

**ASSEMBLY, No. 3649**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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INTRODUCED MARCH 16, 2020

**Sponsored by:**

**Assemblywoman BRITNEE N. TIMBERLAKE**

**District 34 (Essex and Passaic)**

**Assemblyman ANDREW ZWICKER**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**Assemblywoman LINDA S. CARTER**

**District 22 (Middlesex, Somerset and Union)**

**Co-Sponsored by:**

**Assemblywoman Reynolds-Jackson**

**SYNOPSIS**

Requires OIT to establish Statewide wireless network through public-private partnership agreement.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/11/2020)**

1 AN ACT concerning a Statewide wireless network and  
2 supplementing Title 52 of the Revised Statutes.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. As used in P.L. , c. (C. ) (pending before the  
8 Legislature as this bill):

9 “Broadband telecommunications infrastructure” shall have the  
10 same meaning as provided in section 1 of P.L.2007, c.191  
11 (C.40:9D-1).

12 “Broadband telecommunications service” shall have the same  
13 meaning as provided in section 1 of P.L.2007, c.191 (C.40:9D-1)  
14 but shall provide a minimum download speed of at least 1 megabit  
15 per second.

16 “Department” means the Department of the Treasury.

17 “Governing body” shall have the same meaning as provided in  
18 section 1 of P.L.2007, c.191 (C.40:9D-1).

19 “Office” means the Office of Information Technology,  
20 established pursuant to section 9 of P.L.2007, c.56 (C.52:18A-227).

21 “Person” shall have the same meaning as provided in R.S.1:1-2  
22 and includes “public utilities” as defined in R.S.48:2-13.

23 “Public-private partnership agreement” means an agreement  
24 entered into by the Office of Information Technology and a private  
25 entity pursuant to P.L. , c. (C. ) (pending before the  
26 Legislature as this bill) for the purpose of permitting a private entity  
27 to assume full financial and administrative responsibility for the  
28 construction, reconstruction, repair, improvement, extension,  
29 operation, and maintenance of a revenue-producing Statewide  
30 wireless network project.

31 “State government entity” means the State or any department,  
32 agency, commission, or authority thereof subject to the public  
33 contracting provisions of P.L.1954, c.48 (C.52:34-6 et seq.).

34 “Statewide wireless network project” or “project” means the  
35 construction, reconstruction, repair, maintenance, improvement, or  
36 extension of any broadband telecommunications infrastructure for  
37 the provision broadband telecommunications service over of a  
38 Statewide wireless network.

39  
40 2. a. Consistent with federal law, the Office of Information  
41 Technology shall enter into a contract with a private entity to be  
42 referred to as a public-private partnership agreement, that permits  
43 the private entity to assume full financial and administrative  
44 responsibility for the construction, reconstruction, repair,  
45 improvement, extension, operation, and maintenance of a Statewide  
46 wireless network project, provided that the Statewide wireless  
47 network project is financed in whole or in part by the private entity

1 and any owner of the land or property upon which the project is  
2 located retains full ownership of their land or property.

3 b. A public-private partnership agreement may include an  
4 agreement under which the office and a private entity enter into a  
5 leaseback agreement of a revenue-producing Statewide wireless  
6 network project in exchange for up-front or structured financing by  
7 the private entity for the project. Under the leaseback agreement,  
8 the private entity shall be responsible for the management,  
9 operation, and maintenance of the Statewide wireless network  
10 project. The private entity shall receive some or all, as per the  
11 agreement, of the revenue generated by the Statewide wireless  
12 network project, and shall operate the Statewide wireless network  
13 project in accordance with standards established by the office. At  
14 the end of the lease term, all subsequent revenue generated by the  
15 Statewide wireless network project, along with management,  
16 operation, and maintenance responsibility, shall revert to the office.  
17 A leaseback agreement shall be subject to all applicable provisions  
18 of current law governing leases by a State government entity not  
19 inconsistent with the provisions of this section.

20 c. Notwithstanding any provision of law to the contrary, the  
21 office shall be empowered to enter into contracts with a private  
22 entity and its affiliates without being subject to the procurement and  
23 contracting requirements, unless otherwise set forth herein, of any  
24 law applicable to the office provided that the private entity has been  
25 selected by the office pursuant to a solicitation of proposals or  
26 qualifications from at least two private entities. The office shall be  
27 the owner or lessee of any project financed by the State.

28  
29 3. a. Prior to entering into a public-private partnership  
30 agreement, the office shall determine:

- 31 (1) the benefits to be realized by the project;  
32 (2) the cost of project if it is developed by a State government  
33 entity supported by comparisons to comparable projects;  
34 (3) the maximum public contribution that the office will allow  
35 under the public-private partnership agreement;  
36 (4) a comparison of the financial and non-financial benefits of  
37 the public-private partnership agreement compared to other options  
38 including the public sector option;  
39 (5) a list of risks, liabilities, and responsibilities to be  
40 transferred to the private entity and those to be retained by the  
41 office; and  
42 (6) if the project has a high, medium, or low level of project  
43 delivery risk, how the public is protected from these risks.

44 b. Prior to entering into a public-private partnership agreement,  
45 the office shall hold at least one public hearing in each of the north,  
46 central, and southern regions of the State, as determined by the  
47 office, at least 90 days prior to publishing the request for private  
48 entity qualifications, pursuant to section 4 of P.L. , c. (C. )

1 (pending before the Legislature as this bill), and shall present, with  
2 evidence, that the project is in the best interest of the public by  
3 showing that:

4 (1) the project will cost less than the public sector option, or if  
5 the project costs more, there are factors that warrant the additional  
6 expense;

7 (2) there is a public need for the project and the project is  
8 consistent with existing long-term plans;

9 (3) there are specific significant benefits to the project;

10 (4) there are specific significant benefits to using a public-  
11 private partnership instead of other options;

12 (5) the project will result in timely and efficient development  
13 and operation of the Statewide wireless network project; and

14 (6) the risks, liabilities and responsibilities transferred to the  
15 private entity provide sufficient benefits to warrant not using other  
16 means of procurement.

17

18 4. a. A private entity seeking to enter into a public-private  
19 partnership agreement with the office shall first be qualified by the  
20 office, in consultation with the Department of the Treasury,  
21 provided the qualification process ensures that the private entity,  
22 and its subcontractors and consultants, when relevant, are identified  
23 and meet at least the minimum office standards for qualification for  
24 professional services, telecommunications infrastructure  
25 contracting, and other qualifications applicable to the project, prior  
26 to submitting a request for proposals pursuant to subsection c. of  
27 this section.

28 b. The office shall advertise a request for qualifications for a  
29 public-private partnership agreement at least 45 days prior to the  
30 anticipated date of receipt. The advertisement of the request for  
31 qualifications shall be published on the official Internet website of  
32 the office and in at least one or more newspapers with Statewide  
33 circulation.

34 c. After the office determines the qualified respondents  
35 utilizing, at minimum, the qualification standards promulgated by  
36 the office, pursuant to subsection a. of this section, the office shall  
37 issue a request for proposals to each qualified respondent no less  
38 than 90 days prior to the date established for submission of the  
39 proposals. The request for proposals shall require qualified  
40 respondents to include, but not be limited to:

41 (1) a design for at least two tiers of minimum and maximum  
42 download and upload speeds for the broadband telecommunications  
43 service provided by the Statewide wireless network, the slowest of  
44 which shall be offered to the public free of charge;

45 (2) proposed rates not to exceed \$10 per month that shall apply  
46 to any speed tier that is not the slowest speed tier;

47 (3) a description and proof of effective application of all  
48 broadband telecommunications infrastructure the private entity is

1 capable of using in constructing and operating the Statewide  
2 wireless network;

3 (4) a commitment from the private entity to fully cooperate with  
4 the governing body of any local unit within which the private entity  
5 is to construct or install broadband telecommunications  
6 infrastructure in any public right-of-way, under terms and  
7 conditions as may be agreed upon by the governing body and the  
8 private entity;

9 (5) a commitment from the private entity to fully cooperate with  
10 any person owning or having the right to use any poles, street lights,  
11 posts, towers, or other structures erected along any public right-of-  
12 way, under terms and conditions as may be agreed upon by the  
13 person and the private entity; and

14 (6) relevant technical submissions, documents, and any other  
15 material as determined by the office.

16 d. In order for a proposal to be complete and considered by the  
17 office, the proposal from the qualified respondent shall include, but  
18 not be limited to:

19 (1) a full description of the proposed public-private partnership  
20 agreement between the office and the private entity, including all  
21 information obtained by, and findings of, the office pursuant to  
22 subsection c. of section 5 of P.L. , c. (C. ) (pending before  
23 the Legislature as this bill);

24 (2) a full description of the project, including a description of  
25 the leaseback agreement, if applicable;

26 (3) the estimated costs and financial documentation for the  
27 project showing the underlying financial models and assumptions  
28 that determined the estimated costs. The financial documentation  
29 shall include at least three different projected estimated costs  
30 showing scenarios in which materially different economic  
31 circumstances are assumed and an explanation for how the  
32 estimated costs were determined based on the three scenarios;

33 (4) a timetable for completion of the construction of the project;

34 (5) an analysis of all available funding options for the project,  
35 including an analysis of the financial viability and advisability of  
36 such project, along with evidence of the public benefit in advancing  
37 the project as a public-private partnership; and

38 (6) any other requirements that the office deems appropriate or  
39 necessary.

40 e. As part of the estimated costs and financial documentation  
41 for the project, the proposal shall contain a long-range maintenance  
42 plan and a long-range maintenance bond and shall specify the  
43 expenditures that qualify as an appropriate investment in  
44 maintenance. The long-range maintenance plan shall be approved  
45 by the office pursuant to regulations promulgated by the office that  
46 reflect appropriate maintenance benchmarks.

47 f. The office may, upon receipt of one or more proposals,  
48 require that the private entity assume responsibility for all costs

1 incurred by the office before execution of the public-private  
2 partnership agreement, including costs of retaining independent  
3 experts to review, analyze, and advise the office with respect to the  
4 proposal.

5 g. Stipends may be paid in relation to Statewide wireless  
6 network projects when there is a substantial opportunity for  
7 innovation and the costs for developing a proposal are significant.  
8 The office may elect to pay unsuccessful proposers for the work  
9 product they submit with their proposal in response to a request for  
10 proposals. The use by the office of any design element contained in  
11 an unsuccessful proposal shall be at the sole risk and discretion of  
12 the office and shall not confer liability on the recipient of the  
13 stipulated stipend amount. After payment of the stipulated stipend  
14 amount, the office and the unsuccessful proposer shall jointly own  
15 the rights to, and may make use of any work product contained in  
16 the proposal, including the technologies, techniques, methods,  
17 processes, ideas, and information contained in the proposal, project  
18 design, and project financial plan. The use by the unsuccessful  
19 proposer of any part of the work product contained in the proposal  
20 shall be at the sole risk of the unsuccessful proposer and shall not  
21 confer liability on the office. The department, in consultation with  
22 the office, shall promulgate guidelines based upon which any  
23 stipends paid by the office may be based.

24  
25 5. a. (1) After the office has received one or more proposals  
26 from qualified respondents, and any public notification period has  
27 expired, the office shall evaluate the proposals using criteria  
28 promulgated by the office, in consultation with the department and  
29 rank the proposals in order of preference. The office may request  
30 additional information from a qualified respondent, as is needed, to  
31 make a complete assessment of the project.

32 (2) In ranking the proposals, the office may consider factors that  
33 include, but may not be limited to, professional qualifications,  
34 general business terms, innovative engineering, provision of  
35 telecommunications services, or cost-reduction terms, finance plans,  
36 and the need for State funds to deliver the project and discharge the  
37 agreement and shall rely upon, at a minimum, the evaluation criteria  
38 promulgated by the office, in consultation with the department. The  
39 office may negotiate the final terms with the private entities  
40 submitting proposals, including price, term, and any other term or  
41 condition so as to make the project well-suited to the needs of the  
42 office and the State and commercially viable for the private entity.  
43 The office shall select a proposal that meets the standards required  
44 pursuant to this section and that best meet the needs, price, and  
45 other factors considered by the office. The private entity selected  
46 shall comply with all laws and regulations required by the State

1 government entity, including but not limited to section 1 of  
2 P.L.2001, c.134 (C.52:32-44), sections 2 through 8 of  
3 P.L.1975, c.127 (C.10:5-32 to C.10:5-38), section 1 of  
4 P.L.1977, c.33 (C.52:25.24-2), P.L.2005, c.51 (C.19:44A-20.13 et  
5 al.); P.L.2005, c.271 (C.40A:11-51 et al.), Executive Order No. 117  
6 of 2008, Executive Order No. 118 of 2008, Executive Order No.  
7 189 of 1988, prior to executing the public private partnership  
8 agreement.

9 (3) If only one proposal is received, the office shall negotiate in  
10 good faith and, if not satisfied with the results of the negotiations,  
11 the office may, at its sole discretion, terminate negotiations.

12 (4) A public-private partnership agreement shall not be executed  
13 until approval has been granted by the office and the department.  
14 Prior to a final decision by the office on the application, the  
15 department shall be afforded the opportunity to provide comments  
16 on the application that it deems appropriate, and the office shall  
17 consider any comments submitted by the department or relevant  
18 State government entity with respect to the application.

19 b. In approving a proposal for the public-private partnership,  
20 the office shall find that:

21 (1) the office's assumptions regarding the project's scope, its  
22 benefits, its risks and the cost of the public sector option were fully  
23 and reasonably developed;

24 (2) the design of the project is feasible;

25 (3) the experience and qualifications of the private entity are  
26 adequate;

27 (4) the financial plan is sound;

28 (5) the long-range maintenance plan is adequate to protect the  
29 investment;

30 (6) the project is in the best interest of the public; and

31 (7) the term sheet for any proposed procurement contains all  
32 necessary elements.

33 c. The criteria for assessing the project shall include, but may  
34 not be limited to the:

35 (1) feasibility and design of the project;

36 (2) experience and qualifications of the private entity;

37 (3) soundness of the financial plan;

38 (4) adequacy of the required exhibits;

39 (5) adequacy of the long-range maintenance plan; and

40 (6) existence of a clear public benefit.

41 d. The office shall retain the right to revoke its approval of the  
42 project if the project has substantially deviated from the proposal  
43 submitted pursuant to section 4 of P.L. , c. (C. ) (pending  
44 before the Legislature as this bill).

45 e. The office may promulgate any rules and regulations  
46 necessary to implement the provisions of this section, including, but  
47 not limited to, provisions for fees to cover administrative costs and  
48 for the determination of minimum office standards for the operation

1 of the project, and for the qualification for professional services,  
2 telecommunications infrastructure contracting, and other relevant  
3 qualifications.

4  
5 6. Any public-private partnership agreement, if appropriate,  
6 shall include provisions affirming that the agreement and any work  
7 performed under the agreement are subject to the provisions of the  
8 "Construction Industry Independent Contractor Act,"  
9 P.L.2007, c.114 (C.34:20-1 et seq.). Any public-private partnership  
10 agreement shall also include, at a minimum:

- 11 a. the term of the agreement;  
12 b. the total project cost;  
13 c. a completion date guarantee;  
14 d. a provision for damages if the private entity fails to meet the  
15 completion date; and  
16 e. a maximum rate of return to the private entity and a  
17 provision for the distribution of excess earnings to the office or to  
18 the private entity for debt reduction.

19  
20 7. a. Prior to the commencement of work on a project, the  
21 private entity shall establish a Statewide wireless network project  
22 account and appoint a third-party financial institution, who shall be  
23 prequalified by the department, to act as a collateral agent, and  
24 manage the Statewide wireless network project account. The  
25 Statewide wireless network project account shall include the  
26 funding, financial instruments, or both, that shall be used to fully  
27 capitalize and fund the project, and the collateral agent shall  
28 maintain a full accounting of the funds and instruments in the  
29 account. The funds and instruments in the Statewide wireless  
30 network project account shall be held in trust for the benefit of the  
31 contractor, construction manager, and design-build team involved in  
32 the project. The funds and instruments in the Statewide wireless  
33 network project account shall not be the property of the private  
34 entity unless all amounts due to the Statewide wireless network  
35 project account beneficiaries are paid in full. The Statewide  
36 wireless network project account shall only be designated for the  
37 project.

38 b. The private entity shall be required to post a performance  
39 bond to ensure the completion of the project and a payment bond  
40 guaranteeing prompt payment of monies due in accordance with and  
41 conforming to the requirements of N.J.S.2A:44-143 et seq.

42  
43 8. Each worker employed in the construction, operation, or  
44 maintenance services of the Statewide wireless network project by a  
45 private entity that has entered into a public-private partnership  
46 agreement with the office pursuant to P.L. , c. (C. ) (pending  
47 before the Legislature as this bill) shall be paid not less than the

1 prevailing wage rate for the worker's craft or trade as determined by  
2 the Commissioner of Labor and Workforce Development pursuant  
3 to the "New Jersey Prevailing Wage Act," P.L.1963, c.150  
4 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.).

5  
6 9. The power of eminent domain shall not be delegated to any  
7 private entity under the provisions of P.L.2018, c.90 (C.40A:11-52  
8 et al.); however, the office may dedicate any property interest,  
9 including improvements, and tangible personal property of the State  
10 for public use in a Statewide wireless network project if the office  
11 finds that so doing will serve the public purpose of the project by  
12 minimizing the cost of the project to the office or reducing the  
13 delivery time of a project.

14  
15 10. Nothing in P.L. , c. (C. ) (pending before the  
16 Legislature as this bill) shall be construed as or deemed a waiver of  
17 the sovereign immunity of the State, an affected political  
18 subdivision, or public entity or any officer or employee thereof with  
19 respect to the participation in or approval of all or any part of a  
20 Statewide wireless network project.

21  
22 11. This act shall take effect immediately but shall be  
23 inoperative for 90 days following the date of enactment.

#### 24 25 26 STATEMENT

27  
28 This bill requires the Office of Information Technology (OIT) in  
29 the Department of the Treasury (department) to establish a  
30 Statewide wireless network (network) through a public-private  
31 partnership agreement with a private entity that is to assume full  
32 financial and administrative responsibility for the construction,  
33 reconstruction, repair, improvement, extension, operation, and  
34 maintenance of the network, provided that the network project is  
35 financed in whole or in part by the private entity and any owner of  
36 the land or property upon which the project is located retains full  
37 ownership of their land or property. The public-private partnership  
38 may include a leaseback agreement.

39 The bill provides that, prior to entering into a public-private  
40 partnership, the OIT is to determine:

- 41 1) the benefits to be realized by the project;
- 42 2) the cost of project if it is developed by a State government  
43 entity supported by comparisons to comparable projects;
- 44 3) the maximum public contribution that the office will allow  
45 under the public-private partnership agreement;
- 46 4) a comparison of the financial and non-financial benefits of  
47 the public-private partnership agreement compared to other options  
48 including the public sector option;

1       5) a list of risks, liabilities, and responsibilities to be  
2 transferred to the private entity and those to be retained by the  
3 office; and

4       6) if the project has a high, medium, or low level of project  
5 delivery risk, how the public is protected from these risks.

6       The OIT is to also hold a public hearing in the northern, central,  
7 and southern regions of the State to present information supporting  
8 the establishment and construction of the network.

9       The OIT is to require that the private entity include, but not be  
10 limited to, the following in the private entity's proposal to construct  
11 the network:

12       1) at least two tiers of minimum and maximum download and  
13 upload speeds for the broadband telecommunications service  
14 provided by the network, the slowest of which is to be offered to  
15 the public free of charge;

16       2) proposed rates not to exceed \$10 per month that shall apply  
17 to any speed tier that is not the slowest speed tier;

18       3) a description and proof of effective application of all  
19 broadband telecommunications infrastructure the private entity is  
20 capable of using in constructing and operating the network;

21       4) a commitment from the private entity to fully cooperate with  
22 the governing body of any local unit within which the private entity  
23 is to construct or install broadband telecommunications  
24 infrastructure in any public right-of-way, under terms and  
25 conditions as may be agreed upon by the governing body and the  
26 private entity; and

27       5) a commitment from the private entity to fully cooperate with  
28 any person owning or having the right to use any poles, street lights,  
29 posts, towers, or other structures erected along any public right-of-  
30 way, under terms and conditions as may be agreed upon by the  
31 person and the private entity.

32       The bill provides that the OIT, in consultation with the  
33 department, is to review all submitted proposals, and request  
34 additional information as is needed to make a complete assessment  
35 of the project. A public-private partnership agreement is not to be  
36 executed until approval has been granted by the office and  
37 department. The OIT is to retain the right to revoke approval of a  
38 proposal if the project has substantially deviated from the proposal.