

SENATE, No. 4192

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED DECEMBER 4, 2023

Sponsored by:
Senator PATRICK J. DIEGNAN, JR.
District 18 (Middlesex)

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 broadband
13 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 using
20 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 county
25 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 joint
28 meeting or local governing body to which the authority to exercise
29 those powers shall have been delegated under section 14 of P.L.2007,
30 c.63 (C.40A:65-14), or (3) in the case of a municipality, the
31 commission, council, board or body, by whatever name it may be
32 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 networks.

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

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

43 "Local unit" means any county, any joint meeting of counties, any
44 municipality, any special district or any public body corporate and
45 politic created or established under any law of this State by or on

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 behalf of any one or more counties or individual municipalities, as
2 appropriate, or any agency or other instrumentality thereof, including
3 any local authority, board, commission, department or agency of any
4 of the foregoing having custody of funds, but shall not include a
5 school district or regional school district.

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

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

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

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

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

28
29 2. Section 2 of P.L.2007, c.191 (C.40:9D-2) is amended to read
30 as follows:

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

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

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

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

46 By written contract or lease, such governing body may sell
47 capacity in, or grant other similar rights for a private entity to use,

1 broadband telecommunications infrastructure owned or operated by
2 the local unit that provides broadband telecommunications service
3 **【via a wireless community network】**.

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

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

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

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

38

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

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

45 a. the costs of providing broadband telecommunications service
46 **【via a wireless community network】** shall not adversely impact the

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

1 provision of broadband telecommunications service **【via a wireless**
2 **community network】**; and

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

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

9

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

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

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

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

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

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

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

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

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

46 (8) a study that considers other alternatives for the deployment of
47 broadband telecommunications infrastructure and broadband

1 telecommunications service **【via wireless community network】**,
2 including, but not limited to, other business models and use of
3 different private entities; and

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

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

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

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

24
25 5. Section 5 of P.L.2007, c.191 (C.40:9D-5) is amended to read
26 as follows:

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

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

46 (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 **【this**
9 **act】** P.L.2007, c.191 (C.40:9D-4). Due diligence shall include, but
10 not be limited to, research that supports formal conclusions that the
11 local unit or private entity, as appropriate, is creditworthy and that
12 the provision of broadband telecommunications service via that
13 network would not proceed in the absence of financing from the local
14 unit or private entity, as appropriate. The conclusions of this analysis
15 shall be reduced to writing and made available to the public before
16 the governing body of the local unit formally considers any financing
17 authorized pursuant to section 5 of **【this act】** P.L.2007, c.191
18 (C.40:9D-5) or enters into a contract with a private entity pursuant to
19 subsection b. of section 2 of **【this act】** P.L.2007, c.191 (C.40:9D-2).
20 (cf: P.L.2007, c.191, s.6)

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

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

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

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

1 recommending the award of a contract or contracts in accordance
2 with the provisions of section 5 of P.L.1999, c.440 (C.40A:11-4.5)
3 that are not contrary to the provisions of this subsection.
4 (cf: P.L.2007, c.191, s.7)

5
6 8. Section 8 of P.L.2007, c.191 (C.40:9D-8) is amended to read
7 as follows:

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

16
17 9. This act shall take effect immediately.
18
19

20 STATEMENT

21
22 This bill removes a requirement of law that limits the types of
23 broadband telecommunications services, also known as wireless
24 Internet service, that may be provided by a local unit. Specifically,
25 the bill provides that local units would no longer be required to
26 provide broadband telecommunications service through a wireless
27 community network.

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

S4192 DIEGNAN

10

1 By removing the requirement for broadband telecommunications
2 service to be provided via wireless community networks, this bill
3 would authorize a local unit to provide broadband
4 telecommunications service in any manner that the local unit deems
5 necessary, provided that the local unit otherwise complies with the
6 requirements of State and federal law.