

Select Committee C – Infrastructure

West Virginia Legislature

Interim Report to the Joint Committee on Government and Finance
January 9, 2007

Senate Members

Senator John Unger, Chair
Senator Billy Wayne Bailey
Senator Evan Jenkins
Senator Roman Prezioso
Senator Karen Facemyer

House Members

Delegate Richard Browning, Chair
Delegate Brent Boggs
Delegate Samuel Cann
Delegate Kevin Craig
Delegate Lidella Hrutkay
Delegate Steve Kominar
Delegate Jim Morgan
Delegate Randy Swartzmiller
Delegate Harry Keith White
Delegate Tom Azinger
Delegate Ron Walters
Delegate L. Gil White

Select Committee C – Infrastructure was appointed following the 2006 Regular Session of the 77th Legislature and was assigned the interim studies on the following topics:

- (1) **HCR 57** - Requesting the Joint Committee on Government and Finance in conjunction with the Department of Environmental Protection to study the feasibility of a state dam safety rehabilitation fund.
- (2) **HCR 102** - Interim study of the availability and connectivity of broadband services and networks in this state.
- (3) **SCR 94** - Requesting Joint Committee on Government and Finance study technology infrastructure development.

During the 2006-2007 Legislative Interim period, Select Committee C – Infrastructure met and considered testimony from the following state agencies and organizations regarding issues related to the assigned interim topics listed above.

West Virginia Department of Environmental Protection – Secretary Stephanie Timmermyer discussed deficient dams in West Virginia and proposed a revolving loan fund that provides low-interest loans as a method of funding the repair of dams classified as deficient.

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West Virginia Department of Military Affairs and Public Safety – Director of Homeland Security and Emergency Management James Gianato presented an inventory of existing technology infrastructure and electronic government services utilized by the State for matters of homeland security and emergency response; the availability and potential use of GIS or global tracking systems on cell phones and other mobile wireless technology for matters of homeland security and emergency response.

West Virginia Public Service Commission – Director of the Consumer Advocate Division Billy Jack Gregg presented an inventory of state areas where high-speed broadband services and mobile technology infrastructure are provided by the regulated private sector.

West Virginia Office of Technology – Chief Technology Officer Kyle Schafer presented an inventory of existing technology infrastructure and electronic government services utilized by the State with regard to security, interoperability (including cell phone interoperability) and related standards employed by those entities; inventory and identification of areas in the state where broadband services and other mobile technology infrastructure are available for use by the State.

The Alliance of West Virginia Champion Communities, a non-profit corporation – Executive Director Marcel Fortin discussed their programs and efforts to expand access to broadband Internet technology in rural and underdeveloped areas in West Virginia.

Mission West Virginia, Inc., a non-profit corporation – Associate Director and Technology Officer B. David Rogers presented an overview of Mission West Virginia's e-IMPACT technology programs, including programs to provide Community Technology Centers and programs providing computers in underserved communities.

Tower Access Assistance Fund Review Committee – Chairman Dannie Walker presented an overview of activities and progress of Committee.

Community Connect Foundation, a non-profit corporation – Chairman Chris Marr presented an overview of the foundation's mission and programs aimed at expanding access to broadband Internet technology in rural and underdeveloped areas in West Virginia.

Community Health Network – Chief Executive Officer David Campbell and Chief Information Officer Jack Shaffer discussed the importance of rural broadband access for telemedicine applications.

ConnectKentucky, a non-profit corporation – General Counsel Eric Mills discussed an overview of ConnectKentucky's role in facilitating the expansion of broadband services throughout the state of Kentucky, including the utilization of private-public partnerships.

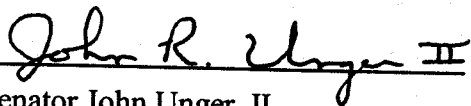
All handouts and information contained in the minutes for all of the meetings are on file.

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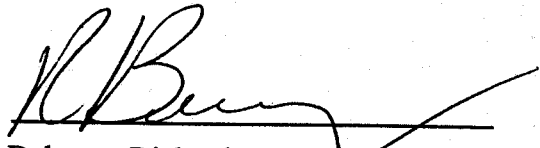
The Committee recommends to the Joint Commission on Government and Finance the following legislation adopted by Select Committee C - Infrastructure, and appended to this report:

- (1) Creation of the Dam Safety Rehabilitation Loan Fund
- (2) Establishment of the Connectivity Advisory Commission

Respectfully submitted,



Senator John Unger, II
Co-Chairman



Delegate Richard Browning
Co-Chairman

1 H. B./S. B.

2
3 (By)

4 [Introduced ; referred to the
5 Committee on .]

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10 A BILL to amend and reenact §22-14-3 of the code of West
11 Virginia, 1931, as amended; and to amend said code by adding
12 thereto a new section, designated §22-14-19, all relating to
13 dam control; definitions; defining "deficient dam";
14 establishing a revolving loan fund for loans to finance the
15 engineering, design, improvement, repair, breeching or
16 removal necessary to correct or remove deficient dams in
17 this state; providing for promulgation of rules.

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

19 That §22-14-3 of the code of West Virginia, 1931, as
20 amended, be amended and reenacted; and that said code be amended
21 by adding thereto a new section, designated §22-14-19, all to
22 read as follows:

23 **ARTICLE 14. DAM CONTROL ACT.**

24 **§22-14-3. Definition of terms used in article.**

25 As used in this article, unless used in a context that

1 clearly requires a different meaning, the term:

2 (a) "Alterations" or "repairs" means only those changes in
3 the structure or integrity of a dam which may affect its safety,
4 which determination shall be made by the secretary.

5 (b) "Application for a certificate of approval" means the
6 request in writing by a person to the secretary requesting that
7 person be issued a certificate of approval.

8 (c) "Appurtenant works" means any structure or facility
9 which is an adjunct of, or connected, appended or annexed to a
10 dam, including, but not limited to, spillways, a reservoir and
11 its rim, low level outlet works or water conduits such as
12 tunnels, pipelines and penstocks either through the dam or its
13 abutments.

14 (d) "Certificate of approval" means the approval in writing
15 issued by the secretary to a person who has applied to the
16 secretary for a certificate of approval which authorizes the
17 person to place, construct, enlarge, alter, repair or remove a
18 dam and specifies the conditions or limitations under which the
19 work is to be performed by that person.

20 (e) "Dam" means an artificial barrier or obstruction,
21 including any works appurtenant to it and any reservoir created
22 by it, which is or will be placed, constructed, enlarged, altered
23 or repaired so that it does or will impound or divert water and:
24 (1) Is or will be twenty-five feet or more in height from the
25 natural bed of the stream or watercourse measured at the

1 downstream toe of the barrier and which does or can impound
2 fifteen acre-feet or more of water; or (2) is or will be six feet
3 or more in height from the natural bed of the stream or
4 watercourse measured at the downstream toe of the barrier and
5 which does or can impound fifty acre-feet or more of water:
6 *Provided*, That the term "dam" does not include: (A) Any dam
7 owned by the federal government; (B) any dam for which the
8 operation and maintenance thereof is the responsibility of the
9 federal government; (C) farm ponds constructed and used primarily
10 for agricultural purposes, including, but not limited to,
11 livestock watering, irrigation, retention of animal wastes and
12 fish culture, and which have no potential to cause loss of human
13 life in the event of embankment failure; or (D) roadfill or other
14 transportation structures which do not or will not impound water
15 under normal conditions and which have a designed culvert or
16 similar conveyance or such capacity as would be used under a
17 state designed highway at the same location: *Provided, however*,
18 That the secretary may apply the provisions of section ten of
19 this article for roadfill or other transportation structures that
20 become a hazard to human life or property through the frequent or
21 continuous impoundment of water.

22 (f) "Deficient dam" means a non-coal related dam that
23 exhibits one or more design, maintenance, or operational problems
24 that may adversely affect the performance of the dam during a
25 major storm or other inclement weather, or over a period of time,

1 resulting in a potential for loss of life or property or
2 otherwise fails to meet the requirements of this article.

3 ~~(f)~~(g) "Department" means the department of environmental
4 protection.

5 ~~(g)~~(h) "Enlargement" means any change in or addition to an
6 existing dam which: (1) Raises the height of the dam; (2) raises
7 or may raise the water storage elevation of the water impounded
8 by the dam; (3) increases or may increase the amount of water
9 impounded by the dam; or (4) increases or may increase the
10 watershed area from which water is impounded by the dam.

11 ~~(h)~~(i) "Person" means any public or private corporation,
12 institution, association, society, firm, organization or company
13 organized or existing under the laws of this or any other state
14 or country; the state of West Virginia; any state governmental
15 agency; any political subdivision of the state or of its counties
16 or municipalities; sanitary district; public service district;
17 drainage district; conservation district; watershed improvement
18 district; partnership; trust; estate; person or individual; group
19 of persons or individuals acting individually or as a group; or
20 any other legal entity whatever. The term "person", when used in
21 this article, includes and refers to any authorized agent, lessee
22 or trustee of any of the foregoing or receiver or trustee
23 appointed by any court for any of the foregoing.

24 ~~(i)~~(j) "Reservoir" means any basin which contains or will
25 contain impounded water.

1 ~~(j)~~(k) "Secretary" means the secretary of the department of
2 environmental protection.

3 ~~(k)~~(l) "Natural resources conservation service" means the
4 natural resource conservation service of the United States
5 department of agriculture or any successor or predecessor agency,
6 including the soil conservation service.

7 ~~(l)~~(m) "Water" means any liquid, including any solids or
8 other matter which may be contained therein, which is or may be
9 impounded by a dam.

10 ~~(m)~~(n) "Water storage elevation" means the maximum elevation
11 that water can reach behind a dam without encroaching on the
12 freeboard approved for the dam under flood conditions.

13 **§22-14-19. Dam Safety Rehabilitation Revolving Fund established;**
14 **disbursement of fund moneys.**

15 (a) There is hereby created in the state treasury a
16 special revenue fund known as the "Dam Safety Rehabilitation
17 Revolving Fund". The fund shall be comprised of moneys allocated
18 to the state by the federal government expressly for the purposes
19 of establishing and maintaining a state dam safety rehabilitation
20 revolving fund, all receipts from loans made from the fund, any
21 moneys appropriated by the Legislature, all income from the
22 investment of moneys held in the fund, and all other moneys
23 designated for deposit to the fund from any source, public or
24 private. The fund shall operate as a special fund whereby all
25 deposits and payments thereto do not expire to the general

1 revenue fund, but shall remain in the account and be available
2 for expenditure in succeeding fiscal years.

3 (b) Moneys in the fund, to the extent that moneys are
4 available, shall be used solely to make loans to persons who own
5 any interest in a deficient dam to finance the engineering,
6 design, alteration, improvement, repair, breaching or removal of
7 the deficient dam necessary to correct or remove any deficiencies
8 and such other activities as authorized by any federal grant
9 received or any legislative appropriation: *Provided*, That moneys
10 in the fund may be utilized to defray those costs incurred by the
11 department in administering the provisions of this subsection.

12 (c) The secretary shall promulgate rules in accordance
13 with the provisions of chapter twenty-nine-a of this code, to
14 govern the disbursement of moneys from the fund, establish a
15 state deficient dams rehabilitation assistance program to direct
16 the distribution of loans from the fund, establish criteria for
17 eligibility to receive loans from the fund and establish the
18 terms and conditions, including interest rates and repayment
19 terms, of such loans.

20 (d) The Secretary may employ qualified officers, agents,
21 advisors and consultants and other persons as necessary to carry
22 out the administration and management of the fund.

23
24 NOTE: The purpose of this bill is to establish a
25 revolving loan fund to finance the correction or removal of
26 deficient dams in this state.

Strike-throughs indicate language that would be stricken
from the present law, and underscoring indicates new language

that would be added.

[§22-14-19] is new; therefore, strike-throughs and underscoring have been omitted.

1 H. B. / S. B.

2
3 (By)

4 [Introduced ; referred to the
5 Committee on .]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §5A-6A-1, §5A-6A-2,
12 §5A-6A-3, §5A-6A-4, §5A-6A-5 and §5A-6A-6, all relating to
13 the establishment of the Connectivity Advisory Commission;
14 providing definitions; establishing qualifications for
15 membership; establishing terms of office; setting forth
16 powers and duties; creating a special fund known as the
17 "Broadband Connectivity Fund"; confidentiality of
18 proprietary information; and continuing the commission.

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

20 That of the Code of West Virginia, 1931, as amended, be
21 amended by adding thereto a new article, designated §5A-6A-1,
22 §5A-6A-2, §5A-6A-3, §5A-6A-4, §5A-6A-5 and §5A-6A-6, to read as
23 follows:

24 **§5A-6A-1. Definitions.**

25 As used in this article, unless the context clearly requires
26 a different meaning:

1 (1) "Broadband" means a telecommunication in which a wide
2 band of frequencies is available to transmit information or data
3 at speeds of at least 200,000 bits per second both directions, or
4 such higher speeds as determined by the Federal Communications
5 Commission;

6 (2) "Broadband service provider" or "broadband provider"
7 means a person or entity that provides broadband services in this
8 state.

9 (3) "Commission" means the Connectivity Advisory Commission
10 established pursuant to this article.

11 **§5A-6A-2. Connectivity Advisory Commission; composition of**
12 **commission; qualifications and terms of office; designating**
13 **chairperson; meetings and quorum; compensation and travel**
14 **expenses.**

15 (a) There is hereby created the "Connectivity Advisory
16 Commission."

17 (b) (1) The commission consists of eleven voting members as
18 follows:

19 (A) The Chief Technology Officer or his or her designee;

20 (B) The Director of Emergency Services and Homeland Security
21 or his or her designee;

22 (C) The executive director of the West Virginia Development
23 Office, or his or her designee;

24 (D) The chairman of the Public Service Commission or his or

1 her designee;

2 (E) The Secretary of the Department of Health and Human
3 Resources or his or her designee;

4 (F) The Secretary of the Department of Education and the
5 Arts, or his or her designee; and

6 (G) Five members appointed by the Governor with the advice
7 and consent of the Senate who meet the requirements and
8 qualifications prescribed in subsections (c) and (d) of this
9 section; and

10 (2) Three members of the West Virginia Senate appointed by
11 the President of the Senate and three members of the West
12 Virginia House of Delegates appointed by the Speaker of the House
13 of Delegates shall serve as advisory, nonvoting members of the
14 commission. No more than two members appointed from each
15 legislative body may be of the same political party.

16 (c) (1) The five members appointed by the Governor pursuant
17 to subdivision (G) of subdivision (1), subsection (b) of this
18 section shall be appointed by the Governor for terms that begin
19 May 1, 2007 and expire as follows:

20 (A) One member shall be appointed for a term ending June 30,
21 2008;

22 (B) Two members shall be appointed for a term ending June
23 30, 2009; and

24 (C) Two members shall be appointed for a term ending June
25 30, 2010.

1 (2) Except for appointments to fill vacancies, each
2 subsequent appointment shall be for a term ending the thirtieth
3 day of June of the fourth year following the year the preceding
4 term expired. In the event a vacancy occurs, it shall be filled
5 by appointment for the unexpired term. A member whose term has
6 expired shall continue in office until a successor has been duly
7 appointed and qualified.

8 (3) No member appointed by the Governor pursuant to
9 subdivision (G) of subdivision (1), subsection (b) of this
10 section may be a candidate for or hold elected office. These
11 members may be reappointed for no more than two full terms.

12 (d) Each of the members of the commission appointed by the
13 Governor pursuant to subdivision (G) of subdivision (1),
14 subsection (b) of this section shall be appointed based upon his
15 or her demonstrated knowledge and experience to effectively
16 accomplish the purposes of this article, and shall meet the
17 following qualifications:

18 (1) At least one shall be an officer, member or designee of
19 a West Virginia nonprofit organization that has established
20 programs or has otherwise participated in programs to promote
21 broadband connectivity in this state;

22 (2) At least two shall be officers, employees or designees
23 of broadband service providers in this state who have
24 demonstrated knowledge and experience in the provision of
25 broadband services in this state;

1 (3) At least one shall be a person representing the largest
2 organization of municipalities in the state;

3 (4) At least one shall be a physician licensed as a medical
4 doctor in this state with a demonstrated knowledge and
5 experience in providing primary healthcare via
6 telecommunications;

7 (e) The Chief Technology Officer shall serve as chairperson.
8 The commission shall hold meetings at the request of the
9 chairperson or at the request of at least three of the members of
10 the commission, but no less frequently than once every three
11 months. The chairperson shall determine the date and time of
12 each meeting.

13 (f) A majority of the commission, including a majority of
14 the members appointed by the Governor pursuant to subdivision (G)
15 of subdivision (1), subsection (b) of this section, constitutes
16 a quorum for the conduct of the business of the commission. No
17 vacancy in the membership of the commission shall impair the
18 right of the commission to exercise its rights and perform its
19 duties.

20 (g) The Office of Technology shall provide sufficient office
21 space, professional and clerical staff to the commission to
22 perform its duties.

23 (h) Each member of the commission appointed pursuant to
24 subdivision (G) of subdivision (1), subsection (b) of this
25 section shall receive the same compensation as is paid to members

1 of the Legislature for their interim duties as recommended by the
2 citizens legislative compensation commission and authorized by
3 law for each day or portion thereof engaged in the discharge of
4 official duties. Each of these appointed members of the
5 commission is entitled to be reimbursed for actual and necessary
6 expenses incurred for each day or portion thereof engaged in the
7 discharge of official duties in a manner consistent with
8 guidelines of the travel management office of the department of
9 administration.

10 **§5A-6A-3. Powers and duties of the commission.**

11 (a) The commission shall:

12 (1) Develop a statewide broadband policy to provide a
13 uniform strategic plan for the establishment, creation and
14 expansion of broadband service in this state. The policy shall
15 promote and facilitate economic development, education and health
16 care, and improve and enhance emergency response and homeland
17 security. The policy shall include criteria and initiatives to
18 establish the following:

19 (A) A plan to locate, determine and increase demand for
20 broadband services in this state;

21 (B) A plan designed to facilitate, stimulate and encourage
22 the provision of broadband services by broadband providers;

23 (C) A broadband funding program to establish or identify
24 sources of funds, including grants or loans, to establish,
25 provide, extend and upgrade broadband services, particularly in

1 rural areas of the state which are without affordable broadband
2 services or are underserved by broadband services;

3 (D) Identify and recommend permanent funding mechanisms and
4 other revenue sources to provide funding necessary to pay the
5 expenses incurred by the commission and the office of technology
6 in the performance of their duties set forth in this article and
7 to fund the plans and programs recommended and included in the
8 statewide broadband policy adopted by the commission; and

9 (E) A plan or program to coordinate and more effectively
10 utilize the services of nonprofit organizations that promote,
11 accommodate, encourage and facilitate the availability and
12 expansion of broadband services;

13 (2) Encourage and facilitate collaboration between agencies
14 of this state and agencies of neighboring states that facilitate
15 and promote broadband services;

16 (3) Develop and implement a plan to facilitate and provide
17 the accurate mapping of the location of all private and public
18 broadband data networks and the location of all areas in the
19 state where broadband connectivity is available; and

20 (4) Develop, provide and maintain a catalogue of resources
21 and availability of broadband services available to citizens,
22 communities and political subdivisions of the state.

23 (b) The commission shall submit a preliminary draft of the
24 statewide broadband policy to the Governor, the President of the
25 Senate and the Speaker of the House of Delegates on or before the

1 first day of November, two thousand seven. The commission shall
2 submit the final draft of the statewide broadband policy,
3 together with any recommendations for the implementation thereof,
4 including drafts of any legislation necessary to effectuate it,
5 to the Governor, the President of the Senate and the Speaker of
6 the House of Delegates on or before the tenth day of January, two
7 thousand eight.

8 (c) After the initial adoption of a statewide broadband
9 policy, the commission shall review the policy annually and adopt
10 any revisions necessary to continue to effectively implement the
11 provisions of this article.

12 **§5A-6A-4. Broadband Connectivity Fund.**

13 (a) There is hereby created in the state treasury a special
14 revenue fund known as the "Broadband Connectivity Fund." The
15 fund shall be comprised of moneys appropriated by the
16 Legislature, all income from the investment of moneys held in the
17 fund, and all other moneys designated for deposit to the fund
18 from any source, public or private. The fund shall operate as a
19 special fund whereby deposits and payments do not expire to the
20 general revenue fund, but remain in the account to be available
21 for expenditure in succeeding fiscal years.

22 (b) Moneys in the fund, to the extent that moneys are
23 available after appropriation by the Legislature, shall be used
24 solely to pay expenses incurred by the commission and the office
25 of the Chief Technology Officer in performing the duties set

1 forth in this article.

2 **§5A-6A-5. Confidentiality of proprietary information.**

3 Proprietary information made available to the Commission by
4 a broadband service provider is confidential and may not be
5 disclosed by the Commission without the consent of the provider:
6 *Provided*, That the provisions of this section do not prohibit
7 the Commission from disclosing areas in the state where broadband
8 service is available. Any proprietary information obtained by or
9 provided to the Commission is not subject to disclosure under the
10 provisions of chapter twenty-nine-b of this code.

11 **§5A-6A-6. Continuation of Connectivity Advisory Commission.**

12 The Connectivity Advisory Commission shall continue to
13 exist, pursuant to the provisions of article ten, chapter four of
14 this code, until the first day of July, two thousand twelve,
15 unless sooner terminated, continued or reestablished pursuant to
16 the provisions of that article.

NOTE: The purpose of this bill is to establish a
Connectivity Advisory Commission. The commission's duties
include the developing of a statewide broadband policy by January
10, 2008, as well as to develop and implement a plan to
accurately map the location of broadband networks and areas where
broadband is available in the state and develop a catalogue of
resources and availability of broadband in the state.

Article §5A-6A-1, §5A-6A-2, §5A-6A-3, §5A-6A-4, §5A-6A-5 and
§5A-6A-6 is new; therefore, strike-throughs and underscoring are
omitted.