

# **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]

1 A BILL to amend the Code of West Virginia, 1931, as amended; by adding thereto a new section  
 2 designated as §31G-6-3, all relating to broadband and political subdivisions generally; pre-  
 3 empting all restrictions on any political subdivision regarding the formation or  
 4 establishment of any entity which would seek to provide or assist in providing broadband  
 5 service; permitting political subdivisions may form subordinate entities which can provide  
 6 or assist in providing broadband service; providing that a grantee who, by action or  
 7 inaction, causes Federal funds to be returned shall hold the state harmless, and shall  
 8 make commensurate reimbursement to the state; providing that a political subdivision of  
 9 this state, which has received infrastructure grant money to fund a project, shall reimburse  
 10 the infrastructure fund if the project is thereafter sold, granted, convey, or otherwise  
 11 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.**

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

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

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

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

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

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

18           (d) When a political subdivision of this state, acting under authority of the provisions of this  
19 section, including any economic development corporation, has received infrastructure grant  
20 money to fund a project, and the project is thereafter sold, granted, conveyed, or otherwise  
21 alienated, or when a party is granted an indefeasible right to the use of any portion of that project,  
22 then, the project sponsor shall reimburse the granting authority the amount of the infrastructure  
23 grant, plus applicable interest at the market rate. In the alternative, upon application, the State  
24 Auditor may approve repayment of the grant by converting the grant into a loan from the granting  
25 entity. The proceeds from the repayment of any grant or grant which has been converted to a loan  
26 shall retain their character as proceeds available for grants. The amount of repayment may be  
27 reduced by the applicable share of accumulated depreciation of the project or the applicable share  
28 of accumulated accelerated depreciation of the project as determined by the State Auditor. The  
29 State Auditor shall review any agreement between the project sponsor and the person or entity  
30 purchasing the project to determine whether the agreement was structured so that no proceeds  
31 would become available for the repayment of the grant funds. If the State Auditor finds that the  
32 transaction was structured by the parties to intentionally preclude the availability of proceeds for  
33 the repayment of the infrastructure grant funds, then the State Auditor may require the project  
34 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.