

# ASSEMBLY, No. 160

## STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 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.



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.

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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,  
9 or 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.

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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

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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)

40

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)

25

26 8. This act shall take effect immediately.

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#### 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.