

[First Reprint]

ASSEMBLY, No. 1497

STATE OF NEW JERSEY
221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Assemblyman ROBERT J. KARABINCHAK

District 18 (Middlesex)

Assemblyman STERLEY S. STANLEY

District 18 (Middlesex)

Assemblyman GABRIEL RODRIGUEZ

District 33 (Hudson)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Science, Innovation and Technology Committee on May 16, 2024, with amendments.



(Sponsorship Updated As Of: 6/25/2024)

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

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

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

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

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

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AST committee amendments adopted May 16, 2024.

1 "Local unit" means any county, any joint meeting of counties,
2 any municipality, any special district or any public body corporate
3 and politic created or established under any law of this State by or
4 on behalf of any one or more counties or individual municipalities,
5 as appropriate, or any agency or other instrumentality thereof,
6 including any local authority, board, commission, department or
7 agency of any of the foregoing having custody of funds, but shall
8 not include a school district or regional school district.

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

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

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

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

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

31

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

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

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

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

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

1 broadband telecommunications service **【via a wireless community**
2 **network】**.

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

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

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

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

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

43

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

46 3. If a governing body of a local unit exercises powers under
47 subsection a. or b. of section 2 of **【this act】** P.L.2007, c.191

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

1 h. each such local unit shall maintain books and records, and
2 provide accounting entries as may be required by the Local Finance
3 Board, to show that there is strict separation and allocation of the
4 local unit's revenues, costs, assets, risks and functions, between the
5 services of the local unit required to be provided by law and the
6 provision of broadband telecommunications service **【via a wireless
7 community network】**; and

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

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

14
15 4. Section 4 of P.L.2007, c.191 (C.40:9D-4) is amended to read
16 as follows:

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

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

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

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

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

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

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

1 (7) a review of the risks, financial and otherwise, associated
2 with the deployment of broadband telecommunications
3 infrastructure and broadband telecommunications service **[via**
4 **wireless community network]**;

5 (8) a study that considers other alternatives for the deployment
6 of broadband telecommunications infrastructure and broadband
7 telecommunications service **[via wireless community network]**,
8 including, but not limited to, other business models and use of
9 different private entities; and

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

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

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

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

30
31 5. Section 5 of P.L.2007, c.191 (C.40:9D-5) is amended to read
32 as follows:

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

46 ¹**[b.]** A State agency that assists in project financing shall not
47 assist in financing the costs of constructing, operating or

1 maintaining any broadband telecommunications infrastructure used
2 for the purpose of providing broadband telecommunications service
3 **【via a wireless community network】**, if such network is offered
4 commercially to the public.¹
5 (cf: P.L.2007, c.191, s.5)

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

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

28
29 7. Section 7 of P.L.2007, c.191 (C.40:9D-7) is amended to read
30 as follows:

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

40 b. Contracts awarded pursuant to this section may be for a term
41 not to exceed seven years, however, a contract awarded pursuant to
42 this section may be extended for an additional term of three years
43 by mutual agreement of the parties to the contract if the ability to
44 extend was set forth in the original request for proposals
45 documentation.

46 c. Notwithstanding the provisions of section 5 of P.L.1999,
47 c.440 (C.40A:11-4.5) to the contrary, after proposals have been

1 evaluated pursuant to subsection d. of that section, the purchasing
2 agent or counsel or administrator may issue an interim report
3 recommending that specific details be negotiated further with one or
4 more of the potential vendors who submitted a proposal for the
5 purpose of modifying the original proposal. After the conclusion of
6 negotiations, and evaluation of all proposals as modified in
7 accordance with this subsection, the purchasing agent or counsel or
8 administrator shall prepare a final report evaluating proposals and
9 recommending the award of a contract or contracts in accordance
10 with the provisions of section 5 of P.L.1999, c.440 (C.40A:11-4.5)
11 that are not contrary to the provisions of this subsection.
12 (cf: P.L.2007, c.191, s.7)

13

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

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

25

26 9. This act shall take effect immediately.