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ASSEMBLY, No. 4808

STATE OF NEW JERSEY
219th LEGISLATURE

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Sponsored by:

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Co-Sponsored by:

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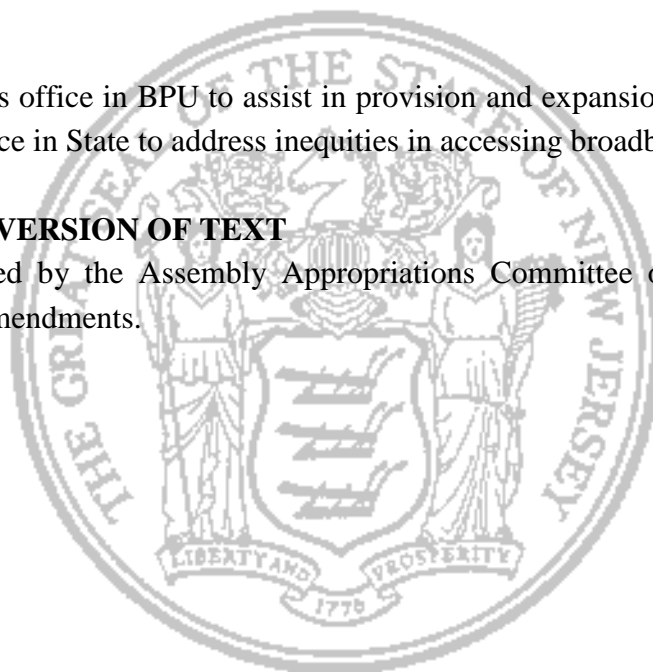
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SYNOPSIS

Establishes office in BPU to assist in provision and expansion of broadband Internet service in State to address inequities in accessing broadband service.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on October 26, 2020, with amendments.



(Sponsorship Updated As Of: 10/29/2020)

1 AN ACT concerning broadband Internet service and supplementing
2 Title 48 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. a. The Legislature finds and declares that:

8 (1) The efforts taken to contain the spread of coronavirus
9 disease 2019 (COVID-19) have resulted in residents, especially
10 students, and certain businesses in this State being required to
11 perform their day-to-day activities from home or otherwise from a
12 remote location, and with the start of the school year, it is especially
13 important for students and educators engaged in remote learning to
14 have Internet access suitable for their needs;

15 (2) Telehealth services, which are accessed through the Internet,
16 have been offered to the public prior to and during the pandemic
17 due to COVID-19, will continue to help to improve equitable access
18 to healthcare;

19 (3) To properly perform telehealth services, remote student
20 learning, and other activities during the pandemic, students,
21 workers, and employers are required to have access to Internet
22 service at broadband speeds to transmit data, graphics, video, and
23 voice communications quickly and efficiently;

24 (4) To document and quantify the extent of the provision of
25 broadband Internet (broadband) service deployment in the United
26 States, twice a year, the Federal Communications Commission
27 (FCC) requires all broadband service providers (providers) to file
28 Form 477 with the FCC, on which providers indicate where they
29 offer service at speeds exceeding 200 kilobits per second in at least
30 one direction, the minimum speed to be deemed as offering
31 broadband service;

32 (5) Presently, the FCC's method in determining broadband
33 connectivity, as determined by the information offered on Form
34 477, allows for a provider to claim that an area is covered when the
35 provider attests that it could serve an area within a census block,
36 even when the people of that area have no access to broadband
37 service;

38 (6) The FCC's website confirms the potential for inaccuracy in
39 this methodology by stating that, "[p]roviders may not offer service
40 to every home in every [census] block in which they report service.
41 The calculations...treat every location as having service, and may
42 therefore over-estimate broadband coverage, particularly in areas
43 with large census blocks";

44 (7) In 2018, a study by the Microsoft Corporation found that
45 162.8 million people in this country are not using the Internet at

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 AAP committee amendments adopted October 26, 2020.

1 broadband speeds, which far exceeds the FCC’s estimated number
2 of people without broadband service access at 25 million, a number
3 determined by the data reported from Form 477;

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

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

11 (10) Disadvantaged individuals in New Jersey do not have the
12 means to pay for broadband service, especially during this time of
13 high unemployment due to COVID-19, because of the high cost of
14 this service;

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

18 (12) This public health emergency has exposed the so-called
19 “digital divide” in this State, making it difficult for rural and low-
20 income areas to access medical care, continue education, and
21 maintain employment; and

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

25 b. The Legislature therefore determines that:

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

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

36 (3) The establishment of a Broadband Assistance Office within
37 the Board of Public Utilities, having duties and responsibilities that
38 include, but not limited to, the review and approval of proposed
39 projects providing for the deployment of fiber optic or other
40 wireline-based broadband service to disadvantaged individuals and
41 in underserved areas, and the provision of financing for these
42 projects, would meet this important need; and

43 (4) It shall be a goal for the State’s residents and businesses to
44 have universal access to a fiber optic or other wireline-based
45 broadband service provider, offering data transfer speeds of at least
46 25 megabits per second (Mbps) download and at least three Mbps
47 upload by 2023 and at least 100 Mbps download and 100 Mbps

1 upload by 2027. This goal shall allow for the Broadband Assistance
2 Office to increase these minimum data transfer speeds as broadband
3 service technology or capability advances.

4

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

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

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

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

25 “Broadband Internet service infrastructure” or “broadband
26 infrastructure” means fiber optic or other wireline-based
27 information equipment and facilities, ¹including point-to-point
28 communication connections between two communication endpoints
29 or nodes,¹ information systems, and information technology used
30 for the purpose of providing fiber optic or other wireline-based
31 broadband Internet service. “Broadband Internet service
32 infrastructure” shall not mean or include any Internet or information
33 service equipment or facilities that, in part, use ¹point-to-multipoint
34 wireless communications facilities or other¹ wireless
35 communications equipment or facilities.

36 “Broadband Internet service provider” or “service provider”
37 means a person, company, corporation, unincorporated association,
38 partnership, or professional corporation which ¹is certified by the
39 board to offer¹ offers¹ fiber optic or other wireline-based broadband
40 Internet service directly to the public, or to classes of users as to be
41 effectively available directly to the public, regardless of the
42 facilities used.

43 “Broadband office” means the “Broadband Assistance Office”
44 established within the Board of Public Utilities pursuant to section 3
45 of P.L. , c. (C.) (pending before the Legislature as this bill).

1 “Broadband project” means a project developed, in whole or in
2 part, for a new or existing broadband Internet service infrastructure
3 or broadband Internet service, or both.

4 “Fund” means the “State Broadband ¹ [Assistance] ¹ Fund”
5 established pursuant to section ¹ [5] ⁶ of P.L. , c. (C.)
6 (pending before the Legislature as this bill).

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

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

16 “Private entity” means a person, a combination of persons, a
17 business entity, a combination of business entities, or a combination
18 of persons and business entities.

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

24
25 3. a. There is hereby established in the Board of Public
26 Utilities a “Broadband Assistance Office.” The broadband office
27 shall be responsible for the formulation and execution of a
28 comprehensive Statewide policy that fosters the provision of wired
29 broadband service by government or private entities, developing a
30 broadband project, or both, if these entities develop a broadband
31 project under a public-private partnership agreement, and shall be
32 responsible for the development, promotion, coordination,
33 oversight, and approval of a broadband project developed pursuant
34 to P.L. , c. (C.) (pending before the Legislature as
35 this bill).

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

45 c. The broadband office shall consult and coordinate with
46 representatives of other State departments, agencies, boards, and
47 authorities, including the authority and the Office of Information

1 Technology, as the broadband office, authority, and Office of
2 Information Technology shall deem necessary and appropriate, to
3 accomplish the goals of P.L. , c. (C.) (pending before the
4 Legislature as this bill).

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

12

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

16 a. in conjunction with the Office of Information Technology,
17 mapping Internet connectivity within the State;

18 b. engaging with stakeholders, such as broadband infrastructure
19 developers, broadband service providers, and local government and
20 school officials representing underserved communities;

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

26 d. establishing policies and procedures that encourage
27 government and private entity participation and investment in
28 broadband projects as necessary and appropriate to implement the
29 provisions of P.L. , c. (C.) (pending before the Legislature
30 as this bill);

31 e. providing technical advice, guidance, and assistance to
32 government and private entities to ensure the availability of the
33 necessary expertise and capacity to develop and evaluate the merits
34 of proposed broadband projects;

35 f. promoting informed and timely decision-making with regard
36 to the development of broadband projects;

37 g. establishing appropriate qualification criteria for government
38 and private entities, including the qualification of private entities
39 undertaking a broadband project under a P3 agreement; and

40 h. monitoring and enforcing the broadband project policies and
41 procedures established pursuant to P.L. , c. (C.) (pending
42 before the Legislature as this bill), which may include a provision
43 for potential revenue sharing opportunities between a government
44 entity and a private entity in certain defined or agreed
45 circumstances, including broadband projects that achieve profits
46 that exceed a negotiated rate of return established for a private
47 entity in a P3 agreement.

- 1 5. In evaluating a proposed broadband project, the broadband
2 office shall:
- 3 a. consider whether leasing or purchasing established
4 broadband infrastructure, such as unused fiber optic cable, is more
5 advantageous in providing faster broadband service;
- 6 b. consider whether establishing a government entity or a non-
7 profit corporation is appropriate to provide broadband infrastructure
8 or broadband service to an underserved community;
- 9 c. evaluate the different methods, including P3 agreements
10 with private entities, that other communities in this country have
11 used to provide broadband infrastructure or broadband service to an
12 underserved community;
- 13 d. determine the most cost effective method in which to
14 establish broadband infrastructure and broadband service, with a
15 cost estimate for a community and a price estimate for paying
16 customers; and
- 17 e. explore all possible federal, State, and private sources of
18 funding and technical assistance for the establishment of broadband
19 infrastructure and broadband service in underserved communities
20 and populations of this State.
- 21
- 22 6. a. There is established in the Board of Public Utilities a
23 separate non-lapsing fund to be known as the “State Broadband
24 Fund” for use by the broadband office to adequately and properly
25 perform its duties and responsibilities in carrying out the
26 requirements of P.L. , c. (C.) (pending before the
27 Legislature as this bill). The board, in consultation with the
28 authority, shall determine the level of funding and the appropriate
29 administration of the fund. With financial assistance from the
30 authority and any available funding from federal, State, and private
31 entity sources, the board shall provide sufficient funding to the
32 broadband office to enable the broadband office to provide funding
33 for underserved communities to pay for broadband service and for
34 the installation or expanded use of broadband infrastructure for
35 communities that lack broadband access, specifically the portion of
36 a communications infrastructure network that physically reaches the
37 residents' or small business's premises within those communities.
- 38 b. The board, in consultation with the authority, is authorized
39 to seek and accept gifts, donations, grants, or loans from public or
40 private sources, including, but not limited to, any funding provided
41 by the Federal Communications Commission or any funding from a
42 non-profit foundation, specifically for the provision of broadband
43 infrastructure or broadband service, except that the board and
44 authority shall not accept a gift, donation, grant, or loan that is
45 subject to conditions that are inconsistent with any other law of this
46 State.

1 7. The board, in consultation with the authority, shall annually
2 prepare a report to the Governor and, pursuant to section 2 of
3 P.L.1991, c.164 (C.52:14-19.1), to the Legislature regarding the
4 number, nature, structure, and scope of each broadband project
5 developed pursuant to P.L. , c. (C.) (pending before the
6 Legislature as this bill) and whether the broadband project is
7 developed under a P3 agreement. The report shall include:

- 8 a. a description of the broadband project and its location;
- 9 b. the costs incurred for the broadband project;
- 10 c. the number of jobs created and other economic and societal
11 benefits of the broadband project;
- 12 d. the increase in the use and demand for broadband service as
13 a result of the broadband project;
- 14 e. if applicable, the enhancements to the resiliency and
15 reliability of the broadband service within the State; and
- 16 f. other relevant information as determined by the board.

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

26

27 8. The board shall promulgate rules and regulations, pursuant
28 to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-
29 1 et seq.), as are necessary to implement the provisions of
30 P.L. , c. (C.) (pending before the Legislature as this bill).
31 The board may be assisted, as appropriate, by other participating
32 agencies, departments, boards, and authorities, including the
33 authority and the Office of Information Technology, in the
34 promulgation of necessary rules and regulations.

35

36 9. This act shall take effect immediately.