

ASSEMBLY, No. 812

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

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SYNOPSIS

Requires OIT to establish Statewide wireless network through public-private partnership agreement.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning a Statewide wireless network and
2 supplementing Title 52 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. As used in P.L. , c. (C.) (pending before the
8 Legislature as this bill):

9 "Broadband telecommunications infrastructure" shall have the
10 same meaning as provided in section 1 of P.L.2007, c.191
11 (C.40:9D-1).

12 "Broadband telecommunications service" shall have the same
13 meaning as provided in section 1 of P.L.2007, c.191 (C.40:9D-1)
14 but shall provide a minimum download speed of at least 1 megabit
15 per second.

16 "Department" means the Department of the Treasury.

17 "Governing body" shall have the same meaning as provided in
18 section 1 of P.L.2007, c.191 (C.40:9D-1).

19 "Office" means the Office of Information Technology,
20 established pursuant to section 9 of P.L.2007, c.56 (C.52:18A-227).

21 "Person" shall have the same meaning as provided in R.S.1:1-2
22 and includes "public utilities" as defined in R.S.48:2-13.

23 "Public-private partnership agreement" means an agreement
24 entered into by the Office of Information Technology and a private
25 entity pursuant to P.L. , c. (C.) (pending before the
26 Legislature as this bill) for the purpose of permitting a private entity
27 to assume full financial and administrative responsibility for the
28 construction, reconstruction, repair, improvement, extension,
29 operation, and maintenance of a revenue-producing Statewide
30 wireless network project.

31 "State government entity" means the State or any department,
32 agency, commission, or authority thereof subject to the public
33 contracting provisions of P.L.1954, c.48 (C.52:34-6 et seq.).

34 "Statewide wireless network project" or "project" means the
35 construction, reconstruction, repair, maintenance, improvement, or
36 extension of any broadband telecommunications infrastructure for
37 the provision broadband telecommunications service over of a
38 Statewide wireless network.

39

40 2. a. Consistent with federal law, the Office of Information
41 Technology shall enter into a contract with a private entity to be
42 referred to as a public-private partnership agreement, that permits
43 the private entity to assume full financial and administrative
44 responsibility for the construction, reconstruction, repair,
45 improvement, extension, operation, and maintenance of a Statewide
46 wireless network project, provided that the Statewide wireless
47 network project is financed in whole or in part by the private entity

1 and any owner of the land or property upon which the project is
2 located retains full ownership of their land or property.

3 b. A public-private partnership agreement may include an
4 agreement under which the office and a private entity enter into a
5 leaseback agreement of a revenue-producing Statewide wireless
6 network project in exchange for up-front or structured financing by
7 the private entity for the project. Under the leaseback agreement,
8 the private entity shall be responsible for the management,
9 operation, and maintenance of the Statewide wireless network
10 project. The private entity shall receive some or all, as per the
11 agreement, of the revenue generated by the Statewide wireless
12 network project, and shall operate the Statewide wireless network
13 project in accordance with standards established by the office. At
14 the end of the lease term, all subsequent revenue generated by the
15 Statewide wireless network project, along with management,
16 operation, and maintenance responsibility, shall revert to the office.
17 A leaseback agreement shall be subject to all applicable provisions
18 of current law governing leases by a State government entity not
19 inconsistent with the provisions of this section.

20 c. Notwithstanding any provision of law to the contrary, the
21 office shall be empowered to enter into contracts with a private
22 entity and its affiliates without being subject to the procurement and
23 contracting requirements, unless otherwise set forth herein, of any
24 law applicable to the office provided that the private entity has been
25 selected by the office pursuant to a solicitation of proposals or
26 qualifications from at least two private entities. The office shall be
27 the owner or lessee of any project financed by the State.

28
29 3. a. Prior to entering into a public-private partnership
30 agreement, the office shall determine:

- 31 (1) the benefits to be realized by the project;
32 (2) the cost of project if it is developed by a State government
33 entity supported by comparisons to comparable projects;
34 (3) the maximum public contribution that the office will allow
35 under the public-private partnership agreement;
36 (4) a comparison of the financial and non-financial benefits of
37 the public-private partnership agreement compared to other options
38 including the public sector option;
39 (5) a list of risks, liabilities, and responsibilities to be
40 transferred to the private entity and those to be retained by the
41 office; and
42 (6) if the project has a high, medium, or low level of project
43 delivery risk, how the public is protected from these risks.

44 b. Prior to entering into a public-private partnership agreement,
45 the office shall hold at least one public hearing in each of the north,
46 central, and southern regions of the State, as determined by the
47 office, at least 90 days prior to publishing the request for private
48 entity qualifications, pursuant to section 4 of P.L. , c. (C.)

1 (pending before the Legislature as this bill), and shall present, with
2 evidence, that the project is in the best interest of the public by
3 showing that:

4 (1) the project will cost less than the public sector option, or if
5 the project costs more, there are factors that warrant the additional
6 expense;

7 (2) there is a public need for the project and the project is
8 consistent with existing long-term plans;

9 (3) there are specific significant benefits to the project;

10 (4) there are specific significant benefits to using a public-
11 private partnership instead of other options;

12 (5) the project will result in timely and efficient development
13 and operation of the Statewide wireless network project; and

14 (6) the risks, liabilities and responsibilities transferred to the
15 private entity provide sufficient benefits to warrant not using other
16 means of procurement.

17

18 4. a. A private entity seeking to enter into a public-private
19 partnership agreement with the office shall first be qualified by the
20 office, in consultation with the Department of the Treasury,
21 provided the qualification process ensures that the private entity,
22 and its subcontractors and consultants, when relevant, are identified
23 and meet at least the minimum office standards for qualification for
24 professional services, telecommunications infrastructure
25 contracting, and other qualifications applicable to the project, prior
26 to submitting a request for proposals pursuant to subsection c. of
27 this section.

28 b. The office shall advertise a request for qualifications for a
29 public-private partnership agreement at least 45 days prior to the
30 anticipated date of receipt. The advertisement of the request for
31 qualifications shall be published on the official Internet website of
32 the office and in at least one or more newspapers with Statewide
33 circulation.

34 c. After the office determines the qualified respondents
35 utilizing, at minimum, the qualification standards promulgated by
36 the office, pursuant to subsection a. of this section, the office shall
37 issue a request for proposals to each qualified respondent no less
38 than 90 days prior to the date established for submission of the
39 proposals. The request for proposals shall require qualified
40 respondents to include, but not be limited to:

41 (1) a design for at least two tiers of minimum and maximum
42 download and upload speeds for the broadband telecommunications
43 service provided by the Statewide wireless network, the slowest of
44 which shall be offered to the public free of charge;

45 (2) proposed rates not to exceed \$10 per month that shall apply
46 to any speed tier that is not the slowest speed tier;

47 (3) a description and proof of effective application of all
48 broadband telecommunications infrastructure the private entity is

1 capable of using in constructing and operating the Statewide
2 wireless network;

3 (4) a commitment from the private entity to fully cooperate with
4 the governing body of any local unit within which the private entity
5 is to construct or install broadband telecommunications
6 infrastructure in any public right-of-way, under terms and
7 conditions as may be agreed upon by the governing body and the
8 private entity;

9 (5) a commitment from the private entity to fully cooperate with
10 any person owning or having the right to use any poles, street lights,
11 posts, towers, or other structures erected along any public right-of-
12 way, under terms and conditions as may be agreed upon by the
13 person and the private entity; and

14 (6) relevant technical submissions, documents, and any other
15 material as determined by the office.

16 d. In order for a proposal to be complete and considered by the
17 office, the proposal from the qualified respondent shall include, but
18 not be limited to:

19 (1) a full description of the proposed public-private partnership
20 agreement between the office and the private entity, including all
21 information obtained by, and findings of, the office pursuant to
22 subsection c. of section 5 of P.L. , c. (C.) (pending before
23 the Legislature as this bill);

24 (2) a full description of the project, including a description of
25 the leaseback agreement, if applicable;

26 (3) the estimated costs and financial documentation for the
27 project showing the underlying financial models and assumptions
28 that determined the estimated costs. The financial documentation
29 shall include at least three different projected estimated costs
30 showing scenarios in which materially different economic
31 circumstances are assumed and an explanation for how the
32 estimated costs were determined based on the three scenarios;

33 (4) a timetable for completion of the construction of the project;

34 (5) an analysis of all available funding options for the project,
35 including an analysis of the financial viability and advisability of
36 such project, along with evidence of the public benefit in advancing
37 the project as a public-private partnership; and

38 (6) any other requirements that the office deems appropriate or
39 necessary.

40 e. As part of the estimated costs and financial documentation
41 for the project, the proposal shall contain a long-range maintenance
42 plan and a long-range maintenance bond and shall specify the
43 expenditures that qualify as an appropriate investment in
44 maintenance. The long-range maintenance plan shall be approved
45 by the office pursuant to regulations promulgated by the office that
46 reflect appropriate maintenance benchmarks.

47 f. The office may, upon receipt of one or more proposals,
48 require that the private entity assume responsibility for all costs

1 incurred by the office before execution of the public-private
2 partnership agreement, including costs of retaining independent
3 experts to review, analyze, and advise the office with respect to the
4 proposal.

5 g. Stipends may be paid in relation to Statewide wireless
6 network projects when there is a substantial opportunity for
7 innovation and the costs for developing a proposal are significant.
8 The office may elect to pay unsuccessful proposers for the work
9 product they submit with their proposal in response to a request for
10 proposals. The use by the office of any design element contained in
11 an unsuccessful proposal shall be at the sole risk and discretion of
12 the office and shall not confer liability on the recipient of the
13 stipulated stipend amount. After payment of the stipulated stipend
14 amount, the office and the unsuccessful proposer shall jointly own
15 the rights to, and may make use of any work product contained in
16 the proposal, including the technologies, techniques, methods,
17 processes, ideas, and information contained in the proposal, project
18 design, and project financial plan. The use by the unsuccessful
19 proposer of any part of the work product contained in the proposal
20 shall be at the sole risk of the unsuccessful proposer and shall not
21 confer liability on the office. The department, in consultation with
22 the office, shall promulgate guidelines based upon which any
23 stipends paid by the office may be based.

24

25 5. a. (1) After the office has received one or more proposals
26 from qualified respondents, and any public notification period has
27 expired, the office shall evaluate the proposals using criteria
28 promulgated by the office, in consultation with the department and
29 rank the proposals in order of preference. The office may request
30 additional information from a qualified respondent, as is needed, to
31 make a complete assessment of the project.

32 (2) In ranking the proposals, the office may consider factors that
33 include, but may not be limited to, professional qualifications,
34 general business terms, innovative engineering, provision of
35 telecommunications services, or cost-reduction terms, finance plans,
36 and the need for State funds to deliver the project and discharge the
37 agreement and shall rely upon, at a minimum, the evaluation criteria
38 promulgated by the office, in consultation with the department. The
39 office may negotiate the final terms with the private entities
40 submitting proposals, including price, term, and any other term or
41 condition so as to make the project well-suited to the needs of the
42 office and the State and commercially viable for the private entity.
43 The office shall select a proposal that meets the standards required
44 pursuant to this section and that best meet the needs, price, and
45 other factors considered by the office. The private entity selected
46 shall comply with all laws and regulations required by the State
47 government entity, including but not limited to section 1 of
48 P.L.2001, c.134 (C.52:32-44), sections 2 through 8 of

1 P.L.1975, c.127 (C.10:5-32 to C.10:5-38), section 1 of
2 P.L.1977, c.33 (C.52:25.24-2), P.L.2005, c.51 (C.19:44A-20.13 et
3 al.); P.L.2005, c.271 (C.40A:11-51 et al.), Executive Order No. 117
4 of 2008, Executive Order No. 118 of 2008, Executive Order No.
5 189 of 1988, prior to executing the public private partnership
6 agreement.

7 (3) If only one proposal is received, the office shall negotiate in
8 good faith and, if not satisfied with the results of the negotiations,
9 the office may, at its sole discretion, terminate negotiations.

10 (4) A public-private partnership agreement shall not be executed
11 until approval has been granted by the office and the department.
12 Prior to a final decision by the office on the application, the
13 department shall be afforded the opportunity to provide comments
14 on the application that it deems appropriate, and the office shall
15 consider any comments submitted by the department or relevant
16 State government entity with respect to the application.

17 b. In approving a proposal for the public-private partnership,
18 the office shall find that:

19 (1) the office's assumptions regarding the project's scope, its
20 benefits, its risks and the cost of the public sector option were fully
21 and reasonably developed;

22 (2) the design of the project is feasible;

23 (3) the experience and qualifications of the private entity are
24 adequate;

25 (4) the financial plan is sound;

26 (5) the long-range maintenance plan is adequate to protect the
27 investment;

28 (6) the project is in the best interest of the public; and

29 (7) the term sheet for any proposed procurement contains all
30 necessary elements.

31 c. The criteria for assessing the project shall include, but may
32 not be limited to the:

33 (1) feasibility and design of the project;

34 (2) experience and qualifications of the private entity;

35 (3) soundness of the financial plan;

36 (4) adequacy of the required exhibits;

37 (5) adequacy of the long-range maintenance plan; and

38 (6) existence of a clear public benefit.

39 d. The office shall retain the right to revoke its approval of the
40 project if the project has substantially deviated from the proposal
41 submitted pursuant to section 4 of P.L. , c. (C.) (pending
42 before the Legislature as this bill).

43 e. The office may promulgate any rules and regulations
44 necessary to implement the provisions of this section, including, but
45 not limited to, provisions for fees to cover administrative costs and
46 for the determination of minimum office standards for the operation
47 of the project, and for the qualification for professional services,

1 telecommunications infrastructure contracting, and other relevant
2 qualifications.

3

4 6. Any public-private partnership agreement, if appropriate,
5 shall include provisions affirming that the agreement and any work
6 performed under the agreement are subject to the provisions of the
7 "Construction Industry Independent Contractor Act,"
8 P.L.2007, c.114 (C.34:20-1 et seq.). Any public-private partnership
9 agreement shall also include, at a minimum:

- 10 a. the term of the agreement;
- 11 b. the total project cost;
- 12 c. a completion date guarantee;
- 13 d. a provision for damages if the private entity fails to meet the
14 completion date; and
- 15 e. a maximum rate of return to the private entity and a
16 provision for the distribution of excess earnings to the office or to
17 the private entity for debt reduction.

18

19 7. a. Prior to the commencement of work on a project, the
20 private entity shall establish a Statewide wireless network project
21 account and appoint a third-party financial institution, who shall be
22 prequalified by the department, to act as a collateral agent, and
23 manage the Statewide wireless network project account. The
24 Statewide wireless network project account shall include the
25 funding, financial instruments, or both, that shall be used to fully
26 capitalize and fund the project, and the collateral agent shall
27 maintain a full accounting of the funds and instruments in the
28 account. The funds and instruments in the Statewide wireless
29 network project account shall be held in trust for the benefit of the
30 contractor, construction manager, and design-build team involved in
31 the project. The funds and instruments in the Statewide wireless
32 network project account shall not be the property of the private
33 entity unless all amounts due to the Statewide wireless network
34 project account beneficiaries are paid in full. The Statewide
35 wireless network project account shall only be designated for the
36 project.

37 b. The private entity shall be required to post a performance
38 bond to ensure the completion of the project and a payment bond
39 guaranteeing prompt payment of monies due in accordance with and
40 conforming to the requirements of N.J.S.2A:44-143 et seq.

41

42 8. Each worker employed in the construction, operation, or
43 maintenance services of the Statewide wireless network project by a
44 private entity that has entered into a public-private partnership
45 agreement with the office pursuant to P.L. , c. (C.) (pending
46 before the Legislature as this bill) shall be paid not less than the
47 prevailing wage rate for the worker's craft or trade as determined by
48 the Commissioner of Labor and Workforce Development pursuant

1 to the “New Jersey Prevailing Wage Act,” P.L.1963, c.150
2 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.).

3

4 9. The power of eminent domain shall not be delegated to any
5 private entity under the provisions of P.L.2018, c.90 (C.40A:11-52
6 et al.); however, the office may dedicate any property interest,
7 including improvements, and tangible personal property of the State
8 for public use in a Statewide wireless network project if the office
9 finds that so doing will serve the public purpose of the project by
10 minimizing the cost of the project to the office or reducing the
11 delivery time of a project.

12

13 10. Nothing in P.L. , c. (C.) (pending before the
14 Legislature as this bill) shall be construed as or deemed a waiver of
15 the sovereign immunity of the State, an affected political
16 subdivision, or public entity or any officer or employee thereof with
17 respect to the participation in or approval of all or any part of a
18 Statewide wireless network project.

19

20 11. This act shall take effect immediately but shall be
21 inoperative for 90 days following the date of enactment.

22

23

24

STATEMENT

25

26 This bill requires the Office of Information Technology (OIT) in
27 the Department of the Treasury (department) to establish a
28 Statewide wireless network (network) through a public-private
29 partnership agreement with a private entity that is to assume full
30 financial and administrative responsibility for the construction,
31 reconstruction, repair, improvement, extension, operation, and
32 maintenance of the network, provided that the network project is
33 financed in whole or in part by the private entity and any owner of
34 the land or property upon which the project is located retains full
35 ownership of their land or property. The public-private partnership
36 may include a leaseback agreement.

37 The bill provides that, prior to entering into a public-private
38 partnership, the OIT is to determine:

- 39 1) the benefits to be realized by the project;
- 40 2) the cost of project if it is developed by a State government
41 entity supported by comparisons to comparable projects;
- 42 3) the maximum public contribution that the office will allow
43 under the public-private partnership agreement;
- 44 4) a comparison of the financial and non-financial benefits of
45 the public-private partnership agreement compared to other options
46 including the public sector option;

1 5) a list of risks, liabilities, and responsibilities to be
2 transferred to the private entity and those to be retained by the
3 office; and

4 6) if the project has a high, medium, or low level of project
5 delivery risk, how the public is protected from these risks.

6 The OIT is to also hold a public hearing in the northern, central,
7 and southern regions of the State to present information supporting
8 the establishment and construction of the network.

9 The OIT is to require that the private entity include, but not be
10 limited to, the following in the private entity's proposal to construct
11 the network:

12 1) at least two tiers of minimum and maximum download and
13 upload speeds for the broadband telecommunications service
14 provided by the network, the slowest of which is to be offered to
15 the public free of charge;

16 2) proposed rates not to exceed \$10 per month that shall apply
17 to any speed tier that is not the slowest speed tier;

18 3) a description and proof of effective application of all
19 broadband telecommunications infrastructure the private entity is
20 capable of using in constructing and operating the network;

21 4) a commitment from the private entity to fully cooperate with
22 the governing body of any local unit within which the private entity
23 is to construct or install broadband telecommunications
24 infrastructure in any public right-of-way, under terms and
25 conditions as may be agreed upon by the governing body and the
26 private entity; and

27 5) a commitment from the private entity to fully cooperate with
28 any person owning or having the right to use any poles, street lights,
29 posts, towers, or other structures erected along any public right-of-
30 way, under terms and conditions as may be agreed upon by the
31 person and the private entity.

32 The bill provides that the OIT, in consultation with the
33 department, is to review all submitted proposals, and request
34 additional information as is needed to make a complete assessment
35 of the project. A public-private partnership agreement is not to be
36 executed until approval has been granted by the office and
37 department. The OIT is to retain the right to revoke approval of a
38 proposal if the project has substantially deviated from the proposal.