

# SENATE, No. 3086

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED OCTOBER 29, 2020

**Sponsored by:**

**Senator M. TERESA RUIZ**

**District 29 (Essex)**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Middlesex, Somerset and Union)**

**Co-Sponsored by:**

**Senators Oroho and Pou**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/29/2020)**

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  
9 disease 2019 (COVID-19) have resulted in residents, especially  
10 students, and certain businesses in this State being required to  
11 perform their day-to-day activities from home or otherwise from a  
12 remote location, and with the start of the school year, it is especially  
13 important for students and educators engaged in remote learning to  
14 have Internet access 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  
17 due to COVID-19, will continue to help to improve equitable access  
18 to healthcare;

19 (3) To properly perform telehealth services, remote student  
20 learning, and other activities during the pandemic, students,  
21 workers, and employers are required to have access to Internet  
22 service at broadband speeds to transmit data, graphics, video, and  
23 voice 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  
27 (FCC) requires all broadband service providers (providers) to file  
28 Form 477 with the FCC, on which providers indicate where they  
29 offer service at speeds exceeding 200 kilobits per second in at least  
30 one direction, the minimum speed to be deemed as offering  
31 broadband service;

32 (5) Presently, the FCC's method in determining broadband  
33 connectivity, as determined by the information offered on Form  
34 477, allows for a provider to claim that an area is covered when the  
35 provider attests that it could serve an area within a census block,  
36 even when the people of that area have no access to broadband  
37 service;

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

44 (7) In 2018, a study by the Microsoft Corporation found that  
45 162.8 million people in this country are not using the Internet at  
46 broadband speeds, which far exceeds the FCC's estimated number  
47 of people without broadband service access at 25 million, a number  
48 determined by the data reported from Form 477;

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

4 (9) Having accurate information concerning broadband service  
5 connectivity in this State is necessary to determine how to better  
6 focus resources on providing broadband service to underserved  
7 areas in New Jersey;

8 (10) Disadvantaged individuals in New Jersey do not have the  
9 means to pay for broadband service, especially during this time of  
10 high unemployment due to COVID-19, because of the high cost of  
11 this service;

12 (11) A significant amount of residents and small businesses  
13 located in rural areas of this State still do not have access to  
14 broadband service;

15 (12) This public health emergency has exposed the so-called  
16 “digital divide” in this State, making it difficult for rural and low-  
17 income areas to access medical care, continue education, and  
18 maintain employment; and

19 (13) This lack of access exacerbates social, economic, income,  
20 and health inequalities in this State that can be addressed by taking  
21 measures that secure broadband access for areas in need.

22 b. The Legislature therefore determines that:

23 (1) It shall be the public policy of this State to foster the  
24 provision of wired broadband service to disadvantaged individuals  
25 and to residents and small businesses located within rural areas of  
26 this State as a measure to lessen the negative economic effects of  
27 COVID-19 and the overall economy of this State;

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

33 (3) The establishment of a Broadband Assistance Office within  
34 the Board of Public Utilities, having duties and responsibilities that  
35 include, but not limited to, the review and approval of proposed  
36 projects providing for the deployment of fiber optic or other  
37 wireline-based broadband service to disadvantaged individuals and  
38 in underserved areas, and the provision of financing for these  
39 projects, would meet this important need; and

40 (4) It shall be a goal for the State’s residents and businesses to  
41 have universal access to a fiber optic or other wireline-based  
42 broadband service provider, offering data transfer speeds of at least  
43 25 megabits per second (Mbps) download and at least three Mbps  
44 upload by 2023 and at least 100 Mbps download and 100 Mbps  
45 upload by 2027. This goal shall allow for the Broadband  
46 Assistance Office to increase these minimum data transfer speeds as  
47 broadband service technology or capability advances.

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

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

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

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

21       “Broadband Internet service infrastructure” or “broadband  
22 infrastructure” means fiber optic or other wireline-based  
23 information equipment and facilities, information systems, and  
24 information technology used for the purpose of providing fiber  
25 optic or other wireline-based broadband Internet service.  
26 “Broadband Internet service infrastructure” shall not mean or  
27 include any Internet or information service equipment or facilities  
28 that, in part, use wireless communications equipment or facilities.

29       “Broadband Internet service provider” or “service provider”  
30 means a person, company, corporation, unincorporated association,  
31 partnership, or professional corporation which is certified by the  
32 board to offer fiber optic or other wireline-based broadband Internet  
33 service directly to the public, or to classes of users as to be  
34 effectively available directly to the public, regardless of the  
35 facilities used.

36       “Broadband office” means the “Broadband Assistance Office”  
37 established within the Board of Public Utilities pursuant to section 3  
38 of P.L.       , c.       (C.       ) (pending before the Legislature as this bill).

39       “Broadband project” means a project developed, in whole or in  
40 part, for a new or existing broadband Internet service infrastructure  
41 or broadband Internet service, or both.

42       “Fund” means the “State Broadband Assistance Fund”  
43 established pursuant to section 5 of P.L.       , c.       (C.       ) (pending  
44 before the Legislature as this bill).

45       “Government entity” means the State, its subdivisions, and any  
46 department, agency, commission, authority, board, or  
47 instrumentality thereof, a county, a municipality, a regional or  
48 municipal authority, a quasi-State agency, a State-created

1 corporation, a municipal corporation. “Governmental entity” may  
2 include a combination of governmental entities as defined herein.

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

6 “Private entity” means a person, a combination of persons, a  
7 business entity, a combination of business entities, or a combination  
8 of persons and business entities.

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

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

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

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

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

- 1       4. To accomplish the duties and responsibilities described in  
2 section 3. of P.L. , c. (C. ) (pending before the Legislature  
3 as 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;
  - 6       b. engaging with stakeholders, such as broadband infrastructure  
7 developers, broadband service providers, and local government and  
8 school officials representing underserved communities;
  - 9       c. in conjunction with the authority, coordinating financial and  
10 technical assistance to municipalities wherein underserved  
11 communities are located, which include households and small  
12 businesses that cannot afford to receive broadband service or areas  
13 within municipalities that lack adequate broadband service;
  - 14       d. establishing policies and procedures that encourage  
15 government and private entity participation and investment in  
16 broadband projects as necessary and appropriate to implement the  
17 provisions of P.L. , c. (C. ) (pending before the Legislature  
18 as this bill);
  - 19       e. providing technical advice, guidance, and assistance to  
20 government and private entities to ensure the availability of the  
21 necessary expertise and capacity to develop and evaluate the merits  
22 of proposed broadband projects;
  - 23       f. promoting informed and timely decision-making with regard  
24 to the development of broadband projects;
  - 25       g. establishing appropriate qualification criteria for government  
26 and private entities, including the qualification of private entities  
27 undertaking a broadband project under a P3 agreement; and
  - 28       h. monitoring and enforcing the broadband project policies and  
29 procedures established pursuant to P.L. , c. (C. ) (pending  
30 before the Legislature as this bill), which may include a provision  
31 for potential revenue sharing opportunities between a government  
32 entity and a private entity in certain defined or agreed  
33 circumstances, including broadband projects that achieve profits  
34 that exceed a negotiated rate of return established for a private  
35 entity in a P3 agreement.
- 36
- 37       5. In evaluating a proposed broadband project, the broadband  
38 office shall:
- 39       a. consider whether leasing or purchasing established  
40 broadband infrastructure, such as unused fiber optic cable, is more  
41 advantageous in providing faster broadband service;
  - 42       b. consider whether establishing a government entity or a non-  
43 profit corporation is appropriate to provide broadband infrastructure  
44 or broadband service to an underserved community;
  - 45       c. evaluate the different methods, including P3 agreements  
46 with private entities, that other communities in this country have  
47 used to provide broadband infrastructure or broadband service to an  
48 underserved community;

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

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

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

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

35  
36 7. The board, in consultation with the authority, shall annually  
37 prepare a report to the Governor and, pursuant to section 2 of  
38 P.L.1991, c.164 (C.52:14-19.1), to the Legislature regarding the  
39 number, nature, structure, and scope of each broadband project  
40 developed pursuant to P.L. , c. (C. ) (pending before the  
41 Legislature as this bill) and whether the broadband project is  
42 developed under a P3 agreement. The report shall include:

- 43 a. a description of the broadband project and its location;  
44 b. the costs incurred for the broadband project;  
45 c. the number of jobs created and other economic and societal  
46 benefits of the broadband project;  
47 d. the increase in the use and demand for broadband service as  
48 a result of the broadband project;

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

3 f. other relevant information as determined by the board.

4 The report shall address any issues related to the implementation  
5 P.L. , c. (C. ) (pending before the Legislature as this bill),  
6 including staffing and resource requirements of the broadband  
7 office. The report shall set forth recommendations, including  
8 recommendations for legislation, concerning how the processes and  
9 methods adopted to foster the development of broadband projects  
10 and any related P3 agreements under P.L. , c. (C. ) (pending  
11 before the Legislature as this bill) may be improved, expanded, or  
12 made more efficient.

13

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

22

23 9. This act shall take effect immediately.

24

25

26

STATEMENT

27

28 This bill establishes in the Board of Public Utilities (BPU) a  
29 “Broadband Assistance Office” (broadband office). The broadband  
30 office is to be responsible for the formulation and execution of a  
31 comprehensive Statewide policy that fosters the provision of wired  
32 broadband service by government or private entities developing a  
33 broadband project, or both, if these entities develop a broadband  
34 project under a public-private partnership (P3) agreement, and be  
35 responsible for the development, promotion, coordination,  
36 oversight, and approval of a broadband project developed pursuant  
37 to the bill. The broadband office, in cooperation with the New  
38 Jersey Economic Development Authority (EDA), is to establish  
39 guidelines for the broadband office’s approval, designation,  
40 operation, and reporting of a proposed broadband project, including  
41 any proposed broadband project developed under a P3 agreement,  
42 in a manner determined by the broadband office. The broadband  
43 office, in cooperation with the EDA, is to oversee, coordinate, and  
44 provide assistance to a broadband project approved by the  
45 broadband office. The broadband office is to consult and  
46 coordinate with representatives of other State departments,  
47 agencies, boards, and authorities, including the EDA and the Office

1 of Information Technology (OIT), as these entities deem necessary  
2 and appropriate to accomplish the goals of the bill.

3 To accomplish the broadband office's duties and responsibilities,  
4 it is to be responsible for: 1) in conjunction with the OIT, mapping  
5 Internet connectivity within the State; 2) engaging with  
6 stakeholders, such as broadband infrastructure developers,  
7 broadband service providers, and local government and school  
8 officials representing underserved communities; 3) in conjunction  
9 with the EDA, coordinating financial and technical assistance to  
10 municipalities wherein underserved communities are located, which  
11 include households and small businesses that cannot afford to  
12 receive broadband service or areas within municipalities that lack  
13 adequate broadband service; 4) establishing policies and procedures  
14 that encourage government and private entity participation and  
15 investment in broadband projects as necessary and appropriate to  
16 implement the provisions of the bill; 5) providing technical advice,  
17 guidance, and assistance to government and private entities to  
18 ensure the availability of the necessary expertise and capacity to  
19 develop and evaluate the merits of proposed broadband projects; 6)  
20 promoting informed and timely decision-making with regard to the  
21 development of broadband projects; 7) establishing appropriate  
22 qualification criteria for government and private entities, including  
23 the qualification of private entities undertaking an broadband  
24 project under a P3 agreement; and 8) monitoring and enforcing the  
25 broadband project policies and procedures established pursuant to  
26 the bill, which may include a provision for potential revenue  
27 sharing opportunities between a government entity and a private  
28 entity in certain defined or agreed circumstances, including  
29 broadband projects that achieve profits that exceed a negotiated rate  
30 of return established for a private entity in a P3 agreement.

31 In evaluating a proposed broadband project, the broadband office  
32 is to: 1) consider whether leasing or purchasing established  
33 broadband infrastructure, such as unused fiber optic cable, is more  
34 advantageous in providing faster broadband service; 2) consider  
35 whether establishing a government entity or a non-profit  
36 corporation is appropriate to provide broadband infrastructure or  
37 broadband service to an underserved community; 3) evaluate the  
38 different methods, including P3 agreements with private entities,  
39 that other communities in this country have used to provide  
40 broadband infrastructure or broadband service to an underserved  
41 community; 4) determine the most cost effective method in which  
42 to establish broadband infrastructure and broadband service, with a  
43 cost estimate for a community and a price estimate for paying  
44 customers; and 5) explore all possible federal, State, and private  
45 sources of funding and technical assistance for the establishment of  
46 broadband infrastructure and broadband service in underserved  
47 communities and populations of this State.

1       The bill establishes in the BPU a separate non-lapsing fund to be  
2 known as the “State Broadband Fund” (broadband fund) for use by  
3 the broadband office to adequately and properly perform the duties  
4 and responsibilities in carrying out the requirements of the bill. The  
5 BPU, in consultation with the EDA, is to determine the level of  
6 funding and the appropriate administration of the broadband fund.  
7 With financial assistance from the EDA and any available funding  
8 from federal, State and private entity sources, the BPU is to provide  
9 sufficient funding to the broadband office to enable the broadband  
10 office to provide funding for underserved communities to pay for  
11 broadband service and for the installation or expanded use of  
12 broadband infrastructure for communities that lack broadband  
13 access, specifically the portion of a communications infrastructure  
14 network that physically reaches the residents' or small business's  
15 premises within those communities. The bill allows the BPU, in  
16 consultation with the EDA, to seek and accept gifts, donations,  
17 grants, or loans from public or private sources, including, but not  
18 limited to, any funding provided by the Federal Communications  
19 Commission or any funding from a non-profit foundation,  
20 specifically for the provision of broadband infrastructure or  
21 broadband service, except that the BPU and EDA are not to accept a  
22 gift, donation, grant, or loan that is subject to conditions that are  
23 inconsistent with any other law of this State.

24       The bill requires the BPU, in consultation with the EDA, to  
25 annually prepare a report to the Governor and the Legislature  
26 concerning the number, nature, structure, and scope of each  
27 broadband project developed, and whether the broadband project is  
28 developed under a P3 agreement. The report is to include: 1) a  
29 description of the broadband project and its location; 2) the costs  
30 incurred for the broadband project; 3) the number of jobs created  
31 and other economic and societal benefits of the broadband project;  
32 4) the increase in the use and demand for broadband service as a  
33 result of the broadband project; 5) if applicable, the enhancements  
34 to the resiliency and reliability of the broadband service within the  
35 State; and 6) other relevant information as determined by the BPU.  
36 The report is to address any issues related to the implementation the  
37 bill, including staffing and resource requirements of the broadband  
38 office. The report is to set forth recommendations regarding how  
39 the processes and methods adopted to foster the development of  
40 broadband projects and any related P3 agreements under the bill  
41 may be improved, expanded, or made more efficient.