WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 748

(By Senators Unger, Fanning, Jenkins, Love, Stollings, White, Facemyer and Barnes)

[Passed March 10, 2007; in effect from passage.]
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(BY SENATORS UNGER, FANNING, JENKINS, LOVE, STOLLINGS, WHITE, FACEMYER AND BARNES)

[Passed March 10, 2007; in effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-4-1, §5B-4-2, §5B-4-3, §5B-4-4, §5B-4-5, §5B-4-6, §5B-4-7, §5B-4-8, §5B-4-9, §5B-4-10, §5B-4-11, §5B-4-12, §5B-4-13, §5B-4-14 and §5B-4-15, all relating to expanding technology infrastructure to provide broadband internet access throughout the State of West Virginia; creating the Electronic Telecommunication Open Infrastructure Act (ETOPIA); providing definitions for terms used in the article; setting forth legislative findings; requiring an inventory and mapping of the current availability of access to broadband communications in
this state; developing coordinated deployment and operation of technology infrastructure within this state; providing for technology infrastructure inventory, local government cooperation and inventory survey reporting requirements; authorizing emergency and legislative rules; prescribing the authority of the Secretary of Department of Administration; describing specific authorized disclosures of confidential information; creating Joint Legislative Oversight Commission on Transportation and Infrastructure; providing subpoena powers; providing for enforcement of subpoena power through a court of competent jurisdiction; prescribing the powers and duties of the Secretary of Commerce; establishing reporting requirements; authorizing secretary to provide technical and funding assistance to develop technology infrastructure; authorizing secretary to engage in consulting services for fee; authorizing contractual and joint venture agreements; providing for the liberal construction of article; utilizing broadband infrastructure, technology and information to enhance early childhood development; providing for the confidentiality of trade secrets and proprietary information; and providing for criminal penalties for unlawful disclosure of confidential information or data.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5B-4-1, §5B-4-2, §5B-4-3, §5B-4-4, §5B-4-5, §5B-4-6, §5B-4-7, §5B-4-8, §5B-4-9, §5B-4-10, §5B-4-11, §5B-4-12, §5B-4-13, §5B-4-14 and §5B-4-15, all to read as follows:

ARTICLE 4. ELECTRONIC TELECOMMUNICATION OPEN INFRASTRUCTURE ACT.
§5B-4-1. Short title.

This article may be cited as the Electronic Telecommunication Open Infrastructure Act and may be referred to as ETOPIA.

§5B-4-2. Definitions.

The following terms, wherever used or referred to in this article, shall have the following meanings unless a different meaning clearly appears from the context:

1. "Broadband infrastructure" means all facilities, hardware and software and other intellectual property necessary to provide broadband services in this state, including, but not limited to, voice, video and data.

2. "Broadband services" means the services, including, but not limited to, voice, video and data, that provide capacity for transmission in excess of two hundred kilobits per second in at least one direction, regardless of the technology or medium used, including, but not limited to, wireless, copper wire, fiber-optic cable or coaxial cable.

3. "Commission" means the Joint Legislative Oversight Commission on Transportation and Infrastructure established by the provisions of section eleven of this article.

4. "Department of Commerce" means the department within the executive branch of West Virginia state government established by the provisions of subdivision (8), subsection (a), section two, article one, chapter five-f of this code. It is headed by the Secretary of
Commerce, who is appointed by the Governor with the advice and consent of the Senate.

(5) "E-business" means "electronic business" and includes any business process that relies on automated information systems that are principally performed with web-based technologies. E-business involves business processes spanning electronic purchasing and supply-chain management, the processing of orders electronically, the handling of customer service and cooperation with business partners. Special technical standards for e-business facilitate the exchange of data between companies. E-business software solutions allow the integration of intrafirm and interfirm business processes. E-business can be conducted using the world wide web (web), the internet, intranets, extranets or a combination of these tools.

(6) "E-commerce" means "electronic commerce" or any range of transactions that consists primarily of the distributing, buying, selling, marketing and servicing of products or services over an electronic system such as the internet or other computer networks. The information technology industry may view this activity as an electronic business application aimed at commercial transactions. In this context, e-commerce can involve electronic funds transfer, supply-chain management, e-marketing, online marketing, online transaction processing, electronic data interchange (EDI), automated inventory management systems and automated data collection systems. Electronic commerce typically uses the electronic communications technology of the world wide web at some point in the transaction's lifecycle, although electronic commerce frequently depends on computer technologies other than
the world wide web such as databases and e-mail and
on other noncomputer technologies such as
transportation for physical goods sold via e-commerce.

(7) "E-government" means "electronic government"
or the use of telecommunications technology to
facilitate and provide for access by the public to:

(A) Proceedings and operations of government;

(B) Records and information regarding the programs
and services that are currently implemented or are to be
proposed or discontinued by a governmental entity;

(C) Any records, not otherwise exempt by law from
disclosure, that are kept by governmental entities and
that would otherwise be available through nonweb-
based means; and

(D) Transactions between the government and the
public such as a citizen’s receipt and return of forms
and applications, including, but not limited to, driver’s
license applications, the payment of fines or penalties or
the filing of taxes. “E-government” also includes the
use of telecommunications technology to facilitate and
provide for exchanges of information between separate
governmental entities, whether local, state or federal,
and the use of videoconferencing to conduct
governmental proceedings with remote participants,
including, but not limited to, the establishment of
telecourts that adequately provide for the protection of
the constitutional rights and privileges of persons
involved in civil or criminal litigation, such as
arraignments, hearings, conferences, trials and appeals
held before such tribunals, and allow for appropriate
(8) "E-learning" means "electronic learning" or the use of telecommunications technology to facilitate and provide education, through lectures or other instructional training, as well as providing access to stored knowledge and information and other learning resources. The most common application of e-learning is asynchronous e-learning which uses web-based learning modules but does not support real time interaction between the instructor and the students and other asynchronous functions that typically support the learning environment. Synchronous e-learning requires more bandwidth than asynchronous e-learning and consists principally of online real-time lectures which typically have to be joined by students at the time of their delivery. Most demanding in terms of bandwidth are forms of collaborative e-learning in which students have to interact continuously to solve problems or engage in other learning activities.

(9) "Facilitator" or "nonprofit facilitator" means a nonprofit corporation or any other lawfully constituted not-for-profit organization or entity that can:

(A) Ally itself with both public and private partners to form a strategic alliance with governmental entities, technology-minded companies, institutions of higher learning and any other public and private entities that support the growth and expansion of electronic access to technology, technology planning, public policy and public-relations; and

(B) Design a workforce recruitment plan that will necessarily be required to construct and implement the
necessary broadband to which this state has committed, i.e., to provide access to the internet for all of the citizens of this state.

(10) "Information equipment" includes central processing units, front-end processing units, miniprocessors, microprocessors and related peripheral equipment such as data storage devices, networking equipment, services, routers, document scanners, data entry equipment, terminal controllers, data terminal equipment, computer-based word processing systems other than memory typewriters;

(11) "Information systems" mean computer-based information equipment and related services designed for the automated transmission, storage, manipulation and retrieval of data by electronic or mechanical means;

(12) "Information technology" means data processing and telecommunications hardware, software, services, supplies, personnel, maintenance and training and includes the programs and routines used to employ and control the capabilities of data processing hardware.

(13) "Local government" means any municipality, county, metro or regional government, or other political subdivision of the state of West Virginia.

(14) "Person" means an individual, corporation, limited or general partnership, joint venture, limited liability company or a government entity, including state authorities, municipalities, counties, police, fire and other public safety organizations, judicial entities, medical entities, schools, colleges, universities, hospitals, libraries, community centers and local
economic development entities. Except to the extent
that state authorities, police, fire, and other public
safety organizations, judicial entities, medical entities,
schools, colleges, universities, hospitals and libraries
may constitute state entities, “person” does not include
the State of West Virginia.

(15) “Public body” means a governmental entity or
institution and its employees, including, but not limited
to, any department, division, agency, bureau, board,
commission, court of law in its nonjudicial functions
only, council, institution, spending unit, authority or
other instrumentality thereof of whatever description of
the State of West Virginia, or any county commission, or
any county board of education, or any incorporated
municipality, metro or regional government or any
other political subdivision;

(16) "Technology infrastructure" means information
systems, information technology, information
equipment and facilities, equipment, lines and services
designed for or used for the transmission, emission or
reception of signs, signals, writings, images or sounds of
intelligence of any nature by wire, radio, microwave or
other electromagnetic or optical systems, related
hardware, software and programming and specifically
including, but not limited to, all features, facilities,
equipment, systems, functions, programming and
capabilities and technical support used by:

(A) A cable operator;

(B) A commercial mobile service carrier;

(C) An open video system operator;
(D) A satellite carrier;

(E) A telecommunications carrier;

(F) Any other wireless carrier, providing current generation broadband services or next generation broadband services to subscribers through such qualified equipment; or

(G) Any carrier or operator using any other technology.

(17) "Telecommuting" means not only telecommuting, but also includes or is related to "e-commuting", "e-work", "telework" or "working from home" through an arrangement under which the employee enjoys limited flexibility in working location and hours and avoids commuting to a central place of work by utilizing telecommunication links. Telework is a broader term, referring to substituting telecommunications for any form of work-related travel, thereby eliminating the distance restrictions of teleworking. A telecommuting program requires a management style which is based on results and not on close scrutiny of individual employees.

(18) "Telemedicine" means the use of telecommunications technology to facilitate and broaden the application of the practice of medicine, thus enabling healthcare providers to deliver health care services from a distance, including, but not limited to, diagnosis, consultation, treatment, transfer of medical data, use of remote medical instruments and equipment and generally establishing a convenient means of delivering medical services to patients for
whom such services might otherwise be unavailable. In addition to clinical applications, telemedicine also includes web-based information and communications technology that can provide education (including continuing education programs) and reduce the administrative costs of health care providers.

§5B-4-3. Legislative findings generally.

The Legislature finds as follows:

(1) It is a primary goal of this state, by the year two thousand ten, to make every municipality, community and rural area in this state, border to border, accessible to the internet through the expansion and extension of broadband services and technology.

(2) An increased availability of broadband through an advanced technology infrastructure will allow more West Virginians to connect with the “information super-highway” of the internet at high speeds. With current technology infrastructure, West Virginia can feasibly take action to assure that all of its citizens will have access to broadband services through cable television or telephone networks that support two-way communications using cable modems or telephone lines and also by utilizing wireless mobile technologies, satellite transmissions and other means of communication. Ultimately, other means of achieving higher speed connections will be conceived, evolved and made available for use as conduits for the transmission and diffusion of data, information and knowledge. West Virginia must be positioned to be on the edge of each such development.
(3) Access to broadband services and the accompanying applications of broadband technology will provide the State of West Virginia with the capacity to foster or support new economic and social opportunities and developments locally, regionally, nationally and internationally.

(4) In achieving this primary goal of maximizing internet accessibility, particular concerns of the Legislature and the executive branch of government should be concentrated on and directed toward those of our citizens who are located in rural areas of the state where access appears to be geographically or physically difficult or economically impracticable. An idealized achievement of this primary goal would equalize internet availability to all of our citizens and communities, give them access to the internet regardless of their location, provide them with the knowledge, information and technology available on the internet and expose them to a myriad of other broadband digital applications and services with their attendant benefits.

(5) The development of broadband and its diffusion to residential subscribers is still in the early stages and the market is far from mature. The expansion of broadband into unserved areas of the state requires capital investments for financing, for building the appropriate technology infrastructure and for providing the services and applications that can carry high speed data, quality video and voice traffic. Deployment costs are high, particularly in remote and scarcely populated areas. In these circumstances, private operators often do not offer broadband because it is not perceived as profitable to do so. This presents a territorial gap in broadband coverage, with urban households and businesses having
ready options and access to broadband while rural population areas may have no options for access.

(6) The primary goal of subdivision (1) of this section may be achieved by the legislative and executive branches of state government by:

(A) Aggressively expanding and extending broadband and other telecommunications services;

(B) Creating incentives for private and nonprofit entities to establish broadband and other telecommunications services;

(C) Undertaking telecommunications planning at the local, regional and state levels and requiring that in such planning, that the participants shall include: (i) Citizens and organizations representing and speaking on behalf of the public; (ii) officers of, or spokesmen for, any involved or affected governmental body; and (iii) representatives of various private sectors, including, but not limited to, representatives of industry and commerce, health care and education and research;

(D) Removing barriers to the full deployment of broadband digital applications and services and providing incentives for the removal of those barriers; and

(E) Removing barriers to public-private partnerships in areas of the state where business entities in the private sector are unable to economically justify capital investments in the technology infrastructure.

(7) There is little doubt that rapid growth of the
The internet is increasingly altering and driving our country in terms of commerce, learning, medicine and other fields so that information technology offers increased economic opportunities, higher living standards, increased health, better education, more individual choices and wider and more meaningful participation in government and public life. The past decade has brought considerable advancement in telecommunications and the way people communicate worldwide. Accordingly, telecommunications in general, and the internet in particular, are becoming increasingly important to the efficient and effective operation of both private and public sector entities. With the advent of the internet and its applications to e-business, e-commerce, e-government, telemedicine, e-learning, telecommuting and media and entertainment, the ability of people in all parts of this state to access the internet has become an important component in the ability of the state and its people and institutions to remain competitive in the information-based global economy.

(8) At the same time, however, progress by market forces and industry should be respected and governmental assistance and funding should be focused on areas and persons remaining unserved and not displace accessible and generally competitively priced broadband services in areas already served or where industry is expected to offer accessible and generally competitively priced broadband services by the end of the next following calendar year.

§5B-4-4. Legislative findings related to business, commerce and industry.
With regard to the projected impact of internet access on business, commerce and industry, the Legislature finds that there is a need to create and develop a foundation and structure for “e-business” or “electronic business” and for “e-commerce” or “electronic commerce” as defined in section two of this article.

(1) That a private nonprofit facilitator, in partnership with government and private enterprise, will best enable the implementation of a legislative plan to expand and extend the boundaries of technology-based business and enhance West Virginia’s future workforce;

(2) That a broadband alliance formed by a nonprofit facilitator and other entities should be focused on building and sustaining a vital West Virginia economy through job creation and improved business processes, technology, education and advocacy;

(3) That a significant part of the mission of a nonprofit facilitator is to promote technology-based economic development for the state by fostering collaboration among the leadership of public and private companies, government agencies and institutions of higher education and that by working with these entities the private nonprofit facilitator will enable the State of West Virginia to create more effective manufacturing processes, improve communications, increase efficiency, expand market opportunities and develop corporate growth strategies;

(4) That our modern economy is driven by processes and goods with high technical content and superiority, competitiveness and progress and such an economy relies upon a highly trained technical workforce.
(5) That the citizens of West Virginia now live and work in the midst of an economic and cultural environment that connects the world through advanced communications and information technology and, accordingly, progressive policies and the innovative use of technology present the State of West Virginia with an opportunity to thrive in this new environment;

(6) That in order to compete and thrive, West Virginia must proactively improve the ability of its citizens and businesses to adopt and use advantageous resources; and

(7) That the use of computers, the internet and related technologies advance the development of the skills that fuel a progressive economy and, increasingly, companies will choose locations and hire workers based upon the availability of workers who possess technologically centric skills and resources.

§5B-4-5. Legislative findings related to access to government.

(a) The Legislature finds that access to government information is fundamental to our democratic society. Streamlining state and local government processes through internet-based tools has proven to be a highly effective and cost-efficient way to improve services.

(b) E-government can:

(1) Permit the resources, services and nonsecure information of an agency of government to be promptly and easily electronically accessed by other governmental entities or by constituents of government, thus allowing those governmental bodies and their
constituents to efficiently and economically interact;

(2) Facilitate communications and transactions between state and local government bodies with vendors or contractors who provide goods or services to governmental entities or to private programs funded by public moneys;

(3) Ensure that West Virginia's governmental officers and employees who deal directly with the public, wherever located in the state, have access to high-speed internet connectivity so that their electronic access will, for example, speed up license renewals, provide online employment information and improve overall service levels.

(c) As state and local governments provide an increasing number of services online, the ability to access them through a faster connection becomes paramount. Government, in partnership with an alliance of a private nonprofit facilitator and other entities, must take the lead in developing e-government solutions, in reducing administrative costs and in increasing access to services and the demand for broadband internet applications. As a technology-based resource in those situations where private investment in infrastructure is not available, a public-private partnership with a facilitator can keep government officials apprised of policy issues and build citizen participation through the development of new applications, emergency preparedness information, employment opportunities and links to other valuable governmental resources.

§5B-4-6. Legislative findings related to health care or "telemedicine".
The Legislature finds as follows:

(1) New technologies are enabling doctors to view and send medical images from any location with access to broadband services securely and quickly.

(2) Broadband access can reduce the disadvantages of physical remoteness from cities, connecting rural health care providers with potentially life-saving information. In addition, consumers can use the internet to search for health care information that was previously only available by visiting their health care provider.

(3) The cost for health care providers to offer services steadily increases, while the amount of revenue remains flat or even decreases. As hospitals and physicians look for ways to lower costs, broadband applications provide efficiencies and cost-saving opportunities. Broadband connectivity can improve the quality of services and profits for health care providers where reliability is essential, speed is important and cost is a defining factor. High-bandwidth connections enhance the dependability of web-based mission-critical applications, reducing some of the cost and burden of providing care. Ultimately, improved service levels are the key to quality of life for both patients and physicians.

§5B-4-7. Legislative findings related to e-learning.

The Legislature finds as follows:

(1) State, business and education leaders use information obtained through broadband communications in the design of their plans for enhancing West Virginia's competitiveness in the
networked world.

(2) Access to information technology in West Virginia will enhance the state's competitiveness in the networked world by creating a better understanding of the existing technological infrastructure, the availability of access to that infrastructure and how it is being used today.

(3) Education leaders recognize the important role information technology and broadband technologies will play in the long-term success of the state's economy. Through the adoption of new technologies, education resources can be made available to our citizens, even in the most rural parts of West Virginia.

§5B-4-8. Legislative findings related to early childhood development.

The Legislature finds as follows:

(1) Developing and utilizing broadband applications that will allow internet users to interact with educational programs (e-learning) and to connect with other online databases, such as e-commerce and telemedicine, will require capital investments and the commitment of other resources, both public and private, in these new and evolving information and communication technologies.

(2) Establishing a broadband connection at a local school will enable students to gain access, in the classroom, to the knowledge and resources available on the internet and, through high-speed cable, DSL, wireless or other means, will enable students access outside of the classroom. Broadband infrastructure will
16 enable a school to provide interactive programs that
17 project information and training related to early
18 childhood development directly into the homes and
19 families of children from birth to age eight in the
20 school's community.

21 (3) Mandating that the availability of broadband
22 access is a public or private service for all communities
23 and rural areas in this state requires recognition that
24 the ongoing financial support and resources of
25 governmental and private entities must include the
26 costs of providing such access within their support and
27 funding for education, social services, administration
28 and other services.

29 (4) As efforts to continue developing and providing
30 broadband infrastructure, information technologies and
31 appropriate applications of technologies impact the
32 area of early childhood development, this article should
33 be implemented in cooperation and partnership among
34 the Department of Commerce, the Department of
35 Education and the Department of Health and Human
36 Resources.

§5B-4-9. Technology infrastructure needs assessment,
inventory and mapping; agency and local
government cooperation; information gathering;
reporting requirements; rule-making authority;
and provision of broadband technology to
families with children from birth to age eight.

1 (a) The state encourages the coordinated deployment
2 and operation of technology infrastructure for present
3 and future use. Therefore, it is necessary for the state to
4 maintain an ongoing, continually updated record of the
5 nature and extent of its technology infrastructure
comprised of information systems, information equipment and information technology, the demands on its technology infrastructure and those governmental entities which use or desire to use the resources of the technology infrastructure providing information services, cable service, advanced services, broadband services, internet, internet protocol enabled services, telecommunications services or similar services or support.

(b) The Secretary of the Department of Administration shall develop systems and processes for maintaining accurate information on the state of the technology infrastructure in the state on an ongoing basis and conduct an infrastructure resources survey of the deployment and operation of technology infrastructure in this state. The secretary shall determine the form and format of the information submitted, and the availability of the results of inventory and mapping, including the use of electronic submissions.

(c) To facilitate the infrastructure resources survey, the Secretary of the Department of Administration shall propose emergency and legislative rules in accordance with article three, chapter twenty-nine-a of this code. These rules may include:

(1) The manner of reporting the technology infrastructure information;

(2) Promulgation of a form or forms for reporting purposes;

(3) A means of providing training to individuals responsible for the completion and submission of the
information on the proposed form;

(4) A means of reporting back to individual participating public bodies, from time to time, at the request of a public body, on findings specific to that body to allow the public body to evaluate independently the information provided;

(5) A limitation that the information is to be used solely for the purposes of this article;

(6) Safeguards to protect the confidential information as provided in section ten of this article;

(7) Methodology for collection of information and the analysis of the information;

(8) Protocols for an annual update of the infrastructure resources survey including information collection, analysis and reporting thereof by the Department of Administration; and

(9) A policy to encourage businesses and to require state and local government agencies to report to the Chief Technology Officer on donations of information technology to educational facilities, nonprofit organizations and members of the public, including without limitation, a description of each item donated and identification of the recipient.

(d) Every public body shall complete an infrastructure resources survey no later than the first day of October, two thousand seven, and a survey each year thereafter as provided in rules promulgated pursuant to this section.
(e) The Secretary shall file annually a report with the Joint Legislative Oversight Commission on Transportation and Infrastructure created in section eleven of this article. The report shall generally advise the Joint Oversight Commission on Transportation and Infrastructure about the deployment and operation of technology infrastructure in this state and to make recommendations on policy and statutory changes that may be needed. The report shall include a discussion of each the following:

1. The connectivity, priorities and interoperability of the technology infrastructure owned, leased or used by public bodies;

2. The technology infrastructure that is owned, leased, operated or used by the public bodies of the state;

3. Technology infrastructure as it affects homeland security, public safety and health, systems reliability and providing continuity of government operations;

4. Technology infrastructure identifying potential market demand areas where expanded resources may be expected;

5. Practices or suggestions to coordinate the development of technology infrastructure and the deployment of services between the public bodies through the coordinated delivery of these systems; and

6. Any other topic that may be beneficial in adequately assessing technology infrastructure.

(f) To the extent technology infrastructure
information is readily provided by private persons or otherwise available, the Secretary shall utilize and incorporate that data to fulfill the reporting requirements of this section.

(g) Not later than the first day of December, two thousand seven, the Governor's Chief Technology Officer within the Department of Administration shall submit a report to the Legislature that:

(1) Assesses the availability of, and access to, broadband technology in homes and families with children from birth to age eight;

(2) Estimates the number of families with children from birth to age eight who are using broadband technology in their homes;

(3) Estimates the unmet demand for broadband technology for families with children from birth to age eight; and

(4) Sets forth a strategic plan to meet the demand described in subdivision (3) of this subsection.

§5B-4-10. Confidential information; exemption from disclosure.

(a) Information submitted by a public body as part of the survey that may be a trade secret or otherwise confidential shall be identified by that body as confidential information. The public body claiming confidentiality shall provide written justification to the secretary at the time the information is submitted stating the reasons for confidentiality and why the information should not be released.
(b) In addition to records or documents that may be considered confidential under this code, confidential information means records, reports or information, or a particular portion or any combination or aggregation thereof, that if made public would present a threat to the safety and security of any system or component relating to the technology infrastructure and related systems.

(c) Information designated as confidential and the written justification shall be maintained in a file separate from the general records related to the public body. The confidential information will be exempt from disclosure requirements under this code.

(d) Information designated as confidential may be released to the Department of Administration, its employees and agents when compiling and analyzing the infrastructure resources survey information and as may be necessary to develop the report required by this article. Any individual receiving information designated confidential shall protect the information as confidential.

(e) Trade secrets or proprietary information obtained by the Governor's Chief Technology Officer from broadband providers and other persons or entities through activities related to surveying and mapping broadband access in West Virginia shall be secured and safeguarded by the state. Such information or data shall not be disclosed to the public or to any firm, individual or agency other than officials or authorized employees of this state. Any person who makes any unauthorized disclosure of such confidential information or data is guilty of a misdemeanor and,
upon conviction thereof, may be fined not more than five thousand dollars or confined in a correctional facility for not more than one year, or both.

(f) The official charged with securing and safeguarding trade secrets and proprietary data is the Governor's Chief Technology Officer, within the Department of Administration, who is authorized to establish and direct appropriate security measures. The Governor shall designate two additional persons to share the responsibility of securing trade secrets or proprietary information. No one will be allowed access without written approval of a minimum of two of the three authorized persons specified above.

§5B-4-11. Joint Legislative Oversight Commission on Transportation and Infrastructure; examination and subpoena powers; contempt proceedings; legislative reports.

(a) The President of the Senate and the Speaker of the House of Delegates shall each designate five members of their respective houses, at least one of whom shall be a member of the minority party, to serve on a joint legislative oversight commission charged with immediate and ongoing oversight of transportation and infrastructure matters, specifically including, but not limited to, the ongoing oversight of the management and coordination of the deployment and operation of infrastructure related to technology. This commission shall be known as the Joint Legislative Oversight Commission on Transportation and Infrastructure.

(b) The Joint Legislative Oversight Commission on Transportation and Infrastructure may:
(1) Make a continuing investigation, study and review of the practices, policies and procedures utilized to expand broadband infrastructure in this state;

(2) Make a continuing investigation, study and review of all matters related to broadband policy in the state;

(3) Review program development by the various agencies of state government if those programs impact access to broadband internet;

(4) Conduct studies on:

(A) The amount of funds expended by state government and by public and private entities in this state for broadband services to persons who are unable to pay for those services;

(B) The extent to which persons in this state forego broadband access because of insufficient income and assets to pay for broadband services;

(C) The extent to which the state is maximizing available federal programs and moneys in providing and expanding broadband services to the citizens of this state;

(D) The operation of the programs and funds created by this article; and

(E) The roles of the public, private and private nonprofit sectors in providing broadband services and access to the citizens of this state;

(5) Review and study the feasibility and financial
impact upon the state of assuring increased access by
school children to broadband in their homes, families
and other nonschool settings, if available; and

(6) Conduct a study on the effects of extending
broadband infrastructure into rural areas, including
effects on the quality, cost and availability of
broadband services.

(c) For purposes of carrying out its duties, the
commission may examine witnesses and subpoena such
persons and books, records, documents, papers or any
other tangible things as it believes should be examined
to make a complete investigation.

(d) All witnesses appearing before the commission
under subpoena shall testify under oath or affirmation.
Any member of the commission may administer oaths or
affirmations to such witnesses.

(e) To compel the attendance of witnesses at such
hearings or the production of any books, records,
documents, papers or any other tangible thing, the
commission may issue subpoenas, signed by one of the
cochairpersons, in accordance with section five, article
one, chapter four of this code. Subpoenas may be
served by any person authorized by law to serve and
execute legal process and service shall be made without
charge. Witnesses subpoenaed to attend hearings shall
be allowed the same mileage and per diem as is allowed
witnesses before any petit jury in this state.

(f) If any person subpoenaed to appear at any hearing
refuses to appear or to answer inquiries there
propounded, or fails or refuses to produce books,
records, documents, papers or any other tangible thing within his control when demanded, the commission shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and the court may compel obedience to the subpoena as though such subpoena had been issued by the court in the first instance.

(g) The commission shall submit annual reports to the Legislature, which describe and evaluate in a concise manner:

(1) The major activities of agencies of state government and public and private entities involved in expand the infrastructure of, and access to broadband for the fiscal year immediately past, including important policy decisions reached on initiatives undertaken during that year, especially as such activities, decisions and initiatives relate to:

(A) Improving the accessibility of appropriate broadband services in all areas of this state;

(B) Improving the ability of the citizens of this state to reasonable afford broadband services.

(2) Other information considered by the commission to be important, including recommendations for statutory, fiscal or policy reforms and reasons for such recommendations.

(h) The reports may specify in what manner any practice, policy or procedure may or should be modified to satisfy the goal of efficient and effective access to broadband services as they become increasingly
§5B-4-12. Powers and duties of the Secretary of Commerce.

(a) The primary responsibility of the secretary is to foster and support economic development and the advancement and commercialization of new and emerging technologies through collaborative agreements between business, industry and the state.

(b) The secretary may provide consulting and additional services, including, but not limited to, evaluation of technology, verification and assessment of market applications, grant administration for any person engaged in public-private collaborations with the department pertaining to technology advancement and commercialization activities and research into new areas of economic development relating to technology, technology infrastructure and telecommunications.

(c) The secretary may receive and accept from any public body or person or entity of any nature whatsoever grants to be expended in accomplishing the objectives of this article and to receive and accept state appropriations and grants from any public body and from any other source, aid or contributions of either money, property or other things of value to be held, used and applied only for the purposes for which the grants and contributions may be made or collect fees for consulting services rendered to any public body.

(d) The secretary may accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article and to make a maximum effort to encourage external support for
programs intended to expand broadband infrastructure into areas of the state not currently served. Any transfer of endowment or other assets to the department shall be formalized in a memorandum of agreement to assure, at a minimum, that any restrictions governing the future disposition of funds are preserved.

(e) The Department of Commerce shall cooperate with the Department of Education and the Department of Health and Human Resources to coordinate state resources as they relate to the expansion of broadband technology so as to provide interactive programs that project information and training related to early childhood development directly into the homes and families of children from birth to age eight.

(f) The Secretary of Commerce may promulgate rules to fulfill the purposes of this section. These rules are not subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the Secretary of State.

§ 5B-4-13. Need for study; reporting requirements; information gathering.

(a) The Secretary of Commerce shall enhance well-being, prosperity, economic growth and community development through the ongoing study and research into and development of best known methods regarding the management practices, human factors and cultural changes related to the implementation, operation and utilization of technology, technology infrastructure and related services. For the purposes of this section, "best known methods" refers to plans that outline strategies and activities designed to continue, diversify or expand the economic base of the state as a
whole; create jobs; develop a highly capable workforce; enhance productivity; facilitate business access to capital, including venture capital and capital markets; advertise and market the resources offered by the state with respect to the technology needs of business and industry; facilitate cooperation among state government, entrepreneurship efforts, public private partnerships, universities and colleges; and leverage funding from sources other than the state, including federal and private sources.

(b) In developing its study, the department shall consider resources and technical support available through other agencies, both public and private, including, but not limited to, the state college and university systems; the West Virginia Housing Development Fund; the Consumer Advocate Office of the Public Service Commission; the West Virginia Economic Development Authority; the West Virginia Parkways, Economic Development and Tourism Authority; the West Virginia Chamber of Commerce; regional planning and development councils; and state appropriations. The Infrastructure and Jobs Development Council, as created by the provisions of section three, article fifteen-a, chapter thirty-one of this code, is also included with the above-named agencies and entities, inasmuch as the broadband infrastructure project or projects to be undertaken under the provisions of this article are within the definition of the term “infrastructure project” as it is defined in section two, article fifteen-a, chapter thirty-one of this code.

(c) Upon completion of a study of best known methods in private industry and public policy, the Secretary shall file an initial preliminary report with the Joint
Legislative Oversight Commission on Transportation and Infrastructure created in this article no later than the first day of November, two thousand seven. The report shall include consideration of the following:

1. Strategies and activities designed to continue, diversify or expand the resources offered by the state with respect to the technology needs of the state;

2. Strategies to facilitate cooperation among state government, local government, entrepreneurship efforts, public-private partnerships and colleges and universities, with respect to the technology needs of business and industry;

3. Management and utilization of technology infrastructure identifying potential growth areas where expanded resources may be expected;

4. Practices or methods to coordinate development and utilization of technology infrastructure and the deployment of technology infrastructure and related technology between public bodies through the coordinated delivery of these systems; and

5. Any other information that may be beneficial in adequately assessing technology available in determining the need for and the preparation of technology infrastructure plans.

(d) The secretary shall report annually to the Joint Oversight Commission on Transportation and Infrastructure to advise the commission about the deployment and operation of technology infrastructure in this state and to make recommendations on policy
and statutory changes that may be needed.

§5B-4-14. Providing technical and funding assistance to develop technology infrastructure; contractual and joint venture agreements.

(a) The Department of Commerce may:

(1) Provide assistance, including funding assistance to develop technology infrastructure, and related technology through a matching grant program. The department shall establish criteria for awarding matching grants within the limits of funds appropriated by the Legislature for the program or as may be available from other sources;

(2) Provide technical assistance, including consulting services for a fee to one or more public bodies pertaining to the development of technology and technology infrastructure; and

(3) Enter 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 such agreements may not be considered a debt of the state or a pledge of the credit of the state.

(b) The powers and authority granted by this article, however, must be focused on technical and funding assistance in those areas remaining unserved and not displace accessible and generally competitively priced broadband services or where industry is expected to offer accessible and generally competitively priced broadband services by the end of the next following
§5B-4-15. Complete authority of article; liberal construction.

This article is full and complete authority for carrying out the powers and duties of the same as herein provided. The provisions of this article shall be liberally construed to accomplish its purpose and no procedure or proceedings, notices, consents or approvals, are required in connection therewith except as may be prescribed by this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill has been approved this the __ Day of __, 2007.

Governor
PRESENTED TO THE GOVERNOR

APR 02 2007

Time 3:35 pm