

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 295

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

[BY REQUEST OF THE EXECUTIVE]

[Introduced February 15, 2021; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §12-6C-11 of the Code of West Virginia, 1931, as amended; to
2 amend said code by adding thereto a new section, designated §12-6C-11a; to amend and
3 reenact §31-15-8 of said code; and to amend said code by adding thereto a new section,
4 designated §31-15-8a, all relating generally to economic development loans and loan
5 insurance issued by the state; clarifying provision stating that the Board of Treasury
6 Investments has no fiduciary duty with regard to economic development loans
7 administered by the Economic Development Authority; providing that the Board of
8 Treasury Investments may inspect and copy, upon written notice, all records related to
9 loans made available by the board to the Economic Development Authority and providing
10 that such records shall not be considered public records and shall be exempt from
11 disclosure pursuant to the provisions of chapter 29B of the code; defining terms; limiting
12 the total amount of loan moneys that the board shall make available to the authority for
13 the Broadband Loan Insurance Program to \$80 million; establishing requirements that
14 must be met before broadband loan insurance moneys will be made available to the
15 authority; providing that the board shall maintain broadband loan insurance loan moneys
16 in a separate account in the Consolidated Fund; providing that broadband loan insurance
17 moneys may only be drawn upon in the event of a broadband provider default on an
18 insured debt or security instrument; limiting the amount of loan insurance that the authority
19 may award in a single year to a single broadband provider to \$20 million; clarifying that
20 the authority may not deduct administrative or operational costs from broadband loan
21 insurance loan moneys; setting forth requirements that must be met before the authority
22 may draw on broadband loan insurance moneys in the event of a broadband provider's
23 default; requiring the authority to submit quarterly reports to the Joint Committee on
24 Government and Finance and to the Governor containing certain information related to its
25 loan insurance program; requiring the authority to make application forms for broadband
26 loan insurance publicly available on its website; establishing the minimum information an

27 applicant for broadband loan insurance shall be required to submit to the authority;
 28 establishing minimum criteria that the authority must consider in its broadband loan
 29 insurance application review process; establishing that the authority may provide loan
 30 insurance for eligible broadband providers pursuant to awards made by federally funded
 31 broadband expansion programs; providing that the authority may not issue loan insurance
 32 to a broadband provider that has previously defaulted on any debt or security instrument
 33 insured by the authority; requiring the authority to post certain information regarding loan
 34 insurance agreements on its website; requiring the authority to adhere to certain
 35 accounting and record-keeping practices; requiring the authority to submit quarterly
 36 reports to the Board of Treasury Investments, the Joint Committee on Government and
 37 Finance, and the Governor containing certain information on insured loans and broadband
 38 projects financed by insured loans; requiring a biennial legislative audit of the Broadband
 39 Loan Insurance Program; removing obsolete language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.

1 (a) The Legislature finds and declares that the citizens of the state benefit from the creation
 2 of jobs and businesses within the state; that business and industrial development loan programs
 3 provide for economic growth and stimulation within the state; that loans from pools established in
 4 the Consolidated Fund will assist in providing the needed capital to assist business and industrial
 5 development; and that time constraints relating to business and industrial development projects
 6 prohibit duplicative review by both the Board and West Virginia Economic Development Authority
 7 Board. ~~The Legislature further finds and declares that an investment in the West Virginia~~

8 ~~Enterprise Capital Fund, LLC, of moneys in the Consolidated Fund as hereinafter provided will~~
9 ~~assist in creating jobs and businesses within the state and provide the needed risk capital to assist~~
10 ~~business and industrial development. This section is enacted in view of these findings~~

11 (b) The West Virginia Board of Treasury Investments shall make available, subject to a
12 liquidity determination, in the form of a revolving loan, up to \$175 million from the Consolidated
13 Fund to loan the West Virginia Economic Development Authority for business or industrial
14 development projects authorized by §31-15-7 of this code and to consolidate existing loans
15 authorized to be made to the West Virginia Economic Development Authority pursuant to this
16 section and pursuant to §31-15-2 of this code which authorizes a \$175 million revolving loan and
17 §31-18B-1 *et seq.* of this code which authorizes a \$50 million investment pool: *Provided*, That the
18 West Virginia Economic Development Authority may not loan more than \$15 million for any one
19 business or industrial development project. The revolving loan authorized by this subsection shall
20 be secured by one note at a variable interest rate equal to the 12-month average of the board's
21 yield on its ~~cash liquidity~~ West Virginia Money Market pool. The rate shall be set on July 1 and
22 adjusted annually on the same date. The maximum annual adjustment may not exceed one
23 percent. Monthly payments made by the West Virginia Economic Development Authority to the
24 board shall be calculated on a 120-month amortization. The revolving loan is secured by a security
25 interest that pledges and assigns the cash proceeds of collateral from all loans under this
26 revolving loan pool. The West Virginia Economic Development Authority may also pledge as
27 collateral certain revenue streams from other revolving loan pools which source of funds does not
28 originate from federal sources or from the board.

29 (c) The outstanding principal balance of the revolving loan from the board to the West
30 Virginia Economic Development Authority may at no time exceed 103 percent of the aggregate
31 outstanding principal balance of the business and industrial loans from the West Virginia
32 Economic Development Authority to economic development projects funded from this revolving
33 loan pool. The independent audit of the West Virginia Economic Development Authority financial

34 records shall annually certify that 103 percent requirement.

35 (d) The interest rates and maturity dates on the loans made by the West Virginia Economic
36 Development Authority for business and industrial development projects authorized by §31-15-7
37 of this code shall be at competitive rates and maturities as determined by the West Virginia
38 Economic Development Authority Board.

39 (e) Any and all outstanding loans made by the West Virginia Board of Treasury
40 Investments, or any predecessor entity, to the West Virginia Economic Development Authority
41 are refundable by proceeds of the revolving loan contained in this section and the board shall
42 make no loans to the West Virginia Economic Development Authority pursuant to §31-15-20 of
43 this code or §31-18B-1 *et seq.* of this code.

44 (f) The directors of the ~~board~~ West Virginia Board of Treasury Investments shall bear no
45 fiduciary responsibility with regard to any of the loans contemplated in this section.

46 ~~(g) Subject to cash availability, the board shall make available to the West Virginia~~
47 ~~Economic Development Authority, from the Consolidated Fund, a nonrecourse loan in an amount~~
48 ~~up to \$25 million, for the purpose of the West Virginia Economic Development Authority making~~
49 ~~a loan or loans from time to time to the West Virginia Enterprise Advancement Corporation, an~~
50 ~~affiliated nonprofit corporation of the West Virginia Economic Development Authority. The~~
51 ~~respective loans authorized by this subsection by the board to the West Virginia Economic~~
52 ~~Development Authority to the West Virginia Enterprise Advancement Corporation shall each be~~
53 ~~evidenced by one note and shall each bear interest at the rate of three percent per annum. The~~
54 ~~proceeds of any and all loans made by the West Virginia Economic Development Authority to the~~
55 ~~West Virginia Enterprise Advancement Corporation pursuant to this subsection shall be invested~~
56 ~~by the West Virginia Enterprise Corporation in the West Virginia Enterprise Capital Fund, LLC,~~
57 ~~the manager of which is the West Virginia Enterprise Advancement Corporation. The loan to West~~
58 ~~Virginia Economic Development Authority authorized by this subsection shall be nonrevolving,~~
59 ~~and advances under the loan shall be made at times and in amounts requested or directed by the~~

~~West Virginia Economic Development Authority, upon reasonable notice to the board. The loan authorized by this subsection is not subject to or included in the limitations set forth in subsection (b) of this section with respect to the \$15 million limitation for any one business or industrial development project and limitation of 103% of outstanding loans, and may not be included in the revolving fund loan principal balance for purposes of calculating the loan amortization in subsection (b) of this section. The loan authorized by this subsection to the West Virginia Economic Development Authority shall be classified by the board as a long-term fixed income investment, shall bear interest on the outstanding principal balance of the loan at the rate of three percent per annum payable annually on or before June 30 of each year, and the principal of which shall be repaid no later than June 30, 2022, in annual installments due on or before June 30 of each year. The annual installments, which need not be equal shall commence no later than June 30, 2005, in annual principal amounts agreed upon between the board and the West Virginia Economic Development Authority. The loan authorized by this subsection shall be nonrecourse and shall be payable by the West Virginia Economic Development Authority solely from amounts or returns received by the West Virginia Economic Development Authority in respect of the loan authorized by this subsection to the West Virginia Enterprise Advancement Corporation, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which the board shall have a security interest to secure repayment of the loan to the West Virginia Economic Development Authority authorized by this subsection. Any and all loans from the West Virginia Enterprise Advancement Corporation made pursuant to this subsection shall also bear interest on the outstanding principal balance of the loan at the rate of three percent per annum payable annually on or before June 30 of each year, shall be nonrecourse and shall be payable by the West Virginia Enterprise Advancement Corporation solely from amounts of returns received by the West Virginia Enterprise Advancement Corporation in respect to its investment in the West Virginia Enterprise Capital Fund, LLC, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which that board shall have a security interest~~

86 ~~to secure repayment of the loan to the West Virginia Economic Development Authority authorized~~
87 ~~by this subsection. In the event the amounts or returns received by the West Virginia Enterprise~~
88 ~~Corporation in respect to its investment in the West Virginia Enterprise Capital Fund, LLC, are not~~
89 ~~adequate to pay when due the principal or interest installments, or both, with respect to the loan~~
90 ~~authorized by this subsection by the board to the West Virginia Economic Development Authority,~~
91 ~~the principal or interest, or both, as the case may be, due on the loan made to the West Virginia~~
92 ~~Economic Development Authority pursuant to this subsection shall be deferred and any and all~~
93 ~~past due principal and interest payments shall promptly be paid to the fullest extent possible upon~~
94 ~~receipt by the West Virginia Enterprise Advancement Corporation of moneys in respect to its~~
95 ~~investments in the West Virginia Enterprise Capital Fund, LLC. The directors or the board shall~~
96 ~~bear no fiduciary responsibility as provided in section thirteen of this article with regard to the loan~~
97 ~~authorized by this subsection.~~

98 ~~(h) Notwithstanding any provision in this code to the contrary, subject to a liquidity~~
99 ~~determination and cash availability, the board shall make available to the West Virginia Economic~~
100 ~~Development Authority, from the Consolidated Fund, in the form of a nonrecourse revolving loan,~~
101 ~~\$50 million, for the purpose of insuring the payment or repayment of all or any part of the principal,~~
102 ~~the redemption or prepayment premiums or penalties on, and interest on any form of debt~~
103 ~~instrument entered into by an enterprise, public body or authority of the state with a financial~~
104 ~~institution, including, but not limited to, banks, insurance companies and other institutions in the~~
105 ~~business of lending money, as authorized and as set forth in section eight, article fifteen, chapter~~
106 ~~thirty one of this code, but only for the purpose of providing insurance on such debt instruments~~
107 ~~relating solely to the deployment of broadband under said section: *Provided*, That the West~~
108 ~~Virginia Economic Development Authority may not insure more than \$10 million for any one~~
109 ~~enterprise, public body or authority of the state in any single calendar year. The loan authorized~~
110 ~~by this subsection may not be included in the revolving fund loan principal balance for purposes~~
111 ~~of calculating the loan amortization in subsection (b) of this section. The loan authorized by this~~

112 ~~subsection shall be classified by the board as a long-term fixed income investment, and shall bear~~
113 ~~interest on the outstanding principal balance of the loan at a variable interest rate equal to the~~
114 ~~twelve-month average of the board's yield on its cash liquidity pool. The rate shall be set on July~~
115 ~~1, 2017 and adjusted quarterly during each year thereafter. The maximum annual adjustment may~~
116 ~~not exceed one percent. Quarterly, the West Virginia Economic Development Authority shall make~~
117 ~~a payment sufficient to pay in full all accrued interests on the loan for the prior quarter. The loan~~
118 ~~authorized by this subsection is nonrecourse and is payable by the West Virginia Economic~~
119 ~~Development Authority solely from moneys received by the West Virginia Economic Development~~
120 ~~Authority in respect to insured debt instruments relating to providing broadband service under~~
121 ~~section eight, article fifteen, chapter thirty-one of this code. Upon payment in full of any said~~
122 ~~insured debt instruments, the West Virginia Economic Development Authority shall reduce the~~
123 ~~outstanding balance of the loan by a like amount. Additionally, quarterly, the West Virginia~~
124 ~~Economic Development Authority shall determine the outstanding balance of all such insured debt~~
125 ~~instruments and shall accordingly adjust the outstanding balance of the loan to equal the~~
126 ~~outstanding obligations of the West Virginia Economic Development Authority for all said insured~~
127 ~~debt instruments. The loan is hereby secured by a security interest that pledges and assigns the~~
128 ~~cash proceeds of all collateral securing all insurance agreements entered into by the authority~~
129 ~~respecting debt instruments relating to the deployment of broadband under said section. In the~~
130 ~~event moneys received by the West Virginia Economic Development Authority respecting any~~
131 ~~individual insured debt instrument relating to providing broadband service under said section is~~
132 ~~insufficient to pay when due the principal or interest installments, or both, with respect to the loan~~
133 ~~authorized by this subsection by the board to the authority, the principal or interest, or both, as~~
134 ~~the case may be, due on the loan made to the authority pursuant to this subsection shall be~~
135 ~~deferred and any and all past due principal and interest payments shall promptly be paid to the~~
136 ~~fullest extent possible upon receipt by the authority of all moneys respecting said debt s. The~~
137 ~~directors of the board bear no fiduciary responsibility as provided in section thirteen of this article~~

138 ~~with regard to the loan authorized by this subsection.~~

139 (g) *Inspection of Records.* – Within 30 days of receiving a written request from the board,
140 the authority shall provide the board with the opportunity to inspect and copy any records in the
141 custody of the authority related to any loan issued by the board to the authority or any loan from
142 the authority to a third party funded by a loan issued by the board. Records to be made available
143 pursuant to this subsection include, but are not limited to, accounting records, loan applications,
144 loan agreements, board minutes, audit reports, and transaction records. Records of the authority
145 that may be held from time to time by the board pursuant to this subsection shall not be considered
146 public records and shall be exempt from disclosure pursuant to the provisions of §29B-1-1 *et seq.*
147 of this code.

§12-6C-11a. Broadband Loan Insurance Program; requirements.

1 (a) *Definitions.* – For the purposes of this section, the following terms have the following
2 meanings:

3 (1) “Authority” refers to the West Virginia Economic Development Authority.

4 (2) “Board” refers to the West Virginia Board of Treasury Investments.

5 (3) “Broadband Loan Insurance Program” or the “program” refers to the program through
6 which the authority issues loan insurance, as authorized by §31-15-8a of this code.

7 (4) “Debt instrument” means any note, loan agreement, lease agreement or any other form
8 of indebtedness whatsoever and shall expressly include a letter of credit or reimbursement or
9 other agreement relating to a letter of credit.

10 (5) “Eligible broadband provider” has the same meaning provided in §31-15-8a of this
11 code.

12 (6) “Financial institution” means the bank, insurance company, or other institution in the
13 business of lending money, that conditions issuance of a debt or security instrument on loan
14 insurance by the authority, as described in §31-15-8a(b)(2) of this code.

15 (b) *Loan for broadband deployment.* –

16 (1) Subject to a liquidity determination and cash availability, the board shall provide a
17 nonrecourse revolving loan to the authority, from the Consolidated Fund, in an amount not to
18 exceed \$80 million. The loan may be used by the authority only as expressly authorized in §31-
19 15-8a of this code.

20 (2) The board shall make the loan moneys available upon receipt of the following:

21 (A) A written request by the authority that the board deposit a specific amount of loan
22 moneys, subject to the limitations provided in this section, into a separate account within the
23 Consolidated Fund for the purpose of funding the program; and

24 (B) A written statement by the authority certifying that the authority is in full compliance
25 with all applicable provisions of federal and state law, as well as any agreements entered into with
26 the board.

27 (3) The board shall maintain the loan moneys made available to the authority in a separate
28 account within the Consolidated Fund. The board shall transfer loan moneys to the authority only
29 as authorized in subsection (d) of this section.

30 (4) The authority may not award an amount of the loan moneys exceeding \$20 million, in
31 any single calendar year, to insure the debt or security instruments, or costs related thereto, of
32 any one broadband provider.

33 (5) The authority may not deduct or use any amount of loan moneys transferred pursuant
34 to this subsection to pay for the authority's operating or administrative expenses.

35 (c) *Loan terms and requirements.* –

36 (1) The loan authorized by this subsection shall be classified by the board as a long-term
37 fixed income investment and shall bear interest on the outstanding principal balance of the loan
38 at a variable interest rate equal to the 12-month average of the board's yield on its West Virginia
39 Money Market pool. The rate shall be set on July 1, 2017 and adjusted quarterly during each year
40 thereafter. The maximum annual adjustment may not exceed one percent.

41 (2) The loan authorized by this subsection is nonrecourse and may be used by the

42 authority only as authorized by §31-15-8a of this code. Upon payment in full of any said insured
43 debt instruments or release in full of any security instruments, the authority shall reduce the
44 outstanding balance of the loan by a like amount. Additionally, quarterly, the authority shall
45 determine the outstanding balance of all such insured debt and security instruments and shall
46 accordingly adjust the outstanding balance of the loan to equal the outstanding obligations of the
47 authority for all said insured debt and security instruments. The authority shall notify the board, in
48 writing, of any such adjustment.

49 (3) The loan is secured by a security interest that pledges and assigns the cash proceeds
50 of all collateral securing all insurance agreements entered into by the authority pursuant to §31-
51 15-8a of this code. In the event moneys received by the authority respecting any individual insured
52 debt or security instrument relating to providing broadband service under said section is
53 insufficient to pay when due the principal or interest installments, or both, with respect to the loan
54 authorized by this subsection by the board to the authority, the principal or interest, or both, as
55 the case may be, due on the loan made to the authority pursuant to this subsection shall be
56 deferred and any and all past-due principal and interest payments shall promptly be paid to the
57 fullest extent possible upon receipt by the authority of all moneys respecting said debt
58 instruments.

59 (d) *Transfer of moneys in event of default.* – The Board of Treasury Investments shall
60 transfer, within a reasonable amount of time, loan moneys to the authority in the amount
61 requested by the authority, upon receipt of the following:

62 (1) Written certification from the authority that a broadband provider has defaulted on a
63 debt instrument or security interest insured by the authority, pursuant to §31-15-8a of this code,
64 and that the broadband provider does not have the option to enter into a forbearance agreement
65 with the financial institution;

66 (2) Written certification from the authority that the authority has pursued or will pursue any
67 reasonable remedies to recoup the costs to the state resulting from the default, including but not

68 limited to instituting a legal action to seize the collateral described in subdivision (3), subsection
 69 (c) of this code; and

70 (3) A draw certificate, in good order, signed on behalf of the authority.

71 (e) *Inspection of Records.* – Within 30 days of receiving a written request from the board,
 72 the authority shall provide the board with the opportunity to inspect and copy any records in the
 73 custody of the authority related to the Broadband Loan Program. Records to be made available
 74 pursuant to this subsection include, but are not limited to, accounting records, loan insurance
 75 applications, loan insurance agreements, board minutes, audit reports, and transaction records.
 76 Records of the authority that may be held from time to time by the board pursuant to this
 77 subsection shall not be considered public records and shall be exempt from disclosure pursuant
 78 to the provisions of §29B-1-1 *et seq.* of this code.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-8. Insurance fund.

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

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

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

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

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

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

12 this code.

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

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

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

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

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

36 (3) To insure the payment or repayment of all or any part of the principal of, prepayment
37 premiums or penalties on, and interest on any form of debt instrument entered into by an

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

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

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

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

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

55 (6) To insure, for up to 20 years, the payment or repayment of all or any part of the principal
56 of and interest on any form of debt instrument entered into by an ~~enterprise, public body, or~~
57 ~~authority of the state~~ eligible broadband provider with a financial institution, including, but not
58 limited to, banks, insurance companies, and other institutions in the business of lending money,
59 which debt instruments are to be solely for capital costs relating to the purposes authorized in
60 §31-15-8a of this code: *Provided*, That beginning on the effective date of the amendments made
61 to this section during the 2021 Regular Session of the Legislature, loan moneys shall not be
62 transferred to the fund except as authorized by §12-6C-11a of this code.

63 (i) ~~Providing broadband service, as defined in §31G-1-1 of this code, to a household or~~

64 ~~business located in an unserved area, as defined in §31G-1-2 of this code, or in an area with~~
65 ~~access to Internet service, by wireline or fixed wireless technology, but that 15% or more of~~
66 ~~households and businesses in the area are served by Internet service with an actual downstream~~
67 ~~data rate less than 10 megabits per second and an upstream data rate less than one megabit per~~
68 ~~second, and no part of the area has three or more wireline or fixed wireless broadband service~~
69 ~~providers; or~~

70 ~~(ii) Building a segment of a telecommunications network that links a network operator's~~
71 ~~core network to a local network plant that serves either an unserved area, as defined in §31G-1-~~
72 ~~2 of this code, or an area in which no more than two wireline providers are operating.~~

73 ~~The authority may not insure the payment or repayment of any part of the principal of and~~
74 ~~interest on any form of debt instrument under this subdivision, unless the participating financial~~
75 ~~institution provides written certification to the authority that, but for the authority's insuring the debt~~
76 ~~instrument, the financial institution would not otherwise make the loan based solely on the~~
77 ~~creditworthiness of the loan applicant: Provided, That nothing contained in this subsection or any~~
78 ~~other provision of this article may be construed as permitting the authority to insure the refinancing~~
79 ~~of existing debt.~~

80 ~~Upon the filing of an application for loan insurance under this subsection, the broadband~~
81 ~~provider shall cause to be published as a Class II legal advertisement in compliance with §59-3-~~
82 ~~1 of seq. of this code, notice of the filing of the application and that the authority may approve the~~
83 ~~same unless within 10 business days after completion of publication a written objection is received~~
84 ~~by the authority from a person or persons challenging that the proposed broadband project does~~
85 ~~not satisfy the provisions of this subsection. The publication area for such notice is to be the~~
86 ~~county or counties in which any portion of the proposed broadband project is to be constructed.~~
87 ~~The notice shall be in such form as the authority shall direct and shall include a map of the area~~
88 ~~or areas to be served by the proposed broadband project. The applicant shall also cause to be~~
89 ~~mailed by first class, on or before the first day of publication of the notice, a copy of the notice to~~

~~90 all known current providers of broadband service within the area proposed to be served. If a
91 challenge under this paragraph is timely received by the authority, the authority shall advise the
92 Broadband Enhancement Council, established in §31G-1-1 *et seq.* of this code, in writing within
93 five business days. The council shall set the matter for hearing on a date within 30 days of receipt
94 of notice from the authority. The Broadband Enhancement Council shall issue a decision on
95 whether the proposed project satisfies the requirements of this subsection or not within 30 days
96 of completion of such hearing. Any party participating in said hearing may appeal the council's
97 decision within thirty days of the issuance of said decision to the Circuit Court of Kanawha County.
98 This provision shall apply to all applicants except to those broadband providers that plan on
99 providing a downstream data rate of at least one gigabyte per second to the end user~~

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

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

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

113 (f) The authority may itself approve the form of any insurance agreement entered into
114 under this section or may authorize the chairman or his or her designee to approve the form of
115 any such agreement. Any payment by the authority under an agreement entered into by the

116 authority under this section shall be made at the time and in the manner that the authority, in its
117 sole and absolute discretion, determines.

118 (g) The obligations of the authority under any insurance agreement entered into pursuant
119 to this article shall not constitute a debt or a pledge of the faith and credit or taxing powers of this
120 state or of any county, municipality, or any political subdivision of this state for the payment of any
121 amount due thereunder or pursuant thereto, but the obligations evidenced by such insurance
122 agreement shall be payable solely from the funds pledged for their payment.

123 (h) By the October 30, 2021, and on or before the 30th day of January, April, July, and
124 October of each year thereafter, the director shall prepare and submit to the Joint Committee on
125 Government and Finance and the Governor, a quarterly report which shall include, at a minimum:

126 (A) The aggregate outstanding amount of insurance issued from the insurance fund; and

127 (B) For each agreement to insure a debt or security instrument, the name of the parties to
128 the agreement; the lending financial institution to which any insured debt or security instrument is
129 owed; the total value of any insured debt or security interest; the maturity date of the insured debt
130 or security instrument; and the status of the insured debt or security instrument, including whether
131 the party to the insurance agreement is delinquent or in default on any insured debt or security
132 instrument.

§31-15-8a. Broadband Loan Insurance Program; requirements.

1 (a) Definitions. – For the purposes of this section:

2 (1) “Broadband Enhancement Council” or “council” refers to the governmental
3 instrumentality established by §31G-1-3 of this code;

4 (2) “Broadband Loan Insurance Program” or the “program” refers to the program through
5 which the authority issues loan insurance, as authorized by this section.

6 (3) “Broadband provider” or “provider” means a business or enterprise providing
7 broadband service, as defined in §31G-1-2 of this code.

8 (4) “Debt instrument” means any note, loan agreement, lease agreement or nay other form

9 of indebtedness whatsoever and shall expressly include a letter of credit or reimbursement or
10 other agreement relating to a letter of credit.

11 (5) "Eligible broadband provider" means a business or enterprise certified, in writing, by
12 the Broadband Enhancement Council to the authority to be a broadband provider, and that is not
13 disqualified from participating in the Broadband Loan Insurance Program according to subdivision
14 (4), subsection (c) of this section, as certified, in writing, by the authority.

15 (6) "Federally funded broadband expansion program" means the Rural Digital Opportunity
16 Fund of the Federal Communications Commission, the Broadband ReConnect Program of the
17 United States Department of Agriculture, or any other federally funded broadband expansion or
18 enhancement program that Congress may from time to time establish.

19 (7) "Financial institution" means the bank, insurance company, or other institution in the
20 business of lending money, that conditions issuance of a debt or security instrument on loan
21 insurance by the authority, as provided in subdivision (2), subsection (b) of this section.

22 (8) "Loan insurance" refers to an agreement to insure the payment or repayment of all or
23 any part of the principal of and interest on a debt or security instrument.

24 (b) Insurance of certain debt or security instruments authorized. –

25 (1) The authority is authorized to insure, for up to 20 years, the payment or repayment of
26 all or any part of the principal of and interest on any form of debt or security instrument entered
27 into by an eligible broadband provider with a financial institution, which debt or security
28 instruments are to be solely for capital costs relating to:

29 (A) A project which has as its principal purpose providing broadband service, as defined
30 in §31G-1-1 of this code, to a household or business located in an unserved area, as defined in
31 §31G-1-2 of this code, or to an underserved area meeting the following criteria:

32 (i) Access to internet service is only available by wireline or fixed wireless technology;

33 (ii) Access to internet service in which 15 percent or more of households and businesses
34 cannot obtain internet service with an actual downstream or upstream data rate equivalent to or

35 faster than the current definition of broadband service as defined by the Federal Communications
36 Commission and further certified by the council.

37 (B) A project which has as its principal purpose building a segment of a
38 telecommunications network that links a network operator's core network to a local network plant
39 that serves either an unserved area, as defined in §31G-1-2 of this code, or an area in which no
40 more than two wireline providers are operating.

41 (2) The authority may not issue loan insurance to a provider, unless the participating
42 financial institution provides written certification to the authority that, but for the authority's insuring
43 the debt instrument, the financial institution would not otherwise make the loan based solely on
44 the creditworthiness of the loan applicant: *Provided*, That nothing contained in this subsection or
45 any other provision of this article may be construed as permitting the authority to insure the
46 refinancing of existing debt.

47 (3) The authority may make the provision of loan insurance authorized by this section
48 contingent upon the eligible broadband provider receiving an award under a federally funded
49 broadband expansion program.

50 (4) To fund the loan insurance authorized by this section, the authority shall request a loan
51 from the West Virginia Board of Treasury Investments, according to the requirements of §12-6C-
52 11a of this code.

53 (c) *Insurance application requirements.* –

54 (1) An eligible provider may apply to the authority for loan insurance. The authority shall
55 make the application form or forms available to the public on its website.

56 (2) The application for loan insurance shall, at a minimum, require the applicant to submit:

57 (A) Proof of business ownership and other business registration information;

58 (B) Detailed information regarding all current, previous, and pending business debt,
59 including any past instances of loan delinquency or default or any breach of a borrower covenant;

60 (C) Detailed records of the provider's financial history, including but not limited to tax

61 returns and financial statements detailing the provider's income, cash flow, and account balances
62 for the past five years;

63 (D) The number of persons employed by the provider and the names and contact
64 information for all managers of the project to be insured;

65 (E) Detailed information regarding assets being presented as collateral, including, but not
66 limited to, serial or identification numbers for all large value machinery, equipment, furniture, and
67 fixtures, inventory records, and accounts receivable;

68 (F) Detailed business plans, financial plans, and financial projections related to the
69 broadband deployment project for which the applicant is requesting loan insurance; and

70 (G) Any additional information that is relevant to the provider's eligibility to receive loan
71 insurance and the provider's ability to deploy broadband in the state, including but not limited to
72 any required authorizations or determinations by any applicable regulatory bodies.

73 (3) The board shall ensure that applicants are eligible to receive loan insurance and shall
74 select applicants who demonstrate a minimal risk of default on any debt or security instrument to
75 be insured through the program. At a minimum, the board shall consider the following criteria in
76 determining whether to approve a loan insurance application:

77 (A) The financial ability of the applicant to complete the insured project and repay the loan;

78 (B) The credit history of the provider;

79 (C) The past earnings and projected cash flow of the provider;

80 (D) The provider's past performance as a participant in any previous economic
81 development program of this state or of any other state;

82 (E) The provider's experience with broadband service deployment in the state or any other
83 state; and

84 (F) The nature and value of the collateral being offered for the loan insurance.

85 (4) The authority may not issue loan insurance to a provider if the provider, or a parent
86 company of the provider, has previously defaulted on a debt or security instrument insured by the

87 authority.

88 (5) The requirements of this subsection (c) do not apply to eligible broadband providers
89 and financial institutions which made an application to the authority for broadband loan insurance
90 or debt instrument insurance prior to the effective date of this code section for such applications.

91 (d) Public notice by applicant. –

92 (1) Upon the filing of an application for loan insurance under this subsection, the
93 broadband provider shall cause to be published as a Class II legal advertisement in compliance
94 with §59-3-1 et seq. of this code, notice of the filing of the application and that the authority may
95 approve the same unless within 10 business days after completion of publication a written
96 objection is received by the authority from a person or persons challenging that the proposed
97 broadband project does not satisfy the provisions of this subsection.

98 (2) The publication area for such notice is to be the county or counties in which any portion
99 of the proposed broadband project is to be constructed. The notice shall be in such form as the
100 authority shall direct and shall include a map of the area or areas to be served by the proposed
101 broadband project. The applicant shall also cause to be mailed by first class, on or before the first
102 day of publication of the notice, a copy of the notice to all known current providers of broadband
103 service within the area proposed to be served.

104 (3) If a challenge under this paragraph is timely received by the authority, the authority
105 shall advise the council within five business days. The council may establish procedural rules
106 governing such hearings by legislative rule, or the council may follow the Rules of Practice and
107 Procedure of the Public Service Commission. The council shall issue a decision on whether the
108 proposed project satisfies the requirements of this subsection or not within 30 days of completion
109 of such hearing. Any party participating in said hearing may appeal the council's decision within
110 30 days of the issuance of said decision to the Circuit Court of Kanawha County.

111 (4) This provision shall apply to all applicants except to those broadband providers that
112 plan on providing a downstream data rate of at least one gigabyte per second to the end user or

113 applicants that have been preliminarily determined to be eligible for a federally funded broadband
114 expansion program.

115 (5) The requirements of subsection (d) do not apply to eligible broadband providers and
116 financial institutions which made application to the authority for broadband loan insurance or debt
117 instrument insurance prior to the effective date of this code section for such applications.

118 (e) Information to be posted by the authority. – The authority shall make the following
119 information, pertaining to all loan insurance agreements, available on its website:

120 (1) The name of the insured provider;

121 (2) The location or locations of the project;

122 (3) The amount of the authority loan or financial assistance provided by the insurance
123 fund;

124 (4) The purpose of the loan or financial assistance;

125 (5) The term, rate, and interest of the loan, and

126 (6) The fixed assets which serve as security for the loan or insurance provided.

127 (f) Internal Controls and Accounting. – The authority shall keep itemized records of all
128 transactions and agreements entered into in furtherance of the program. In administering the
129 program, the authority shall adopt appropriate accounting practices and develop internal controls,
130 including but not limited to, strict compliance with the requirements of §5A-8-9 of this code.

131 (g) Quarterly reports and annual legislative audit. --

132 (1) By the 30th day of October, 2021, and on or before the 30th day of January, April, July,
133 and October of each year thereafter, the director shall prepare and submit to the Joint Committee
134 on Government and Finance, the Governor, and the West Virginia Board of Treasury Investments,
135 a quarterly report which shall include, at a minimum:

136 (A) For each insured project, the provider name; the lending financial institution; the total
137 value of the loan; the total amount of the loan that is insured pursuant to this section; the maturity
138 date of the loan; the balance of loan moneys outstanding with the authority; and the status of the

139 loan, including whether the loan is in delinquent or in default status.

140 (B) For loans not in good standing with the financial institution, the reason for the
141 delinquent or default status of the loan; the provider's plans to address the delinquency or default;
142 the availability of loan collateral that may be seized by the state; the expected outcome of the
143 delinquency or default; and the estimated loss to any state funds that will result from the
144 delinquency or default.

145 (2) Beginning in 2022, and during each year in which a loan insurance agreement entered
146 into pursuant to this section remains in effect, the authority shall prepare and submit to the Joint
147 Committee on Government and Finance, the Governor, and the board, an annual report
148 addressing the status of each project that is insured, pursuant to this section. The report shall, at
149 a minimum, provide project-specific data addressing the broadband service levels being provided
150 by the project, the geographic area to which different broadband service levels are being provided
151 by the project, and the number of households actively receiving broadband service from the
152 project.

153 (3) Beginning in 2022, and every other year thereafter so long as a loan insurance
154 agreement entered into pursuant to this section remains in effect, the Legislative Auditor shall
155 audit the procedures, accounting practices, and internal controls of the authority for compliance
156 with this section and §12-6C-11a of this code and report the findings of the audit to the Joint
157 Committee on Government and Finance.

NOTE: The purpose of this bill is to provide opportunity for the maximum drawdown of federal dollars for broadband expansion in this state by increasing the amount available for loans for broadband deployment issued by the Economic Development Authority, and to ensure that Board of Treasury Investment loan moneys made available to the Economic Development Authority are managed and spent according to appropriate fiscal and accounting standards.

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