

CHAPTER 191

AN ACT allowing certain local units to provide broadband telecommunications service via wireless community networks and supplementing Title 40 of the Revised Statutes.

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

C.40:9D-1 Definitions relative to provision of broadband telecommunications service.

1. As used in this act:

“Broadband telecommunications infrastructure” means information equipment and facilities, information systems, and information technology used for the purpose of providing broadband telecommunications service.

“Broadband telecommunications service” means any telecommunications service using broadband telecommunications infrastructure for the purpose of offering high speed, switched, broadband wireline or wireless telecommunications capability that enables users to originate and receive high-quality voice, data, graphics or video telecommunications through the Internet and using any technology.

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

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

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

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

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

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

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

"Telecommunications service" means the offering of telecommunications directly to the public, or to such classes of users as to be effectively available directly to the public,

regardless of the facilities used, and regardless of whether a fee is charged for the use of such service.

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

C.40:9D-2 Authority of local unit.

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

(1) construct, own or operate broadband telecommunications infrastructure to provide broadband telecommunications service via a wireless community network; or

(2) provide broadband telecommunications service via a wireless community network.

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

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

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

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

e. The governing body of a municipality within a county of the first class, where the county exercises powers under subsections a. and b. of this section, may provide that the

municipality not participate in the provision of broadband telecommunications service via a wireless community network established under this section by that county.

C.40:9D-3 Responsibilities of local unit relative to provision of broadband telecommunications service.

3. If a governing body of a local unit exercises powers under subsection a. or b. of section 2 of this act, whether by contracting with a private entity or by establishing a related competitive business segment, then:

a. the costs of providing broadband telecommunications service via a wireless community network shall not adversely impact the ability of the local unit to offer those services otherwise required by law;

b. the local unit shall be prohibited from reducing the rate of providing those services otherwise required by law when these services are purchased in conjunction with broadband telecommunications service via a wireless community network;

c. in all instances in which resources are deployed by the local unit to provide both broadband telecommunications service via a wireless community network and any other services of the local unit required by law, where resource constraints arise, the provision of the other services shall receive a higher priority;

d. the price which the local unit charges for broadband telecommunications service via a wireless community network shall not be less than the fully allocated cost of providing broadband telecommunications service via a wireless community network, as subject to review and approval of the Local Finance Board, which cost shall include an allocation of the cost of all equipment, vehicles, labor, related fringe benefits and overheads, and administration utilized, and all other assets utilized and costs incurred, directly or indirectly, in providing broadband telecommunications service via a wireless community network;

e. the installation, construction, maintenance, repair, renewal, relocation, or removal of broadband telecommunications infrastructure, when undertaken directly by the related competitive business segment of the local unit, shall be subject to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.);

f. provision of broadband telecommunications service via a wireless community network shall be subject to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) and, where appropriate, the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.);

g. the local unit shall not use the rates of those services required to be provided by law, or any revenue received in payment for those services or any interest or other earnings realized from the deposit or investment of such revenue, to subsidize broadband telecommunications service via a wireless community network offered by the local unit, and expenses incurred in conjunction with the provision of broadband telecommunications service via a wireless community network shall not be borne by any resident or business not choosing to receive such broadband telecommunications service via a wireless community network;

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

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

C.40:9D-4 Plan for proposed activities.

4. a. Prior to the exercise by the governing body of a local unit of any powers under subsections a. and b. of section 2 of this act, the local unit shall have developed a plan which sets forth the local unit's or private entity's proposed activities, as appropriate, that would be necessary to implement the deployment of broadband telecommunications infrastructure and the provision of broadband telecommunications service via a wireless community network. The plan shall identify all relevant financial and operational information, including, but not limited to:

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

(2) the amount of any charges expected to be imposed on subscribers to the broadband telecommunications service via a wireless community network;

(3) a projected implementation schedule for the broadband telecommunications service via a wireless community network and the projected location of the broadband telecommunications infrastructure;

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

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

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

(7) a review of the risks, financial and otherwise, associated with the deployment of broadband telecommunications infrastructure and broadband telecommunications service via wireless community network;

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

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

b. The plan described in subsection a. of this section shall be made available to the public and submitted for review and comment to the Local Finance Board, which shall seek comments about the plan from other appropriate State agencies and the public. In addition, the Local Finance Board shall forward the plan to any State agency with a potential interest in assisting, and statutory authority to assist with, project financing. Any agency which has an interest in assisting with such financing shall give notice of its interest to the appropriate

local unit, which shall maintain a list of all agencies interested in assisting with such financing.

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

C.40:9D-5 Authority to issue revenue bonds.

5. a. The governing body of a local unit exercising powers under subsection a. or subsection b. of section 2 of this act is authorized, pursuant to the provisions of the "Local Bond Law" (N.J.S.40A:2-1 et seq.), to issue revenue bonds of the local unit, to pay a portion or all of the costs of the broadband telecommunications infrastructure used for the purpose of providing broadband telecommunications service via a wireless community network; provided, however, that the principal of and the interest on such revenue bonds shall be payable solely from revenues derived by the local unit from the provision of broadband telecommunications service via that network and any other revenues related thereto. A local unit is permitted to provide a full faith and credit guarantee on such revenue bonds.

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

C.40:9D-6 Due diligence required prior to contract.

6. The governing body of a local unit exercising powers under subsection a. or subsection b. of section 2 of this act shall not enter into or implement any contract regarding broadband telecommunications infrastructure or broadband telecommunications service without first performing due diligence on the plan required under subsection a. of section 4 of this act. Due diligence shall include, but not be limited to, research that supports formal conclusions that the local unit or private entity, as appropriate, is creditworthy and that the provision of broadband telecommunications service via that network would not proceed in the absence of financing from the local unit or private entity, as appropriate. The conclusions of this analysis shall be reduced to writing and made available to the public before the governing body of the local unit formally considers any financing authorized pursuant to section 5 of this act or enters into a contract with a private entity pursuant to subsection b. of section 2 of this act.

C.40:9D-7 Additional competitive contracting provisions; terms; negotiations.

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

b. Contracts awarded pursuant to this section may be for a term not to exceed seven years, however, a contract awarded pursuant to this section may be extended for an additional term of three years by mutual agreement of the parties to the contract if the ability to extend

was set forth in the original request for proposals documentation.

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

C.40:9D-8 Payment of prevailing wage rate.

8. Any contract awarded in connection with any project authorized pursuant to the provisions of this act shall provide that not less than the prevailing wage rate shall be paid to workers employed in the performance of such contract. The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.).

9. This act shall take effect immediately.

Approved October 18, 2007.