

SB 488

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WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

REGULAR SESSION, 2015



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 488

(SENATORS WILLIAMS, PREZIOSO AND
STOLLINGS, *ORIGINAL SPONSORS*)

[PASSED MARCH 13, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

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(SENATORS WILLIAMS, PREZIOSO AND
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[Passed March 13, 2015; in effect ninety days from passage.]

AN ACT to repeal §31-15C-10, §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7 and §31-15C-9 of said code, all relating to creation of Broadband Enhancement Council; modifying definitions; establishing membership; outlining powers and duties; establishing Broadband Enhancement Fund; requiring Secretary of the Department of Commerce to administer and control the Broadband Enhancement Fund; transferring funds from Broadband Deployment Fund to Department of Commerce; modifying requirements for retention of outside expert consultant; and granting legislative rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §31-15C-10, §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended, be repealed; and that §31-15C-2,

§31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7 and §31-15C-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 15C. Broadband enhancement.

§31-15C-2. Definitions.

1 For the purposes of this article:

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

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

21 (3) "Broadband deployment project" means a project to
22 provide broadband services in areas as defined in section six
23 of this article.

24 (4) "Council" means the Broadband Enhancement
25 Council.

26 (5) "Downstream data rate" means the transmission
27 speed from the service provider source to the end-user.

28 (6) "Upstream data rate" means the transmission speed
29 from the end-user to the service provider source.

30 (7) "Unserved area" means a community that has no
31 access to broadband service.

**§31-15C-3. Broadband Enhancement Council; members of council;
administrative support.**

1 (a) The Broadband Enhancement Council is hereby
2 established. The council is a governmental instrumentality of
3 the state. The exercise by the council of the powers conferred
4 by this article and the carrying out of its purpose and duties
5 are considered and held to be, and are hereby determined to
6 be, essential governmental functions and for a public
7 purpose. The council is created under the Department of
8 Commerce for administrative, personnel and technical
9 support services only.

10 (b) The council shall consist of thirteen voting members,
11 designated as follows:

12 (1) The Secretary of Commerce or his or her designee;

13 (2) The Department of Administration Chief Technology
14 Officer or his or her designee; and

15 (3) The Vice Chancellor for Administration of the Higher
16 Education Policy Commission or his or her designee;

17 (4) The State Superintendent of Schools or his or her
18 designee; and

19 (5) Nine public members that serve at the will and
20 pleasure of the Governor and are appointed by the Governor
21 with the advice and consent of the Senate, as follows:

22 (i) One member representing users of large amounts of
23 broadband services in this state;

24 (ii) One member from each congressional district
25 representing rural business users in this state;

26 (iii) One member from each congressional district
27 representing rural residential users in this state;

28 (iv) One member representing urban business users in this
29 state; and

30 (v) One member representing urban residential users in
31 this state.

32 (6) In addition to the thirteen voting members of the
33 council, the President of the Senate shall name two senators
34 from the West Virginia Senate, one from each party, and the
35 Speaker of the House shall name two delegates from the West
36 Virginia House of Delegates, one from each party, each to
37 serve in the capacity of an ex officio, nonvoting advisory
38 member of the council.

39 (c) The Secretary of Commerce shall chair the first
40 meeting at which time a chair and vice chair shall be elected
41 from the members of the council. In the absence of the chair,
42 the vice chair shall serve as chair. The council shall appoint
43 a secretary-treasurer who need not be a member of the
44 council and who, among other tasks or functions designated
45 by the council, shall keep records of its proceedings.

46 (d) The council may appoint committees or
47 subcommittees to investigate and make recommendations to
48 the full council. Members of these committees or
49 subcommittees need not be members of the council.

50 (e) Seven voting members of the council constitute a
51 quorum and the affirmative vote of a simple majority of those
52 members present is necessary for any action taken by vote of
53 the council.

54 (f) The council is part time. Public members appointed by
55 the Governor may pursue and engage in another business or
56 occupation or gainful employment. Any person employed by,
57 owning an interest in or otherwise associated with a
58 broadband deployment project, project sponsor or project
59 participant may serve as a council member and is not
60 disqualified from serving as a council member because of a
61 conflict of interest prohibited under section five, article two,
62 chapter six-b of this code and is not subject to prosecution for
63 violation of said section when the violation is created solely
64 as a result of his or her relationship with the broadband
65 deployment project, project sponsor or project participant so
66 long as the member recuses himself or herself from board
67 participation regarding the conflicting issue in the manner set
68 forth in legislative rules promulgated by the West Virginia
69 Ethics Commission.

70 (g) No member of the council who serves by virtue of his
71 or her office receives any compensation or reimbursement of
72 expenses for serving as a member. The public members and
73 members of any committees or subcommittees are entitled to
74 be reimbursed for actual and necessary expenses incurred for
75 each day or portion thereof engaged in the discharge of his or
76 her official duties in a manner consistent with the guidelines
77 of the Travel Management Office of the Department of
78 Administration.

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

1 (a) The council shall:

2 (1) Explore any and all ways to expand access to
3 broadband services, including, but not limited to, middle
4 mile, last mile and wireless applications;

5 (2) Gather data regarding the various speeds provided to
6 consumers in comparison to what is advertised. The council
7 may request the assistance of the Legislative Auditor in
8 gathering this data;

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

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

17 (5) Cooperate and assist in the expansion of electronic
18 instruction and distance education services.

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

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

28 (2) Promote awareness of public facilities that have
29 community broadband access that can be used for distance
30 education and workforce development;

31 (3) Advise on deployment of e-government portals such
32 that all public bodies and political subdivisions have
33 homepages, encourage one-stop government access and that
34 all public entities stream audio and video of all public
35 meetings;

36 (4) To make and execute contracts, commitments and
37 other agreements necessary or convenient for the exercise of
38 its powers, including, but not limited to, the hiring of
39 consultants to assist in the mapping of the state and
40 categorization of areas within the state;

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

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

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

51 (c) The council shall exercise its powers and authority to
52 advise the Legislature on bringing broadband service to
53 unserved and underserved areas.

54 (d) The council shall report to the Joint Committee on
55 Government and Finance on or before January 1 of each year.
56 The report shall include the action that was taken by the

57 council during the previous year in carrying out the
58 provisions of this article. To the extent the report addresses
59 data gathered in connection with subdivision (2), subsection
60 a, section four of this article, a copy of the report shall be
61 provided to the Attorney General. The council shall also
62 make any other reports as may be required by the Legislature
63 or the Governor.

§31-15C-5. Creation of the Broadband Enhancement Fund.

1 All moneys collected by the council, which may, in
2 addition to appropriations, include gifts, bequests or
3 donations, shall be deposited in a special revenue account in
4 the State Treasury known as the Broadband Enhancement
5 Fund. The fund shall be administered by and under the
6 control of the Secretary of the Department of Commerce.
7 Expenditures from the fund shall be for the purposes set forth
8 in this article and are not authorized from collections but are
9 to be made only in accordance with appropriation by the
10 Legislature and in accordance with the provisions of article
11 two, chapter eleven-b of this code: *Provided*, That any funds
12 remaining in the fund of the former Broadband Development
13 Council shall be transferred to the Department of Commerce
14 by June 30, 2015.

§31-15C-7. Retention of outside expert consultant.

1 In order to assist the council with the highly technical
2 task of categorizing the areas of the state and evaluating and
3 prioritizing projects, the council may retain an outside expert
4 consultant or consultants qualified to map the state on the
5 basis of broadband availability, to evaluate, categorize and
6 prioritize projects, to assist in public outreach and education
7 in order to stimulate demand and to provide other support and
8 assistance as necessary to accomplish the purposes of this
9 article.

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

- 1 (a) In order to implement and carry out the intent of this
- 2 article, the Secretary of the Department of Commerce, with
- 3 the advice and recommendation of the council, shall propose
- 4 rules for legislative approval, pursuant to the provisions of
- 5 article three, chapter twenty-nine-a of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Mark Maynard
.....
Chairman Senate Committee

Dr. P. Hill
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clark A. Barnes
.....
Clerk of the Senate

Stephen D. Harris
.....
Clerk of the House of Delegates

Mark P. Blaine
.....
President of the Senate

Anthony M. Williams
.....
Speaker of the House of Delegates

The within *is approved* this the *26th*
Day of *March*, 2015.

Earl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 23 2015

Time 10:51 AM