

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 705

BY SENATORS PLYMALE, STOLLINGS, BALDWIN, WOELFEL,

UNGER, AND LINDSAY

[Introduced March 22, 2021; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §5-22A-5 of the Code of West Virginia, 1931, as amended; to amend
 2 said code by adding thereto a new article, designated §5-22B-1, §5-22B-2, §5-22B-3, §5-
 3 22B-4, §5-22B-5, §5-22B-6, and §5-22B-7; and to amend and reenact §31G-1-4 of said
 4 code, all relating to creating the Multi-Phase Procurement for Broadband Projects Act for
 5 public-private partnership broadband projects; and providing that the Design Build Board
 6 and the Broadband Enhancement Council shall administer duties of the Multi-Phase
 7 Procurement for Broadband Projects Act.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
 GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;
 BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
 COMMISSIONS, OFFICES, PROGRAMS, ETC.**

ARTICLE 22A. DESIGN-BUILD PROCUREMENT ACT.

§5-22A-5. Duties of board to approve and monitor projects.

1 (a) Upon receipt of information that an agency wants to pursue the design-build method
 2 of project delivery, the board, with the administrative support of the Secretary of the Department
 3 of Administration, shall notify the agency that failure to comply with the requirements of this article
 4 is a violation of state law. The board shall notify the Secretary of the Department of Administration
 5 of any agency knowingly proceeding without meeting the requirements of this article.

6 (b) Prior to an agency issuing an invitation for qualifications for public projects, the board
 7 ~~must~~ shall determine that the public project is appropriate as a design-build project in accordance
 8 with all of the following:

- 9 (1) The agency has the appropriate legal authority to enter into a design-build contract;
- 10 (2) The agency requires a project design and construction time line that is faster than the

11 traditional design-bid-build process would allow;

12 (3) The project requires close coordination of design and construction expertise or an
13 extreme amount of coordination;

14 (4) The agency requires early cost commitments;

15 (5) The agency provides a written plan for funding the project including, but not limited to,
16 the funding necessary to pay for design services and construction costs; and

17 (6) The agency has completed and submitted a written application for approval to the
18 board and requested a meeting with the board to present its request for approval from the board.

19 (c) Upon project approval under subsection (b) of this section, the agency shall submit to
20 the board monthly reports detailing the progress of the approved project. The reports shall
21 continue until the start of construction to ensure that the agency has complied with any
22 requirements established by the board in its approval of the project. If any requirement is not
23 satisfied, the board may withdraw its approval of the project at any time prior to the start of
24 construction. If the board withdraws its approval, the agency may not proceed with the project as
25 a design-build project until the requirements set forth in the board's approval and the requirements
26 of this article are met, as determined by the board.

27 (d) On or before January 1, of each year, the board shall file an annual report with the
28 Joint Committee on Government and Finance, and a copy of the report with the Legislative
29 Librarian, setting forth a description of the projects approved during the preceding year, including
30 copies of monthly monitoring reports submitted to the board pursuant to subsection (c) of this
31 section.

32 (e) The board together with the Broadband Enhanced Council shall administer duties of
33 the Multi-Phase Procurement for Broadband Projects Act pursuant to §5-22B-1 et seq. of this
34 code.

ARTICLE 22B. MULTI-PHASE PROCUREMENT FOR BROADBAND PROJECTS ACT.

§5-22B-1. Short Title; applicability of article.

1 This article shall be known and may be cited as the “Multi-Phase Procurement for
2 Broadband Projects Act.” The provisions of this article may be used for public-private partnership
3 broadband projects.

§5-22B-2. Definitions.

1 “Agency” means all state departments, agencies, authorities, quasi-public corporations,
2 and all political subdivisions, including cities, counties, boards of education and public service
3 districts and the individual representatives of the agency appointed to oversee or supervise the
4 project.

5 “Council” means the Broadband Enhancement Council established pursuant to chapter
6 31G of this code which determines whether a public project satisfies the requirements of this
7 article.

8 “Multi Phase Procurement” is defined as a method of construction which consists of a
9 conceptual phase and a detailed phase which is intended to provide flexibility in public-private
10 partnerships for broadband infrastructure projects.

11 “Firm” means any individual, firm, partnership, corporation, limited liability company,
12 limited liability partnership, association, joint venture, or other legal entity permitted by law to
13 practice engineering, architecture or construction contracting in the State of West Virginia.

14 “Proposal” means an offer to enter into a multiphase procurement contract, as further
15 defined in this article.

16 “Substantial completion” means the stage in the progress of the work when the work or
17 designated portion thereof is sufficiently complete in accordance with the multiphase contract so
18 the agency can occupy or utilize the work for its intended use.

19 “Board” means the Design Build Board, created by §5-22A-41 of this code.

20 “Work” means the design, construction and services required by the multiphase contract,
21 whether completed or partially completed, and includes all other labor, materials, equipment, and
22 services provided or to be provided by the firm to fulfill the firm’s obligations. The work may

23 constitute the whole or a part of the project.

§5-22B-3. Purposes.

1 (a) The purpose of this section is to provide an innovative legislative framework in the form
2 of a two-phase process which enables agencies to seek ideas, develop plans, and enter into
3 agreements authorizing firms to design, construct, improve, maintain, and/or operate broadband
4 infrastructure projects.

5 (b)The legislature finds that:

6 (1) Offsetting capital costs for private partners makes serving areas with cost prohibitive
7 topography and population density feasible;

8 (2) Flexibility in the procurement process for broadband projects will accelerate the
9 deployment of broadband infrastructure;

10 (3) Open-net broadband infrastructure produces competition between service providers,
11 reducing cost and improving service;

12 (4) Agencies may solicit proposals for qualifying projects;

13 (5) Firms may submit unsolicited proposals based on the provisions of §5-22B-6 of this
14 code which is the conceptual phase. This preliminary phase is designed to give an innovative
15 framework to agencies looking to develop broadband projects; and

16 (6) Agencies may choose based upon qualitative scoring which proposals submitted under
17 the conceptual phase qualify for further consideration and development under the provisions of
18 §5-22B-5 which is the detailed phase.

§5-22B-4. Qualifications to Submit Proposals.

1 Any firm may propose a project under the provisions of §5-22B-6 of this code.

2 An agency may request proposals from firms for projects under the provisions of §5-22B-
3 6 of this code. All proposals submitted to an agency under these provisions shall be reviewed by
4 the design-build board to make a determination upon whether the proposal qualifies as a
5 broadband project and conforms to the needs of the conceptual phase proposal.

§5-22B-5. Duties of Design Build Board to approve and monitor projects.

1 (a) Upon receipt of information that an agency wants to pursue the multiphase
2 procurement method of project delivery, the design build board, with the administrative support of
3 the Secretary of the Department of Administration, shall notify the agency that failure to comply
4 with the requirements of this article is a violation of state law. The council shall notify the Secretary
5 of the Department of Administration of any agency knowingly proceeding without meeting the
6 requirements of this article.

7 (b) Prior to an agency soliciting projects, the board must determine that the project is
8 appropriate as a multiphase procurement project in accordance with the requirements of the
9 conceptual phase and all of the following:

10 (1) The agency may enter into a multiphase procurement project;

11 (2) The agency provides a written plan for funding the project; and

12 (3) The agency has completed and submitted a written application for approval to the
13 board and requested a meeting with the board to present its request for approval from the board.

14 (c) Upon the proposal moving to the detailed phase, the agency shall submit monthly
15 reports detailing the progress of the approved project to the board. The reports shall continue until
16 the start of construction to ensure that the agency has complied with any requirements
17 established by the board in its approval of the project. If any requirement is not satisfied, the board
18 may withdraw its approval of the project at any time prior to the start of construction. If the board
19 withdraws its approval, the agency may not proceed with the project as a multiphase procurement
20 project until the requirements set forth in the board's approval and the requirements of the detailed
21 phase are met, as determined by the board.

§5-22B-6. Conceptual Phase.

1 (a) An agency may make a public announcement describing what they would like to see
2 from a conceptual proposal submitted by a firm in the multiphase procurement process.

3 (b) Proposals for qualifying projects shall be submitted containing these provisions but

4 exceptions may be made by the agency charged with accepting or declining the proposal:

5 (1) A description of the project, including the conceptual design and a conceptual plan for
6 service in sufficient detail to explain the intent of the project;

7 (2) A description of how the conceptual design will result in a broadband network capable
8 of delivering affordable broadband at the lowest possible cost with the potential to provide
9 upgrades in the future to meet future demand;

10 (3) A topographic map of appropriate scale indicating the location of the qualifying project;

11 (4) A listing of major responsibilities divided between the firm and the agency;

12 (5) A preliminary time-schedule for the start and end date of the qualifying project;

13 (6) A detail of the firm's Customer Relationship Management systems which demonstrate
14 the firm's ability to deliver quality customer service;

15 (7) Typical price plans for service demonstrating speeds and associated rates;

16 Provide the total number of customers the firm currently provides Internet service. If
17 possible, please provide total residential, business and government customers;

18 (8) The organizational/leadership structure of the firm;

19 (9) Project manager's experience and management approach;

20 (10) A list of each partner and subcontractor utilized in the project;

21 (11) The role of each partner and subcontractor in the project;

22 (12) West Virginia licensure of the firm, each partner, and each subcontractor;

23 (13) Staffing plans and the qualifications of the workforce for the project;

24 (14) Experience of the firm in similar projects;

25 (15) A list and contact information of major clients for the past three years;

26 (16) Explanation of financial capacity and capability to undertake this project including
27 data;

28 (17) Up-to-date audited financial statements, bank statements, or SEC filings;

29 (18) Any local, state, or federal resources identified for use in the project;

30 (19) Estimated costs to develop this conceptual proposal into a detailed broadband
31 network design in the event of the firm's proposal selection to the detailed phase;

32 (20) Estimated time frame to complete the detailed design and associated phased
33 deployment project plan; and

34 (21) Clearly identify any assumptions regarding ownership and operation of the proposed
35 broadband network. Include any assumptions regarding short or long-term maintenance.

36 (c) Upon approval by the agency of a submitted proposal, written notice shall be given to
37 the council.

38 (d) Upon approval by the agency, the proposal must also be sent to the design-build board
39 to be approved or denied under these provisions. If the proposal is not acted upon within 60 days,
40 the proposal is automatically accepted and moved to the detailed phase.

§5-22B-7. Detailed Phase.

1 (a) This phase shall work to provide details and a working plan for the proposed broadband
2 project. The agency that approved the initial conceptual proposal shall work with the firm to meet
3 the criteria under these provisions.

4 (b) Upon acceptance of a proposal to this phase, the agency shall submit monthly reports
5 until the completion of the project to the design-build board and may have this approval revoked
6 if the design-build board has concerns that are not remedied in a timely manner under these
7 provisions.

8 (c) All proposals shall include:

9 (1) Detailed broadband network design to expand broadband access and capacity;

10 (2) Description of the plan to provide cost-effective services that are reasonably priced
11 given the target market;

12 (3) Detailed Deployment Plan which includes:

13 (A) Comprehensive Scope of Work;

14 (B) Deliverables;

15 (C) Financial Plan for construction cost estimates and necessary funding other than
16 private investment which contains enough detail to allow analysis of the proposal’s feasibility; and

17 (D) Any other factors deemed necessary by the design-build board.

18 (d) The agency and the firm shall meet with the county to review the design and estimated
19 costs to determine available funding and set a phased approach to :

20 (1) Develop final design and engineering drawings to support the deployment;

21 (2) Prepare a phased deployment project plan in collaboration with the locality; and

22 (3) Plan to work with the agency to pursue state and federal funding opportunities to offset
23 the costs of deployment.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION
POLICIES.

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§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;

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.

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

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

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

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

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

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

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

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

36 (8) Perform any and all other activities in furtherance of its purpose.

37 (c) The council shall exercise its powers and authority to advise and make
38 recommendations to the Legislature on bringing broadband service to unserved and underserved

39 areas, as well as to propose statutory changes that may enhance and expand broadband in the
40 state.

41 (d) The council shall report to the Joint Committee on Government and Finance on or
42 before January 1 of each year. The report shall include the action that was taken by the council
43 during the previous year in carrying out the provisions of this article. The council shall also make
44 any other reports as may be required by the Legislature or the Governor.

45 (e) The council together with the Design Build Board shall administer duties of the Multi
46 Phase Procurement for Broadband Projects Act pursuant to §5-22B-1 et seq. of this code.

NOTE: The purpose of this bill is to create the Multi Phase Procurement for Broadband
Projects Act for public-private partnership broadband projects.

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