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

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning broadband Internet service and supplementing
Title 48 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. a. The Legislature finds and declares that:
   (1) The efforts taken to contain the spread of coronavirus disease
   2019 (COVID-19) have resulted in residents, especially students, and
certain businesses in this State being required to perform their day-to-
day activities from home or otherwise from a remote location, and
with many schools engaged in remote learning, it is especially
important for students and educators to have Internet access suitable
for their needs;
   (2) Telehealth services, which are accessed
through the Internet, offered to the public prior to and during the
pandemic will continue to help improve equitable access to healthcare;
   (3) To properly perform telehealth services, remote student
learning, and other activities during the pandemic, students, workers,
and employers are required to have access to Internet service at
broadband speeds to transmit data, graphics, video, and voice
communications quickly and efficiently;
   (4) To document and quantify the extent of the provision of
broadband Internet (broadband) service deployment in the United
States, twice a year, the Federal Communications Commission (FCC)
requires all broadband service providers (providers) to file Form 477
with the FCC, on which providers indicate where they offer service at
speeds exceeding 200 kilobits per second in at least one direction, the
minimum speed to be deemed as offering broadband service;
   (5) Presently, the FCC’s method in determining broadband
availability, as determined by the information offered on Form 477,
requires a provider to measure coverage by census block, which means
that some of the people within that area may not have access to
broadband service;
   (6) The FCC’s website confirms the potential for inaccuracy in this
methodology by stating that, “[p]roviders may not offer service to
every home in every [census] block in which they report service. The
calculations…treat every location as having service, and may therefore
over-estimate broadband coverage, particularly in areas with large
census blocks;
   (7) In March 2020, Congress passed the “Broadband DATA Act,”
Pub.L.116-130, which requires the FCC to collect granular service
availability data from wired, fixed wireless, and satellite broadband
providers, and to create maps based on this information. The FCC has
already implemented many of the Broadband DATA Act’s
requirements, and, on July 16, 2020, it released a report and order to
implement collection and verification requirements for fixed and
mobile broadband service availability and quality of service data.
Even under the FCC’s implementation of the “Broadband DATA Act,”
providers are required to submit advertised broadband speed and not
the actual speed that customers receive;

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

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

(10) Having accurate information concerning broadband service
connectivity in this State is necessary to determine how to better focus
resources on providing broadband access to all areas in New Jersey;

(11) Disadvantaged households in New Jersey do not have the
means to pay for broadband service because of the high costs
associated with maintaining the service;

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

(13) COVID-19 has exposed the “digital divide” in this State,
making it difficult for rural and low-income areas to access medical
care, continue education, and maintain employment; and

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

b. The Legislature therefore determines that:

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

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

(3) The establishment of a Broadband Assistance Office within the
New Jersey Economic Development Authority, having duties and
responsibilities that include, but are not limited to, the review and
approval of proposed projects providing for the deployment of fiber
optic or other wireline-based broadband service to disadvantaged
households and in critical areas, and the provision of financing for
these projects, would meet this important need; and

(4) It shall be a goal for the State’s residents and businesses to
have universal access to a fiber optic or other wireline-based
broadband service provider, offering data transfer speeds of at least 25
megabits per second (Mbps) download and at least three Mbps upload
by 2025 and at least 100 Mbps download and 100 Mbps upload by
2029. This goal shall allow for the Broadband Assistance Office to increase these minimum data transfer speeds as broadband service technology or capability advances.

2. As used in P.L. 1974, c.34:1B-4 (pending before the Legislature as this bill):

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

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

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

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

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

“Broadband Internet service provider” or “service provider” means a person, company, corporation, unincorporated association, partnership, or professional corporation which offers fiber optic or other wireline-based broadband Internet service directly to the public, or to classes of users as to be effectively available directly to the public, regardless of the facilities used.

“Broadband office” means the “Broadband Assistance Office” established within the New Jersey Economic Development Authority pursuant to section 3 of P.L.1974, c.34:1B-4 (pending before the Legislature as this bill).
“Broadband project” means a project developed, in whole or in part, for a new or existing broadband Internet service infrastructure or broadband Internet service, or both.

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

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

“Fund” means the “State Broadband Fund” established pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill).

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


“Private entity” means a person, a combination of persons, a business entity, a combination of business entities, or a combination of persons and business entities with experience in the construction and operation of broadband networks.

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

3. a. There is hereby established in the New Jersey Economic Development Authority a “Broadband Assistance Office.” The broadband office shall be responsible for the formulation and execution of a comprehensive Statewide policy that fosters the
provision of wired broadband service by government or private
tentities, developing a broadband project, or both, if these entities
develop a broadband project under a public-private partnership
agreement, and shall be responsible for the development, promotion,
coordination, oversight, and approval of a broadband project
developed pursuant to P.L. , c. (C. ) (pending before the
Legislature as this bill).

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

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

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

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

a. in conjunction with the Office of Information Technology,
mapping Internet connectivity within the State and publicly publishing
this information;

b. engaging with stakeholders, such as broadband infrastructure
developers, broadband service providers, and local government and
school officials representing critical areas;

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

d. establishing policies and procedures that encourage
government and private entity participation and investment in
broadband projects as necessary and appropriate to implement the
provisions of P.L. , c. (C. ) (pending before the Legislature as this bill);
e. providing technical advice, guidance, and assistance to government and private entities to ensure the availability of the necessary expertise and capacity to develop and evaluate the merits of proposed broadband projects;
f. promoting informed and timely decision-making with regard to the development of broadband projects;
g. establishing appropriate qualification criteria for government and private entities, including the qualification of private entities undertaking a broadband project under a P3 agreement;
h. monitoring and enforcing the broadband project policies and procedures established pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), which may include a provision for potential revenue sharing opportunities between a government entity and a private entity in certain defined or agreed circumstances, including broadband projects that achieve profits that exceed a negotiated rate of return established for a private entity in a P3 agreement;
i. coordinating with service providers that offer programs to members of disadvantaged households to raise awareness of these programs so that the households have a better understanding of these programs and how to access them;
j. cooperating with the Department of Children and Families, Department of Human Services, Department of Health, Department of Labor and Workforce Development, Department of Military and Veterans Affairs, and service providers to complete a field study of barriers to broadband adoption by disadvantaged households, such as housing insecurity, language barriers, and population mobility. The authority shall provide, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), a report on the results of the field study to the Legislature with recommendations for solutions to remove these barriers within 18 months of the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill);
k. cooperating with the Department of Children and Families, Department of Human Services, Department of Health, Department of Labor and Workforce Development, and Department of Military and Veterans Affairs, to identify and secure funding from either the State’s General Fund or federal funding to underwrite the cost of monthly broadband service and household broadband service devices for disadvantaged households;
l. cooperating with the Department of Children and Families, Department of Human Services, Department of Health, Department of Labor and Workforce Development, and Department of Military and Veterans Affairs, to identify and secure funding sources from either the State’s General Fund or federal funding to support development, installation, and financing of community-based broadband services that provide broadband access in safe spaces,
including but not limited to libraries, homeless shelters, community centers, and school campuses;

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

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

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

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

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

b. consider whether establishing a government entity or a non-profit corporation is appropriate to provide broadband infrastructure or broadband service to a critical area community;

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

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

e. explore all possible federal, State, and private sources of funding and technical assistance for the establishment of broadband infrastructure and broadband service in critical area communities and populations of this State.

6. a. There is established in the New Jersey Economic Development Authority a separate non-lapsing fund to be known as the “State Broadband Fund” for use by the broadband office to adequately and properly perform its duties and responsibilities in carrying out the requirements of P.L. , c. (C. ) (pending before the Legislature as this bill). The authority, in consultation with the board, shall determine the level of funding and the appropriate administration of the fund. The fund may seek and accept any available funding from federal, State, and private entity sources. The authority shall provide sufficient funding to the broadband office to enable the broadband office to provide funding for critical areas in the
State to pay for broadband service and for the installation or expanded
use of broadband infrastructure for communities that lack broadband
access, specifically the portion of a communications infrastructure
network that physically reaches the residents’ or small business’s
premises within those communities.

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

7. The authority, in consultation with the board, shall annually
prepare a report to the Governor and, pursuant to section 2 of
P.L.1991, c.164 (C.52:14-19.1), to the Legislature regarding the
number, nature, structure, and scope of each broadband project
developed pursuant to P.L. , c. (C. ) (pending before the
Legislature as this bill) and whether the broadband project is
developed under a P3 agreement. The report shall include:
   a. a description of the broadband project and its location;
   b. the costs incurred for the broadband project;
   c. the number of jobs created and other economic and societal
   benefits of the broadband project;
   d. the increase in the use and demand for broadband service as a
   result of the broadband project;
   e. if applicable, the enhancements to the resiliency and reliability
   of the broadband service within the State; and
   f. other relevant information as determined by the authority.

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

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

STATEMENT

This bill establishes in the New Jersey Economic Development Authority (EDA) a “Broadband Assistance Office” (broadband office). The broadband office is to be responsible for formulating and executing a comprehensive Statewide policy that fosters the provision of wired broadband service by government or private entities developing a broadband project, or both, if these entities develop a broadband project under a public-private partnership (P3) agreement, and for the development, promotion, coordination, oversight, and approval of a broadband project developed pursuant to the bill. The broadband office, in cooperation with EDA, is to establish guidelines for the broadband office’s approval, designation, operation, and reporting of a proposed broadband project, including any proposed broadband project developed under a P3 agreement, in a manner determined by the broadband office. The broadband office, in cooperation with EDA, is to oversee, coordinate, and provide assistance to a broadband project approved by the broadband office. The broadband office is to consult and coordinate with representatives of other State departments, agencies, boards, and authorities, including EDA and the Office of Information Technology (OIT), as these entities deem necessary and appropriate to accomplish the goals of the bill.

To accomplish the broadband office’s duties and responsibilities, it is to be responsible for certain obligations enumerated in the bill concerning the facilitation of the establishment of broadband projects. In evaluating a proposed broadband project, the broadband office is to consider certain criteria provided in the bill.

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

The bill requires EDA, in consultation with BPU, to annually prepare a report to the Governor and the Legislature concerning the number, nature, structure, and scope of each broadband project developed, and whether the broadband project is developed under a P3 agreement. The report is to include certain information provided in the bill and address any issues related to the implementation the bill, including staffing and resource requirements of the broadband office. The report is to set forth recommendations regarding how the processes and methods adopted to foster the development of broadband projects and any related P3 agreements under the bill may be improved, expanded, or made more efficient.