

ASSEMBLY, No. 5858

STATE OF NEW JERSEY

220th LEGISLATURE

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Sponsored by:

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District 18 (Middlesex)

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SYNOPSIS

Removes requirement that local units may only provide broadband telecommunication service via wireless community service.

CURRENT VERSION OF TEXT

As introduced.



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 (1) in the case of the county, the board
22 of chosen freeholders or, if the county is organized pursuant to the
23 provisions of the "Optional County Charter Law," P.L.1972, c.154
24 (C.40:41A-1 et seq.), the board of chosen freeholders and the
25 county executive, the county supervisor or the county manager, as
26 appropriate, (2) in the case of a joint meeting of counties, the
27 management committee appointed to exercise the powers of the
28 joint meeting or local governing body to which the authority to
29 exercise those powers shall have been delegated under section 14 of
30 P.L.2007, c.63 (C.40A:65-14), or (3) in the case of a municipality,
31 the commission, council, board or body, by whatever name it may
32 be known, having charge of the finances of the municipality.

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

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

40 "Local Finance Board" means the Local Finance Board, in the
41 Division of Local Government Services, in the Department of
42 Community Affairs, as constituted pursuant to section 1 of
43 P.L.1974, c.35 (C.52:27D-18.1).

44 "Local unit" means any county, any joint meeting of counties,
45 any municipality, any special district or any public body corporate

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

Matter underlined thus is new matter.

1 and politic created or established under any law of this State by or
2 on behalf of any one or more counties or individual municipalities,
3 as appropriate, or any agency or other instrumentality thereof,
4 including any local authority, board, commission, department or
5 agency of any of the foregoing having custody of funds, but shall
6 not include a school district or regional school district.

7 "Related competitive business segment" means a structurally
8 separate business unit established by the governing body of a local
9 unit that offers to install, construct, maintain, repair, renew,
10 relocate, or remove broadband telecommunications infrastructure,
11 or offers to provide or provides broadband telecommunications
12 service **【via a wireless community network】**.

13 "Telecommunications" means the transmission, between or
14 among points specified by the user, of information of the user's
15 choosing, without change in the form or content of the information
16 as sent and received.

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

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

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

29
30 2. Section 2 of P.L.2007, c.191 (C.40:9D-2) is amended to read
31 as follows:

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

35 (1) construct, own or operate broadband telecommunications
36 infrastructure to provide broadband telecommunications service
37 **【via a wireless community network】**; or

38 (2) provide broadband telecommunications service **【via a**
39 **wireless community network】**.

40 b. Consistent with federal law, the governing body of a local
41 unit may enter into a contract with a private entity to provide
42 broadband telecommunications service **【via a wireless community**
43 **network】** or to construct, own, use, acquire, deliver, grant, operate,
44 maintain, sell, purchase, lease, or equip broadband
45 telecommunications infrastructure used for the purpose of providing
46 broadband telecommunications service **【via a wireless community**
47 **network】**.

1 By written contract or lease, such governing body may sell
2 capacity in, or grant other similar rights for a private entity to use,
3 broadband telecommunications infrastructure owned or operated by
4 the local unit that provides broadband telecommunications service
5 **【via a wireless community network】**.

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

26 d. The provision of broadband telecommunications service **【via**
27 **a wireless community network】** pursuant to this section and any
28 broadband telecommunications infrastructure used for such purpose
29 shall not be deemed to be a public utility or to constitute operating
30 any form of public utility service pursuant to Title 48 of the Revised
31 Statutes to the extent that the local unit is engaged in the provision
32 of broadband telecommunications service **【via a wireless**
33 **community network】**.

34 e. The governing body of a municipality within a county of the
35 first class, where the county exercises powers under subsections a.
36 and b. of this section, may provide that the municipality not
37 participate in the provision of broadband telecommunications
38 service **【via a wireless community network】** established under this
39 section by that county.

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

41
42 3. Section 3 of P.L.2007, c.191 (C.40:9D-3) is amended to read
43 as follows:

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

- 1 a. the costs of providing broadband telecommunications
2 service **【via a wireless community network】** shall not adversely
3 impact the ability of the local unit to offer those services otherwise
4 required by law;
- 5 b. the local unit shall be prohibited from reducing the rate of
6 providing those services otherwise required by law when these
7 services are purchased in conjunction with broadband
8 telecommunications service **【via a wireless community network】**;
- 9 c. in all instances in which resources are deployed by the local
10 unit to provide both broadband telecommunications service **【via a**
11 **wireless community network】** and any other services of the local
12 unit required by law, where resource constraints arise, the provision
13 of the other services shall receive a higher priority;
- 14 d. the price which the local unit charges for broadband
15 telecommunications service **【via a wireless community network】**
16 shall not be less than the fully allocated cost of providing
17 broadband telecommunications service **【via a wireless community**
18 **network】**, as subject to review and approval of the Local Finance
19 Board, which cost shall include an allocation of the cost of all
20 equipment, vehicles, labor, related fringe benefits and overheads,
21 and administration utilized, and all other assets utilized and costs
22 incurred, directly or indirectly, in providing broadband
23 telecommunications service **【via a wireless community network】**;
- 24 e. the installation, construction, maintenance, repair, renewal,
25 relocation, or removal of broadband telecommunications
26 infrastructure, when undertaken directly by the related competitive
27 business segment of the local unit, shall be subject to the provisions
28 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1
29 et seq.);
- 30 f. provision of broadband telecommunications service **【via a**
31 **wireless community network】** shall be subject to the provisions of
32 the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et
33 seq.) and, where appropriate, the "Local Authorities Fiscal Control
34 Law," P.L.1983, c.313 (C.40A:5A-1 et seq.);
- 35 g. the local unit shall not use the rates of those services
36 required to be provided by law, or any revenue received in payment
37 for those services or any interest or other earnings realized from the
38 deposit or investment of such revenue, to subsidize broadband
39 telecommunications service **【via a wireless community network】**
40 offered by the local unit, and expenses incurred in conjunction with
41 the provision of broadband telecommunications service **【via a**
42 **wireless community network】** shall not be borne by any resident or
43 business not choosing to receive such broadband
44 telecommunications service **【via a wireless community network】**;
- 45 h. each such local unit shall maintain books and records, and
46 provide accounting entries as may be required by the Local Finance
47 Board, to show that there is strict separation and allocation of the

1 local unit's revenues, costs, assets, risks and functions, between the
2 services of the local unit required to be provided by law and the
3 provision of broadband telecommunications service **【via a wireless**
4 **community network】**; and

5 i. each such local unit shall annually prepare, or have prepared,
6 a report available to the public, and such report shall include, but
7 not be limited to, a summary of revenues and expenditures, the
8 prices charged to subscribers, the areas of the local unit served, and
9 the number of subscribers.

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

11
12 4. Section 4 of P.L.2007, c.191 (C.40:9D-4) is amended to read
13 as follows:

14 4. a. Prior to the exercise by the governing body of a local unit of
15 any powers under subsections a. and b. of section 2 of **【this act】**
16 P.L.2007, c.191 (C.40:9D-2), the local unit shall have developed a
17 plan which sets forth the local unit's or private entity's proposed
18 activities, as appropriate, that would be necessary to implement the
19 deployment of broadband telecommunications infrastructure and the
20 provision of broadband telecommunications service **【via a wireless**
21 **community network】**. The plan shall identify all relevant financial
22 and operational information, including, but not limited to:

23 (1) the costs and source of funding for those costs that are
24 associated with the installation, maintenance and operation of
25 broadband telecommunications infrastructure and broadband
26 telecommunications service **【via a wireless community network】**;

27 (2) the amount of any charges expected to be imposed on
28 subscribers to the broadband telecommunications service **【via a**
29 **wireless community network】**;

30 (3) a projected implementation schedule for the broadband
31 telecommunications service **【via a wireless community network】**
32 and the projected location of the broadband telecommunications
33 infrastructure;

34 (4) the process by which the plan for broadband
35 telecommunications service **【via a wireless community network】**
36 deployment will be evaluated, which process shall include at least
37 one public hearing prior to the decision on the plan;

38 (5) a description of how the broadband telecommunications
39 service **【via a wireless community network】** is to be provided and
40 what geographic area is to be covered by such service;

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

44 (7) a review of the risks, financial and otherwise, associated
45 with the deployment of broadband telecommunications
46 infrastructure and broadband telecommunications service **【via**
47 **wireless community network】**;

1 (8) a study that considers other alternatives for the deployment
2 of broadband telecommunications infrastructure and broadband
3 telecommunications service **【via wireless community network】**,
4 including, but not limited to, other business models and use of
5 different private entities; and

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

9 b. The plan described in subsection a. of this section shall be
10 made available to the public and submitted for review and comment
11 to the Local Finance Board, which shall seek comments about the
12 plan from other appropriate State agencies and the public. In
13 addition, the Local Finance Board shall forward the plan to any
14 State agency with a potential interest in assisting, and statutory
15 authority to assist with, project financing. Any agency which has
16 an interest in assisting with such financing shall give notice of its
17 interest to the appropriate local unit, which shall maintain a list of
18 all agencies interested in assisting with such financing.

19 c. The Local Finance Board shall review the plan and provide
20 comments to the governing body of the local unit within 60 days
21 after receipt thereof. If the Local Finance Board fails to act within
22 the 60-day period, or within such other time period as may be
23 mutually agreed upon by the Local Finance Board and the local
24 unit, the plan shall be deemed approved.

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

26
27 5. Section 5 of P.L.2007, c.191 (C.40:9D-5) is amended to read
28 as follows:

29 5. a. The governing body of a local unit exercising powers
30 under subsection a. or subsection b. of section 2 of **【this act】**
31 P.L.2007, c.191 (C.40:9D-2) is authorized, pursuant to the
32 provisions of the "Local Bond Law" (N.J.S.40A:2-1 et seq.), to
33 issue revenue bonds of the local unit, to pay a portion or all of the
34 costs of the broadband telecommunications infrastructure used for
35 the purpose of providing broadband telecommunications service
36 **【via a wireless community network】**; provided, however, that the
37 principal of and the interest on such revenue bonds shall be payable
38 solely from revenues derived by the local unit from the provision of
39 broadband telecommunications service via that network and any
40 other revenues related thereto. A local unit is permitted to provide
41 a full faith and credit guarantee on such revenue bonds.

42 b. A State agency that assists in project financing shall not assist
43 in financing the costs of constructing, operating or maintaining any
44 broadband telecommunications infrastructure used for the purpose
45 of providing broadband telecommunications service **【via a wireless**
46 **community network】**, if such network is offered commercially to
47 the public.

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

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

3 6. The governing body of a local unit exercising powers under
4 subsection a. or subsection b. of section 2 of **【this act】** P.L.2007,
5 c.191 (C.40:9D-2) shall not enter into or implement any contract
6 regarding broadband telecommunications infrastructure or
7 broadband telecommunications service without first performing due
8 diligence on the plan required under subsection a. of section 4 of
9 **【this act】** P.L.2007, c.191 (C.40:9D-4). Due diligence shall
10 include, but not be limited to, research that supports formal
11 conclusions that the local unit or private entity, as appropriate, is
12 creditworthy and that the provision of broadband
13 telecommunications service via that network would not proceed in
14 the absence of financing from the local unit or private entity, as
15 appropriate. The conclusions of this analysis shall be reduced to
16 writing and made available to the public before the governing body
17 of the local unit formally considers any financing authorized
18 pursuant to section 5 of **【this act】** P.L.2007, c.191 (C.40:9D-5) or
19 enters into a contract with a private entity pursuant to subsection b.
20 of section 2 of **【this act】** P.L.2007, c.191 (C.40:9D-2).
21 (cf: P.L.2007, c.191, s.6)

22

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

25 7. a. In addition to the purposes set forth in section 1 of
26 P.L.1999, c.440 (C.40A:11-4.1), a local contracting unit may use
27 the competitive contracting provisions set forth in the "Local Public
28 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) as modified
29 under this section, in lieu of public bidding, for the purpose of
30 entering into a contract pursuant to subsection b. of section 2 of
31 **【this act】** P.L.2007, c.191 (C.40:9D-2) concerning broadband
32 telecommunications infrastructure for the provision of broadband
33 telecommunications service **【via a wireless community network】**.

34 b. Contracts awarded pursuant to this section may be for a term
35 not to exceed seven years, however, a contract awarded pursuant to
36 this section may be extended for an additional term of three years
37 by mutual agreement of the parties to the contract if the ability to
38 extend was set forth in the original request for proposals
39 documentation.

40 c. Notwithstanding the provisions of section 5 of P.L.1999,
41 c.440 (C.40A:11-4.5) to the contrary, after proposals have been
42 evaluated pursuant to subsection d. of that section, the purchasing
43 agent or counsel or administrator may issue an interim report
44 recommending that specific details be negotiated further with one or
45 more of the potential vendors who submitted a proposal for the
46 purpose of modifying the original proposal. After the conclusion of
47 negotiations, and evaluation of all proposals as modified in
48 accordance with this subsection, the purchasing agent or counsel or

1 administrator shall prepare a final report evaluating proposals and
2 recommending the award of a contract or contracts in accordance
3 with the provisions of section 5 of P.L.1999, c.440 (C.40A:11-4.5)
4 that are not contrary to the provisions of this subsection.

5 (cf: P.L.2007, c.191, s.7)

6
7 8. Section 8 of P.L.2007, c.191 (C.40:9D-8) is amended to read
8 as follows:

9 8. Any contract awarded in connection with any project
10 authorized pursuant to the provisions of **[this act]** P.L.2007, c.191
11 (C.40:9D-1 et seq.) shall provide that not less than the prevailing
12 wage rate shall be paid to workers employed in the performance of
13 such contract. The prevailing wage rate shall be the rate determined
14 by the Commissioner of Labor and Workforce Development
15 pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et
16 seq.).

17 (cf: P.L.2007, c.191, s.8)

18
19 9. This act shall take effect immediately.

20 21 22 STATEMENT

23
24 This bill removes a requirement of law that limits the types of
25 broadband telecommunications services, also known as wireless
26 Internet service, that may be provided by a local unit. Specifically,
27 the bill provides that local units would no longer be required to
28 provide broadband telecommunications service through a wireless
29 community network.

30 Under current law, the governing body of a local unit, including
31 counties, municipalities, and other local entities, is permitted to: (1)
32 establish a related competitive business segment to: (i) construct,
33 own, and operate broadband telecommunications infrastructure for
34 the provision of broadband telecommunications service via a
35 wireless community network; or (ii) provide broadband
36 telecommunications service via a wireless community network; or
37 (2) enter into a contract with a private entity to: (i) provide
38 broadband telecommunications service via a wireless community
39 network; or (ii) construct, own, use, acquire, deliver, grant, operate,
40 maintain, sell, purchase, lease, or equip broadband
41 telecommunications infrastructure for the provision of broadband
42 telecommunications service via a wireless community network.
43 These local units are also permitted to issue revenues bonds,
44 pursuant to the "Local Bond Law" (N.J.S. 40A:2-1 et seq.), to pay
45 for all or part of the costs of the infrastructure used for these
46 purposes.

47 By removing the requirement for broadband telecommunications
48 service to be provided via wireless community networks, this bill

1 would authorize a local unit to provide broadband
2 telecommunications service in any manner that the local unit deems
3 necessary, provided that the local unit otherwise complies with the
4 requirements of State and federal law.