Office of Broadband. Expenditures from the fund shall be for the purposes set forth in this section and are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.

(b) The fund shall consist of moneys appropriated by the Legislature. For fiscal year 2023 and each fiscal year thereafter, the Office of Broadband shall include in their budget requests and the Governor shall include in each budget bill submitted to the Legislature, an appropriation for the purposes of the fund in an amount not less than $1,000,000. The amount appropriated shall be transferred to the fund to be used solely for the purposes provided by this section.

(c) Expenditures from the fund shall be for the purposes of facilitating broadband projects which require up to a 50% match from sources other than the primary grantor and which extends or improves broadband access in this state. No expenditures shall be made from this fund until and unless satisfactory documentation of financial need is provided to the office and approved by the director: *Provided*, That but for this assistance, the grantee would be unable to be awarded or benefited by a grant.

§31G-6-3. Creation and Administration of the Wired Wonderful West Virginia Fund.

(a) There is hereby created in the State Treasury a fund known as the Wired Wonderful West Virginia Fund. The fund shall be administered by and under the control of the Office of Broadband. Expenditures from the fund shall be for the purposes set forth in this section and are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.

(b) The fund shall consist of moneys appropriated by the Legislature. For fiscal year 2023 and each fiscal year thereafter, the Office of Broadband shall include in their budget requests and the Governor shall include in each budget bill submitted to the Legislature, an appropriation for the purposes of the fund in an amount not less than $1,000,000. The amount appropriated shall be transferred to the fund to be used solely for the purposes provided by this section.

(c) Expenditures from the fund shall be for the purposes of establishing a pilot program for open-access last mile broadband internet service wherein internet service is provided on common infrastructure.

(d) Eligible recipients of disbursements from this fund must have an articulable nexus to healthcare, education, and a private sector network operator and must construct an open-access network which allows for multiple internet service providers to competitively offer their services upon this common middle and last mile infrastructure.

§31G-6-4. Creation and Administation of the Broadband Provider Expansion Fund.

(a) There is hereby created in the State Treasury a fund known as the Broadband Provider Expansion Fund. The fund shall be administered by and under the control of the Office of Broadband. Expenditures from the fund shall be for the purposes set forth in this section and are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.

(b) The fund shall consist of moneys appropriated by the Legislature. For fiscal year 2023 and each fiscal year thereafter, the Office of Broadband shall include in their budget requests and the Governor shall include in each budget bill submitted to the Legislature, an appropriation for the purposes of the fund in an amount not less than $1,000,000. The amount appropriated shall be transferred to the fund to be used solely for the purposes provided by this section.

(c) Expenditures from the fund shall be for the purposes of supporting existing broadband providers to extend their last mile networks within unserved and unfunded areas as indicated on the broadband availability map as so designated by Office of Broadband and pursuant to this code. The following amounts shall be made available to broadband providers, not receiving any other financial support in the eligible area, to provide service to unserved and unfunded areas after the provider demonstrates to the director that they have completed the necessary infrastructure build to serve a home or business premises including verifiable speed test data with GPS coordinates and a signed affidavit indicating under criminal penalties that to the best of the provider’s knowledge no other terrestrial broadband service was available to the premises at the time of installation:

(1) A provider shall receive $2,000 per premises for completing infrastructure installation to a residence or business with

(A) an actual downstream data rate of 1,000 megabits per second; and

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

(C) unlimited data usage without overage charges; and

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

(2) A provider shall receive $500 per premises for completing infrastructure installation to a residence or business with a terrestrial wired or fixed wireless connection with

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

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

(C) unlimited data usage without overage charges; and

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

(d) Disbursements from this fund shall be made available on a first-come, first-served basis and shall be expended and made available to providers until the fund is depleted. Upon additional legislative appropriation into this fund, disbursements shall be disbursed again in like fashion until the fund is depleted.

NOTE: The purpose of this bill is to enhance and expand broadband policies and access; provide for the creation and administration of four funds in the state treasury known as the Broadband Open Access Middle Mile Fund, the Broadband Grant Matching Fund, the Wired Wonderful West Virginia Fund, and the Broadband Provider Expansion Fund, all to be administered by and under the control of the Office of Broadband; provide for state budgeting and legislative appropriations concerning the funds; provide for the separate purposes of each of the funds and the separate conditions under which moneys in each fund may be expended, being generally broadband expansion in this state.

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