

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 231

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PLYMALE, JEFFRIES, STOLLINGS, AND WOELFEL

[Introduced January 12, 2022; referred
to the Committee on Economic Development]

1 A BILL to amend and reenact §31G-4-1 and §31G-4-4 of the Code of West Virginia, 1931, as
 2 amended, all relating to broadband connectivity; defining terms; requiring engineering
 3 reports on available telecommunication cable space; providing for shared costs for the
 4 report; requiring notice from pole owner or manager to telecommunication carriers of
 5 available space; and requiring notice to pole owner or manager of intent to use any
 6 available space.

Be it enacted by the Legislature of West Virginia:

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 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 said applicable codes, the Code of West Virginia, or the
 6 West Virginia Code of State Rules, variances for the installation and maintenance of broadband
 7 service infrastructure on utility poles shall be permitted if these are agreed upon between
 8 infrastructure owners.

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

12 ~~(3)~~ "Attachment Application" means the application made by an Attacher to a Pole Owner
 13 for attachment of equipment, antenna, line or facility of any kind to a utility pole. It shall include:

14 (A) Proof of insurance; or

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

16 "Broadband Service" means the same as that term is defined in §31G-1-2 of this code.

17 "Commission" means the Public Service Commission as set forth in §24-1-1 et seq. of this

18 code.

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

25 "Telecommunications Carrier" means either:

26 (A) A telecommunication carrier as determined by the Public Service Commission, or

27 (B) A telecommunication carrier that meets the definition of such with respect to the
28 Federal Communication Commission, as set forth in 47 U.S.C. § 153.

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

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

35 "Utility Facility" means the same as that term is defined in §17-2A-17a of this code.

36 "Utility Poles" of "Poles" means a pole that is used to support electrical, cable television,
37 telephone, and broadband service.

38 "Wireless Access" means access to and use of a right-of-way for the purpose of
39 constructing, installing, maintaining, using, or operating telecommunications facilities for wireless
40 communication purposes.

§31G-4-4. Public Service Commission jurisdiction; rulemaking; enforcement.

1 (a) The Public Service Commission shall possess and exercise regulatory jurisdiction over
2 the provisions of this article. The commission shall administer and adjudicate disputes relating to

3 the issues and procedures provided for under this article.

4 (b) The commission shall adopt the rates, terms, and conditions of access to and use of
5 poles, ducts, conduits, and rights-of-way as provided in 47 U.S.C. § 224 and 47 C.F.R. § 1.1401
6 – 1.1415, inclusive, of the dispute resolution process incorporated by reference in those
7 regulations and any subsequent modifications or additions to the provisions of the United States
8 Code or Code of Federal Regulations provisions referenced herein.

9 (c) The commission shall certify to the Federal Communications Commission that this
10 state, as evidenced by the enactment of this article, hereby exercises jurisdiction over the
11 regulation of pole attachments. The certification shall include notice that the State of West Virginia
12 hereby:

13 (1) Regulates the rates, terms, and conditions related to pole attachments; and

14 (2) In so regulating such rates, terms, and conditions, the state has the authority to
15 consider and does consider the interests of the subscribers of the services offered via such
16 attachments, as well as the interests of the consumers of the services.

17 (d) (1) Notwithstanding subsection (b), the commission shall promulgate rules to address
18 abandoned cable, conductor, and related facilities attached to utility poles. The rules shall include
19 provisions that:

20 (A) Provide for the pole owner to fully recover from the owner of the attachment the costs
21 incurred by the pole owner for the removal and disposal of abandoned cable, conductors, and
22 related facilities;

23 (B) Address situations where the pole owner is unable to receive full recovery of its
24 removal and disposal costs from the owner of the attachment by instead receiving recovery of its
25 net unrecovered costs from its jurisdictional customers, including other Attachers, in such manner
26 as the commission determines is just and reasonable; and

27 (C) Allow the pole owner to book or defer these net costs on its accounting books and
28 request recovery to the commission outside of a base rate case proceeding through a surcharge

29 or other rate recovery mechanism.

30 (D) Require within 30 days a pole owner or manager to make known to the Public Service
31 Commission when a utility pole has been approved for telecommunication fibers to be added and
32 what the additional available capacity is for that pole. Telecommunication carriers will be notified
33 by the commission within 15 days of the available space and the telecommunication carrier who
34 intends to use the pole will share in the cost of the engineering work required. The
35 telecommunication carrier shall be given 30 days to notify the pole owner or manager they will
36 use the pole or poles for connectivity.

37 (2) Any pole owner, after making reasonable efforts to require the attachment owner to
38 remove abandoned facilities, that proceeds to remove what the pole owner reasonably believes
39 is abandoned cable, conductor, and related facilities, shall be released and held harmless from
40 liability from claims or any related losses claimed by the Attacher or others for the pole owner's
41 removal work, including any loss of property value, potential business value, salvage value, or
42 any other value of such cable, conductor, and related facilities.

43 (e) Notwithstanding subsection (b), the commission shall promulgate rules to govern the
44 timely transfer of facilities from an old pole to a new pole and the removal of utility poles that have
45 had electric facilities moved to new poles but continue to have other facilities attached in the
46 telecommunications space on the old existing poles. Should the attached facilities not be
47 transferred in a timely manner from the old pole to the new pole by the owner of the attachments,
48 as determined by the commission, the rules shall address this matter and include the right and
49 mechanism of the pole owner itself to transfer the facilities to the new pole, to remove the old
50 pole, and to recover its costs fully and timely from the owner of the facilities transferred. Any pole
51 owner who transfers facilities from an old pole to a new pole, after reasonable due diligence, shall
52 be released and held harmless from liability for its transfer work, except for acts of negligence or
53 willful misconduct.

NOTE: The purpose of this bill is regarding broadband connectivity; to define terms; to require engineering reports on available telecommunication cable space; to provide for shared costs for the report; to require notice from pole owner or manager to telecommunication carriers of available space; and to require notice to pole owner or manager of intent to use any available space.

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