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SENATE, No. 3086

STATE OF NEW JERSEY
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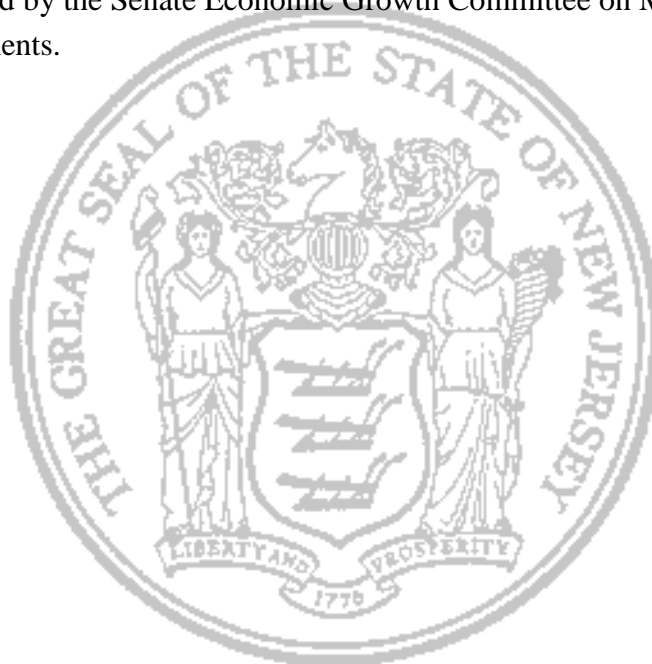
Senators Oroho, Pou, Greenstein and Singleton

SYNOPSIS

Establishes office in EDA to assist in provision and expansion of broadband Internet service in State to address inequities in accessing broadband service.

CURRENT VERSION OF TEXT

As reported by the Senate Economic Growth Committee on March 11, 2021, with amendments.



(Sponsorship Updated As Of: 12/16/2021)

1 AN ACT concerning broadband Internet service and supplementing
2 Title 48 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. a. The Legislature finds and declares that:

8 (1) The efforts taken to contain the spread of coronavirus disease
9 2019 (COVID-19) have resulted in residents, especially students, and
10 certain businesses in this State being required to perform their day-to-
11 day activities from home or otherwise from a remote location, and
12 with the start of the school year, it is especially important for students
13 and educators engaged in remote learning to have Internet access
14 suitable for their needs;

15 (2) Telehealth services, which are accessed through the Internet,
16 have been offered to the public prior to and during the pandemic due
17 to COVID-19, will continue to help to improve equitable access to
18 healthcare;

19 (3) To properly perform telehealth services, remote student
20 learning, and other activities during the pandemic, students, workers,
21 and employers are required to have access to Internet service at
22 broadband speeds to transmit data, graphics, video, and voice
23 communications quickly and efficiently;

24 (4) To document and quantify the extent of the provision of
25 broadband Internet (broadband) service deployment in the United
26 States, twice a year, the Federal Communications Commission (FCC)
27 requires all broadband service providers (providers) to file Form 477
28 with the FCC, on which providers indicate where they offer service at
29 speeds exceeding 200 kilobits per second in at least one direction, the
30 minimum speed to be deemed as offering broadband service;

31 (5) Presently, the FCC's method in determining broadband
32 ¹**[connectivity]** availability¹, as determined by the information offered
33 on Form 477, ¹**[allows for]** requires¹ a provider to ¹**[claim that an**
34 **area is covered when the provider attests that it could serve an area**
35 **within a]** measure coverage by¹ census block, ¹**[even though]** which
36 means that some of¹ the people ¹**[of]** within¹ that area ¹**[have no]**
37 may not have¹ access to broadband service;

38 (6) The FCC's website confirms the potential for inaccuracy in this
39 methodology by stating that, "[p]roviders may not offer service to
40 every home in every [census] block in which they report service. The
41 calculations...treat every location as having service, and may therefore
42 over-estimate broadband coverage, particularly in areas with large
43 census blocks;

44 (7) ¹In March 2020, Congress passed the "Broadband DATA Act,"
45 Pub.L.116-130, which requires the FCC to collect granular service

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEG committee amendments adopted March 11, 2021.

1 availability data from wired, fixed wireless, and satellite broadband
2 providers, and to create maps based on this information. The FCC has
3 already implemented many of the Broadband DATA Act's
4 requirements, and, on July 16, 2020, it released a report and order to
5 implement collection and verification requirements for fixed and
6 mobile broadband service availability and quality of service data.
7 Even under the FCC's implementation of the "Broadband DATA Act,"
8 providers are required to submit advertised broadband speed and not
9 the actual speed that customers receive;

10 (8)¹ In 2018, a study by the Microsoft Corporation found that
11 162.8 million people in this country are not using the Internet at
12 broadband speeds, which far exceeds the FCC's estimated number of
13 people without broadband service access at 25 million, a number
14 determined by the data reported from Form 477;

15 ¹[(8)] (9)¹ A 2019 Pew Research Center survey found that only 73
16 percent of American adults had high-speed Internet access at home and
17 this figure was even lower in rural areas and low-income areas;

18 ¹ [(9)] (10) ¹ Having accurate information concerning broadband
19 service connectivity in this State is necessary to determine how to
20 better focus resources on providing broadband ¹[service to
21 underserved] access to all¹ areas in New Jersey;

22 ¹[(10)] (11)¹ Disadvantaged ¹[individuals] households¹ in New
23 Jersey do not have the means to pay for broadband service, especially
24 during this time of high unemployment due to COVID-19, because of
25 the high cost of this service;

26 ¹[(11)] (12)¹ A significant amount of residents and small
27 businesses located in rural areas of this State still do not have access to
28 broadband service;

29 ¹[(12)] (13)¹ This public health emergency has exposed the so-
30 called "digital divide" in this State, making it difficult for rural and
31 low-income areas to access medical care, continue education, and
32 maintain employment; and

33 ¹[(13)] (14)¹ This lack of access exacerbates social, economic,
34 income, and health inequalities in this State that can be addressed by
35 taking measures that secure broadband access for areas in need.

36 b. The Legislature therefore determines that:

37 (1) It shall be the public policy of this State to foster the provision
38 of wired broadband service to disadvantaged ¹[individuals]
39 households¹ and to residents and small businesses located within rural
40 areas of this State as a measure to lessen the negative economic effects
41 of COVID-19 and the overall economy of this State;

42 (2) In order to foster the provision of wired broadband service to
43 these residents and businesses, the State of New Jersey should have a
44 role in meeting this need, and to serve as a source of funding for fiber
45 optic or other wireline-based broadband service provided by State,
46 federal, or local government entities and by private entities;

(3) The establishment of a Broadband Assistance Office within the ¹**Board of Public Utilities** New Jersey Economic Development Authority¹, having duties and responsibilities that include, but not limited to, the review and approval of proposed projects providing for the deployment of fiber optic or other wireline-based broadband service to disadvantaged ¹**individuals** households¹ and in ¹**underserved** critical¹ areas, and the provision of financing for these projects, would meet this important need; and

(4) It shall be a goal for the State's residents and businesses to have universal access to a fiber optic or other wireline-based broadband service provider, offering data transfer speeds of at least 25 megabits per second (Mbps) download and at least three Mbps upload by 2023 and at least 100 Mbps download and 100 Mbps upload by 2027. This goal shall allow for the Broadband Assistance Office to increase these minimum data transfer speeds as broadband service technology or capability advances.

2. As used in P.L. , c. (C.) (pending before the Legislature as this bill):

“Authority” means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

“Board” means the Board of Public Utilities or any successor agency.

¹“Broadband adoption” means residential subscribership to broadband Internet service that is already available to the customer premises.¹

“Broadband Internet service” or “broadband service” means any fiber optic or other wireline-based Internet or other information service used for the purpose of offering high speed, switched, broadband wireline communications capability that enables users to send and receive high-quality voice, data, graphics, or video communications through the Internet and using any technology and with data transfer speeds of at least 25 megabits per second download and at least three megabits per second upload. These minimum data transfer speeds may be increased by an amount determined by ¹the¹ Broadband Assistance Office as broadband service technology or capability advances. “Broadband Internet service” shall not mean or include any Internet or information service that, in part, uses wireless communications equipment or facilities.

“Broadband Internet service infrastructure” or “broadband infrastructure” means fiber optic or other wireline-based information equipment and facilities, ¹including point-to-point communication connections between two communication endpoints or nodes.¹ information systems, and information technology used for the purpose of providing fiber optic or other wireline-based broadband Internet service. “Broadband Internet service infrastructure” shall not mean or include any Internet or information service equipment or facilities that,

1 in part, use ¹point-to-multipoint wireless communications facilities or
2 other¹ wireless communications equipment or facilities.

3 “Broadband Internet service provider” or “service provider” means
4 a person, company, corporation, unincorporated association,
5 partnership, or professional corporation which ¹[is certified by the
6 board to offer] offers¹ fiber optic or other wireline-based broadband
7 Internet service directly to the public, or to classes of users as to be
8 effectively available directly to the public, regardless of the facilities
9 used.

10 “Broadband office” means the “Broadband Assistance Office”
11 established within the ¹[Board of Public Utilities] New Jersey
12 Economic Development Authority¹ pursuant to section 3 of P.L. , c.
13 (C.) (pending before the Legislature as this bill).

14 “Broadband project” means a project developed, in whole or in
15 part, for a new or existing broadband Internet service infrastructure or
16 broadband Internet service, or both.

17 ¹ “Critical area” means a census tract in which less than 100 percent
18 of households have access to broadband service, or a census tract that
19 meets the following requirements: a. at least 35 percent of the
20 households qualify as low-income households; or b. at least 40 percent
21 of the residents identify as a minority or as members of a State
22 recognized tribal community.

23 “Disadvantaged household” means any household which receives
24 benefits from or participates in the State Medicaid program, any form
25 of public housing assistance, the New Jersey Supplemental Nutrition
26 Assistance Program (SNAP), Temporary Assistance for Needy
27 Families (TANF), federal Supplemental Security Income (SSI), a
28 program resulting in a Charity Care subsidy to a hospital, the National
29 School Lunch Program (NSLP), the Head Start Program, the federal
30 Low Income Home Energy Assistance Program, the federal Special
31 Supplemental Nutrition Program for Women, Infants, and Children
32 (WIC), any veterans’ pension program, and any federal tribal
33 assistance program. “Disadvantaged household” shall include any
34 household that makes less than 200 percent of the federal poverty
35 level.¹

36 “Fund” means the “State Broadband ¹**[Assistance]**¹ Fund”
37 established pursuant to section ¹**[5]** ⁶6¹ of P.L. , c. (C.) (pending
38 before the Legislature as this bill).

39 “Government entity” means the State, its subdivisions, and any
40 department, agency, commission, authority, board, or instrumentality
41 thereof, a county, a municipality, a regional or municipal authority, a
42 quasi-State agency, a State-created corporation, a municipal
43 corporation. “Governmental entity” may include a combination of
44 governmental entities as defined herein.

45 “Office of Information Technology” means the Office of
46 Information Technology established pursuant to section 9 of P.L.2007,
47 c.56 (C.52:18A-227).

1 “Private entity” means a person, a combination of persons, a
2 business entity, a combination of business entities, or a combination of
3 persons and business entities with experience in the construction and
4 operation of broadband networks¹.

5 “Public-private partnership agreement” or “P3 agreement” means
6 an agreement entered into by a governmental entity and a private
7 entity for the purposes of undertaking a broadband project approved by
8 the broadband office pursuant to section 3 of P.L. , c. (C.) (pending
9 before the Legislature as this bill).

10
11 3. a. There is hereby established in the ¹**[Board of Public**
12 **Utilities]** New Jersey Economic Development Authority¹ a
13 “Broadband Assistance Office.” The broadband office shall be
14 responsible for the formulation and execution of a comprehensive
15 Statewide policy that fosters the provision of wired broadband service
16 by government or private entities, developing a broadband project, or
17 both, if these entities develop a broadband project under a public-
18 private partnership agreement, and shall be responsible for the
19 development, promotion, coordination, oversight, and approval of a
20 broadband project developed pursuant to P.L. , c. (C.)
21 (pending before the Legislature as this bill).

22 b. The broadband office, in cooperation with the authority, shall
23 establish guidelines for the broadband office’s approval, designation,
24 operation, and reporting of a proposed broadband project, including
25 any proposed broadband project developed under a P3 agreement, in a
26 manner determined by the broadband office. The broadband office, in
27 cooperation with the authority, shall oversee, coordinate, and provide
28 assistance to a broadband project approved by the broadband office
29 pursuant to P.L. , c. (C.) (pending before the Legislature as
30 this bill).

31 c. The broadband office shall consult and coordinate with
32 representatives of other State departments, agencies, boards, and
33 authorities, including the authority and the Office of Information
34 Technology, as the broadband office, authority, and Office of
35 Information Technology shall deem necessary and appropriate, to
36 accomplish the goals of P.L. , c. (C.) (pending before the
37 Legislature as this bill).

38 d. The broadband office shall identify the resources and personnel
39 of the board, the authority, and other participating agencies,
40 departments, boards, and authorities of the State that are deemed
41 necessary and appropriate to support the broadband office. The
42 ¹**[board]** authority¹ may retain one or more qualified private
43 consultants with relevant expertise to provide the technical assistance
44 and resources deemed necessary and appropriate to assist the
45 broadband office.

1 4. To accomplish the duties and responsibilities described in
2 section 3 of P.L. , c. (C.) (pending before the Legislature as
3 this bill), the broadband office shall be responsible for:

4 a. in conjunction with the Office of Information Technology,
5 mapping Internet connectivity within the State ¹and publicly
6 publishing this information¹;

7 b. engaging with stakeholders, such as broadband infrastructure
8 developers, broadband service providers, and local government and
9 school officials representing ¹**underserved communities** critical
10 areas¹;

11 c. in conjunction with the authority, coordinating financial and
12 technical assistance to municipalities wherein critical areas
13 communities are located, which include households and small
14 businesses that cannot afford to receive broadband service or areas
15 within municipalities that lack adequate broadband service;

16 d. establishing policies and procedures that encourage
17 government and private entity participation and investment in
18 broadband projects as necessary and appropriate to implement the
19 provisions of P.L. , c. (C.) (pending before the Legislature as
20 this bill);

21 e. providing technical advice, guidance, and assistance to
22 government and private entities to ensure the availability of the
23 necessary expertise and capacity to develop and evaluate the merits of
24 proposed broadband projects;

25 f. promoting informed and timely decision-making with regard to
26 the development of broadband projects;

27 g. establishing appropriate qualification criteria for government
28 and private entities, including the qualification of private entities
29 undertaking a broadband project under a P3 agreement; ¹**and**¹

30 h. monitoring and enforcing the broadband project policies and
31 procedures established pursuant to P.L. , c. (C.) (pending
32 before the Legislature as this bill), which may include a provision for
33 potential revenue sharing opportunities between a government entity
34 and a private entity in certain defined or agreed circumstances,
35 including broadband projects that achieve profits that exceed a
36 negotiated rate of return established for a private entity in a P3
37 agreement ¹**;** ¹;

38 ¹i. coordinating with service providers that offer programs to
39 members of disadvantaged households to raise awareness of these
40 programs so that the households have a better understanding of
41 these programs and how to access them;

42 j. cooperating with the Department of Children and Families,
43 Department of Human Services, Department of Health, Department
44 of Labor and Workforce Development, Department of Military and
45 Veterans Affairs, and service providers to complete a field study of
46 barriers to broadband adoption by disadvantaged households, such
47 as housing insecurity, language barriers, and population mobility.
48 The authority shall provide, pursuant to section 2 of P.L.1991, c.164

1 (C.52:14-19.1), a report on the results of the field study to the
2 Legislature with recommendations for solutions to remove these
3 barriers within 18 months of the enactment of P.L. , c. (C.)
4 (pending before the Legislature as this bill);

5 k. cooperating with the Department of Children and Families,
6 Department of Human Services, Department of Health, Department
7 of Labor and Workforce Development, and Department of Military
8 and Veterans Affairs, to identify and secure funding from either the
9 State's General Fund or federal funding to underwrite the cost of
10 monthly broadband service and household broadband service
11 devices for disadvantaged households;

12 l. cooperating with the Department of Children and Families,
13 Department of Human Services, Department of Health, Department
14 of Labor and Workforce Development, and Department of Military
15 and Veterans Affairs, to identify and secure funding sources from
16 either the State's General Fund or federal funding to support
17 development, installation, and financing of community-based
18 broadband services that provide broadband access in safe spaces,
19 including but not limited to libraries, homeless shelters, community
20 centers, and school campuses;

21 m. cooperating with the Department of Education to identify
22 and secure funding from either the State's General Fund or federal
23 funding to underwrite the cost of monthly broadband service and
24 household broadband devices purchased by public schools on behalf
25 of students in grades from kindergarten to twelfth grade from
26 disadvantaged households;

27 n. identifying and providing financial and technical support to
28 community-based programs that provide digital literacy training in
29 relevant community languages to members of disadvantaged
30 households; and

31 o. developing and funding community-based programs that
32 provide digital literacy training in relevant community languages to
33 members of disadvantaged households.¹

34
35 5. In evaluating a proposed broadband project, the broadband
36 office shall:

37 a. consider whether leasing or purchasing established broadband
38 infrastructure, such as unused fiber optic cable, is more advantageous
39 in providing faster broadband service;

40 b. consider whether establishing a government entity or a non-
41 profit corporation is appropriate to provide broadband infrastructure or
42 broadband service to ¹**[an underserved]** a critical area¹ community;

43 c. evaluate the different methods, including P3 agreements with
44 private entities, that other communities in this country have used to
45 provide broadband infrastructure or broadband service to an
46 underserved community;

1 d. determine the most cost effective method in which to establish
2 broadband infrastructure and broadband service, with a cost estimate
3 for a community and a price estimate for paying customers; and

4 e. explore all possible federal, State, and private sources of
5 funding and technical assistance for the establishment of broadband
6 infrastructure and broadband service in ¹**underserved** critical area¹
7 communities and populations of this State.
8

9 6. a. There is established in the ¹**Board of Public Utilities**
10 New Jersey Economic Development Authority¹ a separate non-lapsing
11 fund to be known as the “State Broadband Fund” for use by the
12 broadband office to adequately and properly perform its duties and
13 responsibilities in carrying out the requirements of P.L. , c. (C.)
14 (pending before the Legislature as this bill). The ¹**board** authority¹,
15 in consultation with the ¹**authority** board¹, shall determine the level
16 of funding and the appropriate administration of the fund. ¹**With**
17 financial assistance from the authority and any ¹**The fund may seek**
18 and accept any¹ available funding from federal, State, and private
19 entity sources ¹**, the board** ¹**. The authority** shall provide sufficient
20 funding to the broadband office to enable the broadband office to
21 provide funding for ¹**underserved communities** critical areas¹ in the
22 State to pay for broadband service and for the installation or expanded
23 use of broadband infrastructure for communities that lack broadband
24 access, specifically the portion of a communications infrastructure
25 network that physically reaches the residents' or small business's
26 premises within those communities.

27 b. The ¹**board** authority¹, in consultation with the ¹**authority**
28 board¹, is authorized to seek and accept gifts, donations, grants, or
29 loans from public or private sources, including, but not limited to, any
30 funding provided by the Federal Communications Commission or any
31 funding from a non-profit foundation, specifically for the provision of
32 broadband infrastructure or broadband service, except that the board
33 and authority shall not accept a gift, donation, grant, or loan that is
34 subject to conditions that are inconsistent with any other law of this
35 State.
36

37 7. The ¹**board** authority¹, in consultation with the ¹**authority**
38 board¹, shall annually prepare a report to the Governor and, pursuant
39 to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature
40 regarding the number, nature, structure, and scope of each broadband
41 project developed pursuant to P.L. , c. (C.) (pending before the
42 Legislature as this bill) and whether the broadband project is
43 developed under a P3 agreement. The report shall include:

44 a. a description of the broadband project and its location;
45 b. the costs incurred for the broadband project;
46 c. the number of jobs created and other economic and societal
47 benefits of the broadband project;

1 d. the increase in the use and demand for broadband service as a
2 result of the broadband project;

3 e. if applicable, the enhancements to the resiliency and reliability
4 of the broadband service within the State; and

5 f. other relevant information as determined by the ¹[board]
6 authority¹.

7 The report shall address any issues related to the implementation
8 P.L. , c. (C.) (pending before the Legislature as this bill),
9 including staffing and resource requirements of the broadband office.

10 The report shall set forth recommendations, including
11 recommendations for legislation, concerning how the processes and
12 methods adopted to foster the development of broadband projects and
13 any related P3 agreements under P.L. , c. (C.) (pending before
14 the Legislature as this bill) may be improved, expanded, or made more
15 efficient.

16
17 8. The ¹[board] authority¹ shall promulgate rules and
18 regulations, pursuant to the “Administrative Procedure Act,”
19 P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary to implement
20 the provisions of P.L. , c. (C.) (pending before the
21 Legislature as this bill). The ¹[board] authority¹ may be assisted, as
22 appropriate, by other participating agencies, departments, boards,
23 and authorities, including the authority and the Office of
24 Information Technology, in the promulgation of necessary rules and
25 regulations.

26
27 9. This act shall take effect immediately.