WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3397

By Delegate Linville

[Introduced February 13, 2023; Referred to the Committee on Technology and Infrastructure then the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended; by adding thereto a new section designated as §31G-6-3, all relating to broadband and political subdivisions generally; pre-empting all restrictions on any political subdivision regarding the formation or establishment of any entity which would seek to provide or assist in providing broadband service; permitting political subdivisions may form subordinate entities which can provide or assist in providing broadband service; providing that a grantee who, by action or inaction, causes Federal funds to be returned shall hold the state harmless, and shall make commensurate reimbursement to the state; providing that a political subdivision of this state, which has received infrastructure grant money to fund a project, shall reimburse the infrastructure fund if the project is thereafter sold, granted, convey, or otherwise alienated

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. PRE-EMPTION OF CONFLICTING LOCAL ORDINANCES AND PRIVATE RESTRICTIONS

§31G-6-3. Pre-emption in favor of broadband service for political subdivisions.

(a) Notwithstanding any other provision of this code or the West Virginia Code of State Rules to the contrary, any restriction on any political subdivision regarding the formation or establishment of any entity which would seek to provide or assist in providing broadband service, is hereby pre-empted to the extent necessary in favor of the broadband installation or deployment.

(b) Political subdivisions may form subordinate entities which can provide or assist in providing broadband service; this further includes:

(1) Providing assistance, including funding assistance to develop technology infrastructure, and related technology through a grant program;

(2) Providing technical assistance, including consulting services; and

(3) Entering into contractual or joint venture agreements with one or more persons and public bodies pertaining to the development of technology and technology infrastructure: *Provided,* That these agreements may not be considered a debt of the state or a pledge of the credit of the state.

(c) Any political subdivision acting under authority of the provisions of this section, that, by its action or inaction, causes federal funds to be returned, repaid, or otherwise clawed back from the State, shall hold the state harmless, and shall make commensurate reimbursement to the state in accordance with the provisions of this section.

(d) When a political subdivision of this state, acting under authority of the provisions of this section, including any economic development corporation, has received infrastructure grant money to fund a project, and the project is thereafter sold, granted, conveyed, or otherwise alienated, or when a party is granted an indefeasible right to the use of any portion of that project, then, the project sponsor shall reimburse the granting authority the amount of the infrastructure grant, plus applicable interest at the market rate. In the alternative, upon application, the State Auditor may approve repayment of the grant by converting the grant into a loan from the granting entity. The proceeds from the repayment of any grant or grant which has been converted to a loan shall retain their character as proceeds available for grants. The amount of repayment may be reduced by the applicable share of accumulated depreciation of the project or the applicable share of accumulated accelerated depreciation of the project as determined by the State Auditor. The State Auditor shall review any agreement between the project sponsor and the person or entity purchasing the project to determine whether the agreement was structured so that no proceeds would become available for the repayment of the grant funds. If the State Auditor finds that the transaction was structured by the parties to intentionally preclude the availability of proceeds for the repayment of the infrastructure grant funds, then the State Auditor may require the project sponsor to repay the full amount of any infrastructure grant.

NOTE: The purpose of this bill is to pre-empt all restrictions on any political subdivision regarding the formation or establishment of any entity which would seek to provide or assist in providing broadband service.

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