

ASSEMBLY, No. 188

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman HAROLD "HAL" J. WIRTHS
District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Assemblymen McClellan and Simonsen

SYNOPSIS

Allows local units to offer broadband telecommunications service under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 8/24/2020)

1 **AN ACT** concerning the provision of broadband telecommunications
2 service and amending P.L.2007, c.191.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 1 of P.L.2007, c.191 (C.40:9D-1) is amended to read
8 as follows:

9 1. As used in **[this act]** P.L.2007, c.191 (C.40:9D-1 et seq.):

10 "Broadband telecommunications infrastructure" means
11 information equipment and facilities, information systems, and
12 information technology used for the purpose of providing
13 broadband telecommunications service.

14 "Broadband telecommunications service" means any
15 telecommunications service using broadband telecommunications
16 infrastructure for the purpose of offering high speed, switched,
17 broadband wireline or wireless telecommunications capability that
18 enables users to originate and receive high-quality voice, data,
19 graphics, or video telecommunications through the Internet and
20 using any technology.

21 "Governing body" means:

22 (1) in the case of the county, the board of chosen freeholders or,
23 if the county is organized pursuant to the provisions of the
24 "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et
25 seq.), the board of chosen freeholders and the county executive, the
26 county supervisor or the county manager, as appropriate **[,];**

27 (2) in the case of a joint meeting of counties, the management
28 committee appointed to exercise the powers of the joint meeting or
29 local governing body to which the authority to exercise those
30 powers **[shall have been]** is delegated under section 14 of
31 P.L.2007, c.63 (C.40A:65-14) **[,];** or

32 (3) in the case of a municipality, the commission, council, board
33 or body, by whatever name it may be known, having charge of the
34 finances of the municipality.

35 "Internet" means the international computer network of both
36 federal and non-federal interoperable packet switched data
37 networks.

38 "Joint meeting of counties" or "joint meeting" means a joint
39 meeting formed by two or more counties under a joint contract
40 entered into pursuant to the provisions of the "Uniform Shared
41 Services and Consolidation Act," P.L.2007, c.63 (C.40A:65-
42 1 et al.).

43 "Local Finance Board" means the Local Finance Board, in the
44 Division of Local Government Services, in the Department of

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is
not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 Community Affairs, as constituted pursuant to section 1 of
2 P.L.1974, c.35 (C.52:27D-18.1).

3 "Local unit" means any county, any joint meeting of counties,
4 any municipality, any special district or any public body corporate
5 and politic created or established under any law of this State by or
6 on behalf of any one or more counties or individual municipalities,
7 as appropriate, or any agency or other instrumentality thereof,
8 including any local authority, board, commission, department, or
9 agency of any of the foregoing having custody of funds, but shall
10 not include a school district or regional school district.

11 "Related competitive business segment" means a structurally
12 separate business unit established by the governing body of a local
13 unit that offers to install, construct, maintain, repair, renew,
14 relocate, or remove broadband telecommunications infrastructure,
15 or offers to provide or provides broadband telecommunications
16 service via a wireless community network or wireline connection.

17 "Telecommunications" means the transmission, between or
18 among points specified by the user, of information of the user's
19 choosing, without change in the form or content of the information
20 as sent and received.

21 "Telecommunications service" means the offering of
22 telecommunications directly to the public, or to such classes of
23 users as to be effectively available directly to the public, regardless
24 of the facilities used, and regardless of whether a fee is charged for
25 the use of such service.

26 "Wireless community network" means a local shared network
27 consisting of a series of interlinked computers that allow persons
28 with wireless equipped devices within the area served by the
29 network to gain entry to the wider Internet through wireless Internet
30 service connections provided by broadband telecommunications
31 infrastructure at designated access points.

32 "Wireline connection" means broadband telecommunications
33 service having data transfer speeds of at least 25 megabits per
34 second download and at least three megabits per second upload, as
35 provided through a wired connection to a residential or commercial
36 building within this State.

37 (cf: P.L.2007, c.191, s.1)

38

39 2. Section 2 of P.L.2007, c.191 (C.40:9D-2) is amended to read
40 as follows:

41 2. a. Consistent with federal law, the governing body of a
42 local unit, through the establishment of a related competitive
43 business segment, is authorized to:

44 (1) construct, own, or operate broadband telecommunications
45 infrastructure to provide broadband telecommunications service via
46 a wireless community network or wireline connection; or

47 (2) provide broadband telecommunications service via a
48 wireless community network or wireline connection.

1 b. Consistent with federal law, the governing body of a local
2 unit may enter into a contract with a private entity to provide
3 broadband telecommunications service via a wireless community
4 network or wireline connection, or to construct, own, use, acquire,
5 deliver, grant, operate, maintain, sell, purchase, lease, or equip
6 broadband telecommunications infrastructure used for the purpose
7 of providing broadband telecommunications service via a wireless
8 community network or wireline connection.

9 By written contract or lease, such governing body may sell
10 capacity in, or grant other similar rights for a private entity to use,
11 broadband telecommunications infrastructure owned or operated by
12 the local unit that provides broadband telecommunications service
13 via a wireless community network or wireline connection.

14 c. The governing body of a local unit, exercising powers under
15 subsections a. and b. of this section, may enter into a written
16 agreement with any person owning or having the right to use any
17 poles, street lights, posts, towers, or other structures erected along
18 any public right-of-way within the boundaries of such local unit for
19 the use of those structures by that local unit, upon such terms and
20 conditions as may be agreed upon by such local unit and such
21 person. To the extent that State, county, or municipal approval, or
22 the approval of another public entity or any private entity is
23 required for the placement of broadband telecommunications
24 infrastructure used for the purpose of providing broadband
25 telecommunications service via a wireless community network or
26 wireline connection along a public right-of-way, such approval shall
27 not unreasonably be withheld. The provisions of this section shall
28 not affect the terms and conditions by which the State may give
29 consent, grant, or franchise to a person for use of the right-of-way
30 along any State highway, or the terms and conditions by which a
31 public body may give consent, grant, or franchise to a person for
32 use of the right-of-way within the boundaries of the geographical
33 area over which such public body has jurisdiction.

34 d. The provision of broadband telecommunications service via
35 a wireless community network or wireline connection pursuant to
36 this section and any broadband telecommunications infrastructure
37 used for such purpose shall not be deemed to be a public utility or
38 to constitute operating any form of public utility service pursuant to
39 Title 48 of the Revised Statutes to the extent that the local unit is
40 engaged in the provision of broadband telecommunications service
41 via a wireless community network or wireline connection.

42 e. The governing body of a municipality within a county of the
43 first class, where the county exercises powers under subsections a.
44 and b. of this section, may provide that the municipality not
45 participate in the provision of broadband telecommunications
46 service via a wireless community network or wireline connection
47 established under this section by that county.

48 (cf: P.L.2007, c.191, s.2)

1 3. Section 3 of P.L.2007, c.191 (C.40:9D-3) is amended to read
2 as follows:

3 3. If a governing body of a local unit exercises powers under
4 subsection a. or b. of section 2 of **【this act】** P.L.2007, c.191
5 (C.40:9D-2), whether by contracting with a private entity or by
6 establishing a related competitive business segment, then:

7 a. the costs of providing broadband telecommunications
8 service via a wireless community network or wireline connection
9 shall not adversely impact the ability of the local unit to offer those
10 services otherwise required by law;

11 b. the local unit shall be prohibited from reducing the rate of
12 providing those services otherwise required by law when these
13 services are purchased in conjunction with broadband
14 telecommunications service via a wireless community network or
15 wireline connection;

16 c. in all instances in which resources are deployed by the local
17 unit to provide both broadband telecommunications service via a
18 wireless community network or wireline connection and any other
19 services of the local unit required by law, where resource
20 constraints arise, the provision of the other services shall receive a
21 higher priority;

22 d. the price which the local unit charges for broadband
23 telecommunications service via a wireless community network or
24 wireline connection shall not be less than the fully allocated cost of
25 providing broadband telecommunications service via a wireless
26 community network or wireline connection, as subject to review
27 and approval of the Local Finance Board, which cost shall include
28 an allocation of the cost of all equipment, vehicles, labor, related
29 fringe benefits and overheads, and administration utilized, and all
30 other assets utilized and costs incurred, directly or indirectly, in
31 providing broadband telecommunications service via a wireless
32 community network or wireline connection;

33 e. the installation, construction, maintenance, repair, renewal,
34 relocation, or removal of broadband telecommunications
35 infrastructure, when undertaken directly by the related competitive
36 business segment of the local unit, shall be subject to the provisions
37 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1
38 et seq.);

39 f. the provision of broadband telecommunications service via a
40 wireless community network or wireline connection shall be subject
41 to the provisions of the "Local Public Contracts Law," P.L.1971,
42 c.198 (C.40A:11-1 et seq.) and, where appropriate, the "Local
43 Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-
44 1 et seq.);

45 g. the local unit shall not use the rates of those services
46 required to be provided by law, or any revenue received in payment
47 for those services or any interest or other earnings realized from the
48 deposit or investment of such revenue, to subsidize broadband

1 telecommunications service via a wireless community network or
2 wireline connection offered by the local unit, and expenses incurred
3 in conjunction with the provision of broadband telecommunications
4 service via a wireless community network or wireline connection
5 shall not be borne by any resident or business not choosing to
6 receive such broadband telecommunications service via a wireless
7 community network or wireline connection;

8 h. each such local unit shall maintain books and records, and
9 provide accounting entries as may be required by the Local Finance
10 Board, to show that there is strict separation and allocation of the
11 local unit's revenues, costs, assets, risks and functions, between the
12 services of the local unit required to be provided by law and the
13 provision of broadband telecommunications service via a wireless
14 community network or wireline connection; and

15 i. each such local unit shall annually prepare, or have prepared,
16 a report available to the public, and such report shall include, but
17 not be limited to, a summary of revenues and expenditures, the
18 prices charged to subscribers, the areas of the local unit served, and
19 the number of subscribers.

20 (cf: P.L.2007, c.191, s.3)

21
22 4. Section 4 of P.L.2007, c.191 (C.40:9D-4) is amended to read
23 as follows:

24 4. a. Prior to the exercise by the governing body of a local unit
25 of any powers under subsections a. and b. of section 2 of **[this act]**
26 P.L.2007, c.191 (C.40:9D-2), the local unit shall have developed a
27 plan which sets forth the local unit's or private entity's proposed
28 activities, as appropriate, that would be necessary to implement the
29 deployment of broadband telecommunications infrastructure and the
30 provision of broadband telecommunications service via a wireless
31 community network or wireline connection. The plan shall identify
32 all relevant financial and operational information, including, but not
33 limited to:

34 (1) the costs and source of funding for those costs that are
35 associated with the installation, maintenance, and operation of
36 broadband telecommunications infrastructure and broadband
37 telecommunications service via a wireless community network or
38 wireline connection;

39 (2) the amount of any charges expected to be imposed on
40 subscribers to the broadband telecommunications service via a
41 wireless community network or wireline connection;

42 (3) a projected implementation schedule for the broadband
43 telecommunications service via a wireless community network or
44 wireline connection and the projected location of the broadband
45 telecommunications infrastructure;

46 (4) the process by which the plan for broadband
47 telecommunications service via a wireless community network or
48 wireline connection deployment will be evaluated, which process

1 shall include at least one public hearing prior to the decision on the
2 plan;

3 (5) a description of how the broadband telecommunications
4 service via a wireless community network or wireline connection is
5 to be provided and what geographic area is to be covered by such
6 service;

7 (6) an evaluation of the current availability of broadband service
8 provided by private entities within the area of interest to identify
9 appropriate broadband service linkages, partners, and applications;

10 (7) a review of the risks, financial and otherwise, associated
11 with the deployment of broadband telecommunications
12 infrastructure and broadband telecommunications service via
13 wireless community network or wireline connection;

14 (8) a study that considers other alternatives for the deployment
15 of broadband telecommunications infrastructure and broadband
16 telecommunications service via wireless community network or
17 wireline connection, including, but not limited to, other business
18 models and use of different private entities; and

19 (9) a review to determine the most appropriate technology and
20 feasibility, including the design of broadband telecommunications
21 infrastructure and related equipment used for such deployment.

22 b. The plan described in subsection a. of this section shall be
23 made available to the public and submitted for review and comment
24 to the Local Finance Board, which shall seek comments about the
25 plan from other appropriate State agencies and the public. In
26 addition, the Local Finance Board shall forward the plan to any
27 State agency with a potential interest in assisting, and statutory
28 authority to assist with, project financing. Any agency which has
29 an interest in assisting with such financing shall give notice of its
30 interest to the appropriate local unit, which shall maintain a list of
31 all agencies interested in assisting with such financing.

32 c. The Local Finance Board shall review the plan and provide
33 comments to the governing body of the local unit within 60 days
34 after receipt thereof. If the Local Finance Board fails to act within
35 the 60-day period, or within such other time period as may be
36 mutually agreed upon by the Local Finance Board and the local
37 unit, the plan shall be deemed approved.

38 (cf: P.L.2007, c.191, s.4)

39

40 5. Section 5 of P.L.2007, c.191 (C.40:9D-5) is amended to read
41 as follows:

42 5. a. The governing body of a local unit exercising powers
43 under subsection a. or subsection b. of section 2 of **[this act]**
44 P.L.2007, c.191 (C.40:9D-2) is authorized, pursuant to the
45 provisions of the "Local Bond Law" (N.J.S.40A:2-1 et seq.), to
46 issue revenue bonds of the local unit, to pay a portion or all of the
47 costs of the broadband telecommunications infrastructure used for
48 the purpose of providing broadband telecommunications service via

1 a wireless community network or wireline connection; provided,
2 however, that the principal of and the interest on such revenue
3 bonds shall be payable solely from revenues derived by the local
4 unit from the provision of broadband telecommunications service
5 via that network or wireline connection and any other revenues
6 related thereto. A local unit is permitted to provide a full faith and
7 credit guarantee on such revenue bonds.

8 b. A State agency that assists in project financing shall not
9 assist in financing the costs of constructing, operating, or
10 maintaining any broadband telecommunications infrastructure used
11 for the purpose of providing broadband telecommunications service
12 via a wireless community network or wireline connection, if such
13 network or wireline connection is offered commercially to the
14 public.

15 (cf: P.L.2007, c.191, s.5)

16
17 6. Section 6 of P.L.2007, c.191 (C.40:9D-6) is amended to read
18 as follows:

19 6. The governing body of a local unit exercising powers under
20 subsection a. or subsection b. of section 2 of **【this act】** P.L.2007,
21 c.191 (C.40:9D-2) shall not enter into or implement any contract
22 regarding broadband telecommunications infrastructure or
23 broadband telecommunications service via a wireless community
24 network or wireline connection without first performing due
25 diligence on the plan required under subsection a. of section 4 of
26 **【this act】** P.L.2007, c.191 (C.40:9D-4). Due diligence shall
27 include, but not be limited to, research that supports formal
28 conclusions that the local unit or private entity, as appropriate, is
29 creditworthy and that the provision of broadband
30 telecommunications service via that network or wireline connection
31 would not proceed in the absence of financing from the local unit or
32 private entity, as appropriate. The conclusions of this analysis shall
33 be reduced to writing and made available to the public before the
34 governing body of the local unit formally considers any financing
35 authorized pursuant to section 5 of **【this act】** P.L.2007, c.191
36 (C.40:9D-5) or enters into a contract with a private entity pursuant
37 to subsection b. of section 2 of **【this act】** P.L.2007, c.191 (C.40:9D-
38 2).

39 (cf: P.L.2007, c.191, s.6)

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41 7. Section 7 of P.L.2007, c.191 (C.40:9D-7) is amended to read
42 as follows:

43 7. a. In addition to the purposes set forth in section 1 of
44 P.L.1999, c.440 (C.40A:11-4.1), a local contracting unit may use
45 the competitive contracting provisions set forth in the "Local Public
46 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) as modified
47 under this section, in lieu of public bidding, for the purpose of
48 entering into a contract pursuant to subsection b. of section 2 of

1 **【this act】** P.L.2007, c.191 (C.40:9D-2) concerning broadband
2 telecommunications infrastructure for the provision of broadband
3 telecommunications service via a wireless community network or
4 wireline connection.

5 b. Contracts awarded pursuant to this section may be for a term
6 not to exceed seven years, however, a contract awarded pursuant to
7 this section may be extended for an additional term of three years
8 by mutual agreement of the parties to the contract if the ability to
9 extend was set forth in the original request for proposals
10 documentation.

11 c. Notwithstanding the provisions of section 5 of P.L.1999,
12 c.440 (C.40A:11-4.5) to the contrary, after proposals have been
13 evaluated pursuant to subsection d. of that section, the purchasing
14 agent or counsel or administrator may issue an interim report
15 recommending that specific details be negotiated further with one or
16 more of the potential vendors who submitted a proposal for the
17 purpose of modifying the original proposal. After the conclusion of
18 negotiations, and evaluation of all proposals as modified in
19 accordance with this subsection, the purchasing agent or counsel or
20 administrator shall prepare a final report evaluating proposals and
21 recommending the award of a contract or contracts in accordance
22 with the provisions of section 5 of P.L.1999, c.440 (C.40A:11-4.5)
23 that are not contrary to the provisions of this subsection.
24 (cf: P.L.2007, c.191, s.7)

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26 8. This act shall take effect immediately.

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28

29

STATEMENT

30

31 Current law allows the governing body of a local unit, through
32 the establishment of a related competitive business segment or
33 through a contract with a private entity, under certain terms and
34 conditions provided in that law, to construct, own, or operate,
35 within the boundaries of the local unit, broadband
36 telecommunications infrastructure to provide broadband
37 telecommunications service via a wireless community network.
38 This bill expands the law to allow a local unit to offer that
39 broadband telecommunications service via a “wireline connection.”
40 The bill defines “wireline connection” as a broadband
41 telecommunications service having data transfer speeds of at least
42 25 megabits per second download and at least three megabits per
43 second upload as provided through a wired connection to a
44 residential or commercial building within the State.
45 Allows local units to offer broadband telecommunications service
46 under certain circumstances.