WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 2979
(By Delegate(s) Boggs, Skaff, E. Nelson, White Morgan, M. Poling and Miley)

Passed April 11, 2013
In effect ninety days from passage.
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2979

(BY DELEGATE(S) BOGGS, SKAFF, E. NELSON, WHITE, MORGAN, M. POLING AND MILEY)

[Passed April 11, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §31-15C-2, §31-15C-4, §31-15C-8, §31-15C-9 and §31-15C-10 of the Code of West Virginia, 1931, as amended, all relating to the Broadband Deployment Council; modifying and adding definitions; clarifying that the data rate for broadband will be the same as specified by the Federal Communications Commission; requiring annual reports to the Joint Committee on Government and Finance; extending the council’s public outreach and education efforts beyond unserved areas; rule-making and emergency rule-making authority; revising the council’s guidelines and criteria for funding assistance: modifying the application process for project assistance; and revising notice and publication requirements.
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Be it enacted by the Legislature of West Virginia:

That §31-15C-2, §31-15C-4, §31-15C-8, §31-15C-9 and §31-15C-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15C. BROADBAND DEPLOYMENT.

§31-15C-2. Definitions.

For the purposes of this article:

(1) "Broadband" or "broadband service" means any service providing advanced telecommunications capability with the same downstream data rate and upstream data rate as is specified by the Federal Communications Commission and that does not require the end-user to dial up a connection that has the capacity to always be on, and for which the transmission speeds are based on regular available bandwidth rates, not sporadic or burstable rates, with latency suitable for real-time applications and services such as VoIP and video conferencing, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas: *Provided, That as the Federal Communications Commission updates the downstream data rate and the upstream data rate the Council will publish the revised data rates in the State Register within sixty days of the federal update.*

(2) "Broadband demand promotion project" means a statewide or regional project to undertake activities to promote demand for broadband services and broadband applications.

(3) "Broadband deployment project" means a project to provide broadband services in a type 2 and/or type 3 unserved area, as defined in section six of this article.

(4) "Council" means the Broadband Deployment Council.

(5) "Downstream data rate" means the transmission speed from the service provider source to the end-user.
(6) “Upstream data rate” means the transmission speed from the end-user to the service provider source.

(7) “Unserved area” means a community that has no access to broadband service.

§31-15C-4. Powers and duties of the council generally.

(a) The council shall:

(1) Explore the potential for increased use of broadband service for the purposes of education, career readiness, workforce preparation and alternative career training;

(2) Explore ways for encouraging state and municipal agencies to expand the development and use of broadband services for the purpose of better serving the public, including audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking; and

(3) Cooperate and assist in the expansion of electronic instruction and distance education services by July 2014.

(b) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purpose and intent of this article. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any broadband deployment project;

(2) Promote awareness of public facilities that have community broadband access that can be used for distance education and workforce development;
(3) Advise on deployment of e-government portals such that all public bodies and political subdivisions have homepages, encourage one-stop government access and that all public entities stream audio and video of all public meetings;

(4) To make and execute contracts, commitments and other agreements necessary or convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to assist in the mapping of the state, categorization of areas within the state and evaluation of project applications: Provided, That the provisions of article three, chapter five-a of this code do not apply to the agreements and contracts executed under the provisions of this article;

(5) Acquire by gift or purchase, hold or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article;

(6) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties; and

(7) Perform any and all other activities in furtherance of its purpose.

(c) The council shall exercise its powers and authority to bring broadband service to unserved areas. The council may not duplicate or displace broadband service in areas already served or where private industry feasibly can be expected to offer services in the reasonably foreseeable future.

In providing governmental funding for broadband deployment projects, the council shall give priority to funding for projects in areas without access to broadband service of any type or any speed before providing governmental funding for projects in areas with existing broadband service below the minimum speeds specified in section two of this article.
The council shall report to the Joint Committee on Government and Finance on or before January 1 of each year. The report shall include the action that was taken by the council during the previous year in carrying out the provisions of this article. The council shall also make any other reports as may be required by the Legislature or the Governor.

§31-15C-8. Stimulation of demand through public outreach and education.

In order to implement and carry out the intent of this article, the council may take such actions as it deems necessary or advisable in order to stimulate demand through public outreach and education. The council shall consider the views, if offered, of affected members of the public, including private industry.

§31-15C-9. Development of guidelines and application for funding assistance; emergency rule-making authority.

(a) In order to implement and carry out the intent of this article in type 2 and type 3 unserved areas, the council shall propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, to develop comprehensive, uniform guidelines for use by the council in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop and execute a broadband deployment project in a type 2 or type 3 unserved area. The council may promulgate emergency rules pending authorization of the legislative rules.

(b) The guidelines shall include the following:

(1) The cost-effectiveness of the project;

(2) The economic development benefits of the project;

(3) The availability of alternative sources of funding that could help finance the project, including, but not limited to,
private grants or federal funding and the efforts undertaken to obtain such funding;

(4) If the project requires the construction of a network, the applicant's ability to operate and maintain such network;

(5) The degree to which the project advances statewide broadband access and other state broadband planning goals;

(6) If the project involves the construction of a network, the proposed technologies, bandwidths, upstream data rates and downstream data rates;

(7) The estimated dates the project would commence and be completed;

(8) How the proposed project compares to alternative proposals for the same unserved area with regard to the number of people served, the amount of financial assistance sought, and the long-term viability of the proposed project; and

(9) Any other consideration the council deems pertinent in evaluating requests for funding assistance.

(c) Under no circumstances may the council's guidelines allow for the approval of any project for broadband service involving the construction of a network that does not meet the minimum specifications for broadband service as set by the Federal Communications Commission.

(d) The council shall create an application form that shall be used by all project sponsors requesting funding assistance from the council to plan, acquire, construct, improve or otherwise develop and execute broadband deployment projects in type 2 or type 3 unserved areas or broadband demand promotion projects. The application form shall advise applicants of information required by state agencies that will issue permits and certificates regarding the project.
(e) The application form shall require the project sponsor to set forth:

(1) The proposed location of the project;

(2) If the project involves the construction of a network, the type(s) of unserved area(s) the project proposes to address;

(3) The estimated total cost of the project;

(4) The amount of funding assistance required and the specific uses of the funding;

(5) Other sources of funding available or potentially available for the project;

(6) Information demonstrating the need for the project;

(7) That the proposed funding of the project is the most economically feasible and viable alternative to completing the project; and

(8) Such other information as the council considers necessary.

§31-15C-10. Requirements for project funding assistance; review of project application by council; competitive applications.

(a) As determined by the council, project sponsors may submit applications for funding assistance.

(b) Broadband deployment projects, including projects involving the construction of a network, may be submitted for type 2 and/or type 3 unserved areas as those areas are categorized pursuant to section six of this article. Broadband demand promotion projects may be submitted on a statewide or regional basis.
(c) When a completed application is received for a project area, the council shall post notice with the Secretary of State of the first completed application received for that project area. The notice shall be published in the State Register for sixty days to allow for competing applications to be submitted to the council.

(d) Within thirty days of the close of the sixty-day notice period, the council shall review all applications timely received during the sixty-day period and either:

(1) Approve funding for one or more projects after determining that the funding would constitute an appropriate investment of public funds; or

(2) Deny the project funding request if the council determines that:

(A) The application does not contain all of the required information;

(B) Is incomplete;

(C) A proposed project is not eligible for funding assistance; or

(D) The proposed project is otherwise not an appropriate or prudent investment of state funds.

(e) Prior to approving or denying any funding request, the council may seek the advice of any expert consultant retained pursuant to section seven of this article, but the council is not bound by that advice. The council shall also consider the views, if offered, of affected members of the public, including private industry.

(f) To apply for or receive any funding assistance for a broadband deployment project or a broadband demand promotion project from the council pursuant to this section, the
project sponsor seeking the funding assistance shall submit a completed application to the council on the form prepared for such purpose by the council pursuant to section nine of this article.

(g) In reviewing each application, the council may use the engineering, financial and technical expertise of outside consultants in addition to the respective staffs of the government agencies and private-sector entities represented on the council or other government agencies.

(h) Notwithstanding any provision of article fifteen-a, chapter thirty-one or any other provision of this code, broadband deployment project proposals and broadband demand promotion project proposals submitted to the council for its consideration pursuant to this article and the council’s decisions with regard to such projects shall not be subject to review by the West Virginia Infrastructure and Jobs Development Council.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Member, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the ___ day of ______, 2013.

Governor