
WEST VIRGINIA CODE CHAPTER 31G
ARTICLE 3

WV Legislature

§31G-3-1. Definitions.

“Microtrenching” means a technique of deploying cables, including specifically for broadband networks, using a cutting wheel to cut a trench with smaller dimensions than can be achieved with conventional trench digging equipment; with the trench dimensions being no greater than three inches in width, and a depth between one and two feet.

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§31G-3-2. Microtrenching permitted; notification.

(a) A person may perform microtrenching, where such is feasible, to the extent allowed by a permit issued by the appropriate municipality, county or state agency. All microtrenching work performed must be in accordance with the National Electrical Safety Code and other generally accepted safety codes.

(b) A person must install conduit in a way that will readily permit another owner to add length to the microtrenching by connecting its own conduit to the first owner's conduit. Where an owner connects its own conduit to another owner's previously installed conduit, the owner must install conduit that has the same number of pathways or pipes as the previous owner's conduit.

(c) A person must install a vacant conduit of the same size as its own conduit when performing microtrenching operations. Other persons desiring use of conduit in the same area may make use of this vacant conduit upon application to the Broadband Enhancement Council.

(d) When applying for a permit a person must notify the appropriate permitting entity of the intended dates of the start and completion of microtrenching construction. Notification must be made on a form and in a format prescribed by the appropriate permitting entity. No fee shall be charged for such application, as the installation of additional vacant conduit under the provisions of this section shall function in lieu of a fee. The person shall submit the following documents to the appropriate permitting entity:

(1) Proof of insurance; or

(2) An indemnification agreement.

(e) Promptly after completion of microtrenching construction, but no longer than forty calendar days after issuance of the permit for microtrenching, the entity must file a document with the appropriate permitting entity containing the following information:

(1) An "as-built" drawing of the conduit installed. The "as-built" drawing will be treated as proprietary and confidential, to the extent permitted by law.

(2) A map showing the street location of the conduit including the side of the street the conduit is on, the beginning and ending points of the conduit, the number of ducts in the conduit, and the number of ducts of excess capacity in the conduit. The map must accurately reflect the addresses of buildings that are passed by the conduit.

§31G-3-3. Conduit installation or fiber installation by counties, municipalities, and other political subdivisions.

(a) Notwithstanding any other provision of this code to the contrary, any county, municipality, or other political subdivision of the State of West Virginia may:

(1) Install or contract with any entity for the installation of conduit, fiber, or broadband facilities throughout that political subdivision;

(2) Partner with any of the following entities, or any combination thereof, to install such conduit or communications facilities throughout that political subdivision:

(A) Nonprofit organization;

(B) Cooperative association;

(C) Another county, municipality, or political subdivision;

(D) Private corporations, company, or person; or

(E) Public-private partnership; and

(4) Partner with any of the following entities, or any combination thereof, which operate a network operations center, to operate a fiber network: *Provided*, That a political subdivision may operate a network for their own use:

(A) Nonprofit organization;

(B) Cooperative association;

(C) Another county, municipality, or political subdivision;

(D) Private corporations, company, or person; or

(E) Public-private partnership.

§31G-3-4. Compatible use.

(a) A broadband operator shall be authorized to construct or operate a broadband system:

(1) Over public rights-of-way; and

(2) Through easements, which are within the area to be served by the broadband system and which have been dedicated for compatible uses.

(b) In installing, operating, and maintaining facilities, the broadband operator shall avoid all unnecessary damage and injury to any trees, structures, and improvements in and along the routes utilized for the system.

(c) The broadband operator shall indemnify and hold the state, county and municipality harmless at all times from any and all claims for injury and damage to persons or property, both real and personal, caused by the installation, operation, or maintenance of its broadband system, notwithstanding any negligence on the part of the state, county, and/or municipality, their employees, or agents. Upon receipt of notice in writing from the state, county, and/or municipality, the broadband operator shall, at its own expense, defend any action or proceeding against the state, county and/or municipality in which it is claimed that personal injury or property damage was caused by activities of the broadband operator in the installation, operation or maintenance of its broadband system.

(d) The use of public highways and other public places shall be subject to:

(1) All applicable state statutes, municipal ordinances and all applicable rules governing the construction, maintenance, and removal of overhead and underground facilities of public utilities;

(2) For county highways, all applicable rules adopted by the governing body of the county in which the county highways are situated;

(3) For state or federal-aid highways, all public welfare rules adopted by the Commissioner of the Division of Highways; and

(4) With respect to the use of any public highway that crosses the trackway of any railroad, nothing in this article shall be construed to provide for any greater or any lesser compliance with any safety policy or procedure established by the railroad with respect to the construction of utility crossings across the railroad's trackway that is applicable to any other similarly situated utility, whether utilizing aerial or buried lines.

(e) In the use of easements dedicated for compatible uses, the broadband operator shall ensure:

(1) That the safety, functioning, and appearance of the property and the convenience and safety of other persons is not adversely affected by the installation or construction of

facilities necessary for a broadband system; and

(2) That the owner of the property is justly compensated by the broadband operator for any damages caused by the installation, construction, operation, or removal of facilities by the broadband operator.

(f) An “easement dedicated for compatible uses” is a public or private easement for electric, gas, telephone, or other utility transmission