

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3412**

By Delegate Linville

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

1 A BILL to amend and reenact §31G-1A-7 of the Code of the West Virginia, 1931, as amended; and  
 2 to amend said code by adding thereto a new article, designated §31G-7-1, §31G-7-2  
 3 §31G-7-3 and §31G-7-4, all relating to certain provisions relating to broadband; adding  
 4 certain provisions to the administration of the Broadband Development Fund, including  
 5 regulating the disposal of grant funded assets; relating to defining eligible  
 6 telecommunications carriers; defining the status of such; and providing for penalties where  
 7 misrepresentation of eligible telecommunications carrier status occurs.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 1A. OFFICE OF BROADBAND.**

**§31G-1A-7. Broadband Development Fund.**

1 (a) The Broadband Development Fund is hereby created in the State Treasury. The fund  
 2 shall be administered by the Secretary of the Department of Economic Development and shall  
 3 consist of all moneys made available for the purposes of this article from any source, including, but  
 4 not limited to, all gifts, grants, bequests or transfers from any source, any moneys that may be  
 5 appropriated to the fund by the Legislature, and all interest or other return earned from investment  
 6 of the fund. Expenditures from the fund shall be for the purposes set forth in subsection (b) of this  
 7 section and are not authorized from collections but are to be made only in accordance with  
 8 appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this  
 9 code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq.* of this code: *Provided,*  
 10 That for the fiscal year ending June 30, 2022, expenditures are authorized from collections rather  
 11 than pursuant to an explicit appropriation by the Legislature. Any balance, including accrued  
 12 interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the  
 13 General Revenue Fund but shall remain in the fund and be expended as provided by this section.

14 (b) Monies of the Broadband Development Fund may only be expended for the following  
 15 purposes:

16 (1) Expenses for the administration of the Office of Broadband;

17 (2) Line extension advancement and development projects, including expansion of  
18 existing fiber and cable networks;

19 (3) Major broadband project strategies, including new networks or major expansions of  
20 existing networks;

21 (4) GigReady incentive projects, including a state incentive for ISP and local governments  
22 and organizations to pool some of their federal American Rescue Plan Act allocations or other  
23 local funding; and

24 And

25 (5) Wireless Internet Networks, including expansions or upgrades of existing fixed wireless  
26 networks.

27 (c) Except funds expended for the administration of the Office of Broadband, monies of the  
28 Broadband Development Fund may only be expended for projects authorized by subsection (b) of  
29 this section that have been certified to the Joint Committee on Government and Finance by the  
30 Director of the Office of Broadband or the Secretary of the Department of Economic Development  
31 prior to making the expenditures.

32 (d) The Legislature of the State of West Virginia finds and declares that competition in any  
33 market, more especially in the delivery of broadband internet services is eminently desirable. The  
34 Legislature further finds that a competitive market, rather than a rate-regulated monopoly or  
35 duopoly will promote and perpetuate improvement in customer service, technical service, terms,  
36 conditions, and pricing. Accordingly, all agencies of state government are hereby directed to first  
37 support expansion and enhancement of broadband internet services to unserved homes and  
38 businesses and second to support expansion and enhancement of competition.

39 (e) Telecommunications facilities purchased, installed, or funded by any grant program  
40 offered by this state shall be subject to:

41 (1) The provisions of 2 CFR 200 governing equipment and capital assets and any other  
42 applicable federal law, rule, or regulation; and

43 (2) Any state law, rule, or regulation governing the sale of government or grant-funded  
44 assets not in conflict with applicable federal law, rule, or regulation.

**ARTICLE 7. ELIGIBLE TELECOMMUNICATIONS CARRIERS.**

**§31G-7-1. Legislative Findings.**

1 The Legislature of the State of West Virginia finds and declares that:

2 (1) The certification of Eligible Telecommunications Carriers is a responsibility primarily  
3 delegated to the states.

4 (2) The proper utilization and oversight of disbursement of funds from the Universal  
5 Service Fund established by the federal government and managed by the Federal  
6 Communications Commission is in the public interest, convenience, and necessity.

7 (3) Failure to perform material obligations imposed upon an Eligible Telecommunications  
8 Carrier in connection with disbursement of funding from the Universal Service Fund is detrimental  
9 to the public interest, convenience, and necessity.

10 (4) Proper oversight and certification of compliance are necessary and proper for the  
11 continuing issuance of Eligible Telecommunications Status and are in the public interest.

**§31G-7-2. Definition.**

1 "Eligible Telecommunications Carrier" means the status for a telecommunications carrier  
2 to be eligible for Universal Service Fund support pursuant to 47 CFR § 54.201.

**§31G-7-3. Eligible Telecommunications Carriers Status.**

1 Notwithstanding any other provision of this code to the contrary, eligible  
2 Telecommunications Carriers Status shall be issued by the Public Service Commission. Issuance  
3 thereof shall not be unreasonably withheld, considering the recommendation of the Attorney  
4 General, and only if the applicant for Eligible Telecommunications Carrier status is in compliance  
5 with the following:

6 (a) The Attorney General shall check the Universal Service Administrative Company HUB  
7 for any commitments, and/or obligations of Eligible Telecommunications Carriers in the state of

8 West Virginia.

9 (b) The Attorney General shall require certification of completion thereof and ongoing  
10 compliance therewith, under penalty of perjury prior to making a favorable recommendation to the  
11 Public Service Commission of the application to be an Eligible Telecommunications Carrier. The  
12 Attorney General shall transmit all such recommendations which shall not be unreasonably  
13 withheld to the Public Service Commission within 15 days of an application, after which time a  
14 favorable recommendation will be deemed to be received.

**§31G-7-4. Misrepresentation in Certification for Eligible Telecommunications Carrier**  
**Status, \_\_\_\_\_ penalty.**

1 (a) If the Attorney General finds evidence that an Eligible Telecommunications Carrier has  
2 materially misrepresented compliance in their certification referenced in §31G-7-3 of this code,  
3 notification of such material misrepresentation shall be transmitted to the West Virginia Public  
4 Service Commission. The Public Service Commission shall conduct a hearing on the merits  
5 thereof and if after a hearing the Eligible Telecommunications Carrier is found to be materially non-  
6 compliant, the Public Service Commission shall assess a fine equal to the amount of any  
7 subsidization received for which the commitment, assertion or obligation was established. Any  
8 such fine shall be limited to such proportional amount as that which was awarded to the Eligible  
9 Telecommunications Carrier for a particular area or act to be performed and shall not be construed  
10 to include all amounts awarded statewide. The Public Service Commission or Attorney General  
11 shall seek enforcement of any fine and any court of competent jurisdiction in this state shall order  
12 payment and compliance with the order of the Public Service Commission associated herewith.  
13 Funds from any fine shall be deposited into the Broadband Development Fund, less any  
14 reasonable expenses and costs of the Public Service Commission in connection therewith.

15 (b) When such determination has been made, the Attorney General, and any other  
16 Department, office, bureau, or agency and any political subdivision of this state, shall cause any  
17 Eligible Telecommunications Carrier and its subsidiaries found to be materially non-compliant

18 under subsection (a) of this section or failing to make the certification required thereunder, to no  
19 longer be certified as an Eligible Telecommunications Carrier and to be ineligible for any state  
20 grants, awards, procurement, leasing, licensing other than a business license issued by the  
21 Secretary of State or any business license by a political subdivision of this state, easement, right-  
22 of-way access, or purchase until such material misrepresentation is cured: *Provided*, That nothing  
23 in this section shall be construed or applied retro actively to prevent the installation, repair,  
24 maintenance or other required work for any carrier of last resort required to provide telephone  
25 service in this state: *Provided however*, That nothing in this section shall be construed to prevent  
26 an internet service provider from repairing or replacing telecommunications facilities in rights-of-  
27 way or easements that internet service provider currently has facilities situated within.

NOTE: The purpose of this bill is to modify certain provisions relating to broadband. The bill adds certain provisions to the administration of the Broadband Development Fund, including regulating the disposal of grant funded assets. The bill relates to defining eligible telecommunications carriers. The bill defines the status of such. Finally, the bill provides for penalties where misrepresentation of eligible telecommunications carrier status occurs.

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