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ASSEMBLY, No. 4808

STATE OF NEW JERSEY
219th LEGISLATURE

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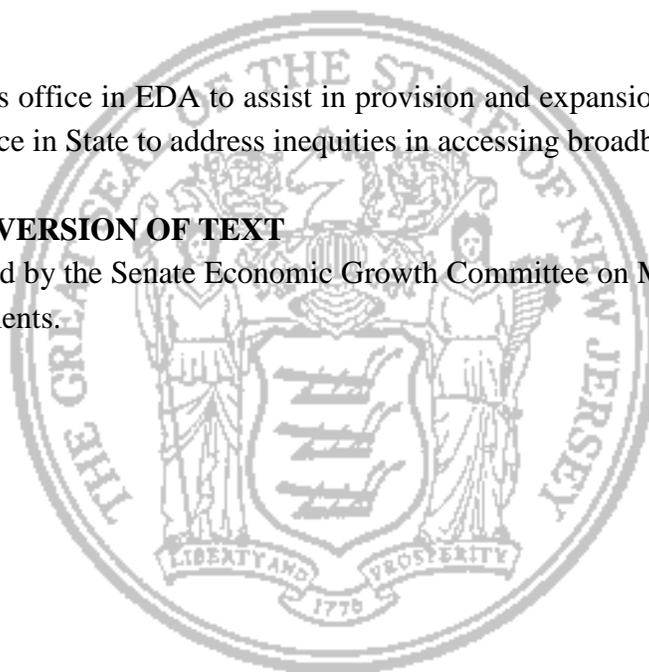
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SYNOPSIS

Establishes office in EDA 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 Senate Economic Growth Committee on March 11, 2021, 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 disease
9 2019 (COVID-19) have resulted in residents, especially students, and
10 certain businesses in this State being required to perform their day-to-
11 day activities from home or otherwise from a remote location, and
12 with the start of the school year, it is especially important for students
13 and educators engaged in remote learning to have Internet access
14 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 due
17 to COVID-19, will continue to help to improve equitable access to
18 healthcare;

19 (3) To properly perform telehealth services, remote student
20 learning, and other activities during the pandemic, students, workers,
21 and employers are required to have access to Internet service at
22 broadband speeds to transmit data, graphics, video, and voice
23 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 (FCC)
27 requires all broadband service providers (providers) to file Form 477
28 with the FCC, on which providers indicate where they offer service at
29 speeds exceeding 200 kilobits per second in at least one direction, the
30 minimum speed to be deemed as offering broadband service;

31 (5) Presently, the FCC's method in determining broadband
32 ²**[connectivity]** availability², as determined by the information offered
33 on Form 477, ²**[allows for]** requires² a provider to ²**[claim that an**
34 **area is covered when the provider attests that it could serve an area**
35 **within a]** measure coverage by² census block, ²**[even though]** which
36 means that some of² the people ²**[of]** within² that area ²**[have no]**
37 may not have² access to broadband service;

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

44 (7) ²In March 2020, Congress passed the "Broadband DATA Act,"
45 Pub.L.116-130, which requires the FCC to collect granular service

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.

²Senate SEG committee amendments adopted March 11, 2021.

1 availability data from wired, fixed wireless, and satellite broadband
2 providers, and to create maps based on this information. The FCC has
3 already implemented many of the Broadband DATA Act's
4 requirements, and, on July 16, 2020, it released a report and order to
5 implement collection and verification requirements for fixed and
6 mobile broadband service availability and quality of service data.
7 Even under the FCC's implementation of the "Broadband DATA Act,"
8 providers are required to submit advertised broadband speed and not
9 the actual speed that customers receive;

10 (8)² In 2018, a study by the Microsoft Corporation found that
11 162.8 million people in this country are not using the Internet at
12 broadband speeds, which far exceeds the FCC's estimated number of
13 people without broadband service access at 25 million, a number
14 determined by the data reported from Form 477;

15 ²[(8)] (9)² A 2019 Pew Research Center survey found that only 73
16 percent of American adults had high-speed Internet access at home and
17 this figure was even lower in rural areas and low-income areas;

18 ²[(9)] (10)² Having accurate information concerning broadband
19 service connectivity in this State is necessary to determine how to
20 better focus resources on providing broadband ²[service to
21 underserved] access to all² areas in New Jersey;

22 ²[(10)] (11)² Disadvantaged ²[individuals] households² in New
23 Jersey do not have the means to pay for broadband service, especially
24 during this time of high unemployment due to COVID-19, because of
25 the high cost of this service;

26 ²[(11)] (12)² A significant amount of residents and small
27 businesses located in rural areas of this State still do not have access to
28 broadband service;

29 ²[(12)] (13)² This public health emergency has exposed the so-
30 called "digital divide" in this State, making it difficult for rural and
31 low-income areas to access medical care, continue education, and
32 maintain employment; and

33 ²[(13)] (14)² This lack of access exacerbates social, economic,
34 income, and health inequalities in this State that can be addressed by
35 taking measures that secure broadband access for areas in need.

36 b. The Legislature therefore determines that:

37 (1) It shall be the public policy of this State to foster the provision
38 of wired broadband service to disadvantaged ²[individuals]
39 households² and to residents and small businesses located within rural
40 areas of this State as a measure to lessen the negative economic effects
41 of COVID-19 and the overall economy of this State;

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

1 (3) The establishment of a Broadband Assistance Office within the
2 ²**[Board of Public Utilities]** New Jersey Economic Development
3 Authority², having duties and responsibilities that include, but not
4 limited to, the review and approval of proposed projects providing for
5 the deployment of fiber optic or other wireline-based broadband
6 service to disadvantaged ²**[individuals]** households² and in
7 ²**[underserved]** critical² areas, and the provision of financing for these
8 projects, would meet this important need; and

9 (4) It shall be a goal for the State’s residents and businesses to
10 have universal access to a fiber optic or other wireline-based
11 broadband service provider, offering data transfer speeds of at least 25
12 megabits per second (Mbps) download and at least three Mbps upload
13 by 2023 and at least 100 Mbps download and 100 Mbps upload by
14 2027. This goal shall allow for the Broadband Assistance Office to
15 increase these minimum data transfer speeds as broadband service
16 technology or capability advances.

17
18 2. As used in P.L. , c. (C.) (pending before the Legislature
19 as this bill):

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

23 “Board” means the Board of Public Utilities or any successor
24 agency.

25 ²“Broadband adoption” means residential subscribership to
26 broadband Internet service that is already available to the customer
27 premises.²

28 “Broadband Internet service” or “broadband service” means any
29 fiber optic or other wireline-based Internet or other information service
30 used for the purpose of offering high speed, switched, broadband
31 wireline communications capability that enables users to send and
32 receive high-quality voice, data, graphics, or video communications
33 through the Internet and using any technology and with data transfer
34 speeds of at least 25 megabits per second download and at least three
35 megabits per second upload. These minimum data transfer speeds
36 may be increased by an amount determined by ²the² Broadband
37 Assistance Office as broadband service technology or capability
38 advances. “Broadband Internet service” shall not mean or include any
39 Internet or information service that, in part, uses wireless
40 communications equipment or facilities.

41 “Broadband Internet service infrastructure” or “broadband
42 infrastructure” means fiber optic or other wireline-based information
43 equipment and facilities, ¹including point-to-point communication
44 connections between two communication endpoints or nodes.¹
45 information systems, and information technology used for the purpose
46 of providing fiber optic or other wireline-based broadband Internet
47 service. “Broadband Internet service infrastructure” shall not mean or

1 include any Internet or information service equipment or facilities that,
2 in part, use 1point-to-multipoint wireless communications facilities or
3 other¹ wireless communications equipment or facilities.

4 “Broadband Internet service provider” or “service provider” means
5 a person, company, corporation, unincorporated association,
6 partnership, or professional corporation which 1[is certified by the
7 board to offer] offers¹ fiber optic or other wireline-based broadband
8 Internet service directly to the public, or to classes of users as to be
9 effectively available directly to the public, regardless of the facilities
10 used.

11 “Broadband office” means the “Broadband Assistance Office”
12 established within the 2[Board of Public Utilities] New Jersey
13 Economic Development Authority² pursuant to section 3 of P.L. , c.
14 (C.) (pending before the Legislature as this bill).

15 “Broadband project” means a project developed, in whole or in
16 part, for a new or existing broadband Internet service infrastructure or
17 broadband Internet service, or both.

18 2“Critical area” means a census tract in which less than 100 percent
19 of households have access to broadband service, or a census tract that
20 meets the following requirements: a. at least 35 percent of the
21 households qualify as low-income households; or b. at least 40 percent
22 of the residents identify as a minority or as members of a State
23 recognized tribal community.

24 “Disadvantaged household” means any household which receives
25 benefits from or participates in the State Medicaid program, any form
26 of public housing assistance, the New Jersey Supplemental Nutrition
27 Assistance Program (SNAP), Temporary Assistance for Needy
28 Families (TANF), federal Supplemental Security Income (SSI), a
29 program resulting in a Charity Care subsidy to a hospital, the National
30 School Lunch Program (NSLP), the Head Start Program, the federal
31 Low Income Home Energy Assistance Program, the federal Special
32 Supplemental Nutrition Program for Women, Infants, and Children
33 (WIC), any veterans’ pension program, and any federal tribal
34 assistance program. “Disadvantaged household” shall include any
35 household that makes less than 200 percent of the federal poverty
36 level.²

37 “Fund” means the “State Broadband 1[Assistance]¹ Fund”
38 established pursuant to section 1[5] 6¹ of P.L. , c. (C.)
39 (pending before the Legislature as this bill).

40 “Government entity” means the State, its subdivisions, and any
41 department, agency, commission, authority, board, or instrumentality
42 thereof, a county, a municipality, a regional or municipal authority, a
43 quasi-State agency, a State-created corporation, a municipal
44 corporation. “Governmental entity” may include a combination of
45 governmental entities as defined herein.

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

4 “Private entity” means a person, a combination of persons, a
5 business entity, a combination of business entities, or a combination of
6 persons and business entities ²with experience in the construction and
7 operation of broadband networks.²

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

13
14 3. a. There is hereby established in the ²**[Board of Public**
15 **Utilities]** New Jersey Economic Development Authority² a
16 “Broadband Assistance Office.” The broadband office shall be
17 responsible for the formulation and execution of a comprehensive
18 Statewide policy that fosters the provision of wired broadband service
19 by government or private entities, developing a broadband project, or
20 both, if these entities develop a broadband project under a public-
21 private partnership agreement, and shall be responsible for the
22 development, promotion, coordination, oversight, and approval of a
23 broadband project developed pursuant to P.L. , c. (C.)
24 (pending before the Legislature as this bill).

25 b. The broadband office, in cooperation with the authority, shall
26 establish guidelines for the broadband office’s approval, designation,
27 operation, and reporting of a proposed broadband project, including
28 any proposed broadband project developed under a P3 agreement, in a
29 manner determined by the broadband office. The broadband office, in
30 cooperation with the authority, shall oversee, coordinate, and provide
31 assistance to a broadband project approved by the broadband office
32 pursuant to P.L. , c. (C.) (pending before the Legislature as
33 this bill).

34 c. The broadband office shall consult and coordinate with
35 representatives of other State departments, agencies, boards, and
36 authorities, including the authority and the Office of Information
37 Technology, as the broadband office, authority, and Office of
38 Information Technology shall deem necessary and appropriate, to
39 accomplish the goals of P.L. , c. (C.) (pending before the
40 Legislature as this bill).

41 d. The broadband office shall identify the resources and personnel
42 of the board, the authority, and other participating agencies,
43 departments, boards, and authorities of the State that are deemed
44 necessary and appropriate to support the broadband office. The
45 ²**[board]** authority² may retain one or more qualified private
46 consultants with relevant expertise to provide the technical assistance

1 and resources deemed necessary and appropriate to assist the
2 broadband office.

3

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

7 a. in conjunction with the Office of Information Technology,
8 mapping Internet connectivity within the State ²and publicly
9 publishing this information²;

10 b. engaging with stakeholders, such as broadband infrastructure
11 developers, broadband service providers, and local government and
12 school officials representing ²**underserved communities** critical
13 areas²;

14 c. in conjunction with the authority, coordinating financial and
15 technical assistance to municipalities wherein critical areas
16 communities are located, which include households and small
17 businesses that cannot afford to receive broadband service or areas
18 within municipalities that lack adequate broadband service;

19 d. establishing policies and procedures that encourage
20 government and private entity participation and investment in
21 broadband projects as necessary and appropriate to implement the
22 provisions of P.L. , c. (C.) (pending before the Legislature as
23 this bill);

24 e. providing technical advice, guidance, and assistance to
25 government and private entities to ensure the availability of the
26 necessary expertise and capacity to develop and evaluate the merits of
27 proposed broadband projects;

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

30 g. establishing appropriate qualification criteria for government
31 and private entities, including the qualification of private entities
32 undertaking a broadband project under a P3 agreement; ²**and** ²

33 h. monitoring and enforcing the broadband project policies and
34 procedures established pursuant to P.L. , c. (C.) (pending
35 before the Legislature as this bill), which may include a provision for
36 potential revenue sharing opportunities between a government entity
37 and a private entity in certain defined or agreed circumstances,
38 including broadband projects that achieve profits that exceed a
39 negotiated rate of return established for a private entity in a P3
40 agreement ²**.** ²;

41 ²i. coordinating with service providers that offer programs to
42 members of disadvantaged households to raise awareness of these
43 programs so that the households have a better understanding of
44 these programs and how to access them;

45 j. cooperating with the Department of Children and Families,
46 Department of Human Services, Department of Health, Department
47 of Labor and Workforce Development, Department of Military and

1 Veterans Affairs, and service providers to complete a field study of
2 barriers to broadband adoption by disadvantaged households, such
3 as housing insecurity, language barriers, and population mobility.
4 The authority shall provide, pursuant to section 2 of P.L.1991, c.164
5 (C.52:14-19.1), a report on the results of the field study to the
6 Legislature with recommendations for solutions to remove these
7 barriers within 18 months of the enactment of P.L. , c. (C.)
8 (pending before the Legislature as this bill);

9 k. cooperating with the Department of Children and Families,
10 Department of Human Services, Department of Health, Department
11 of Labor and Workforce Development, and Department of Military
12 and Veterans Affairs, to identify and secure funding from either the
13 State's General Fund or federal funding to underwrite the cost of
14 monthly broadband service and household broadband service
15 devices for disadvantaged households;

16 l. cooperating with the Department of Children and Families,
17 Department of Human Services, Department of Health, Department
18 of Labor and Workforce Development, and Department of Military
19 and Veterans Affairs, to identify and secure funding sources from
20 either the State's General Fund or federal funding to support
21 development, installation, and financing of community-based
22 broadband services that provide broadband access in safe spaces,
23 including but not limited to libraries, homeless shelters, community
24 centers, and school campuses;

25 m. cooperating with the Department of Education to identify and
26 secure funding from either the State's General Fund or federal
27 funding to underwrite the cost of monthly broadband service and
28 broadband service devices purchased by public schools on behalf of
29 students in grades from kindergarten to twelfth grade from
30 disadvantaged households;

31 n. identifying and providing financial and technical support to
32 community-based programs that provide digital literacy training in
33 relevant community languages to members of disadvantaged
34 households; and

35 o. developing and funding community-based programs that
36 provide digital literacy training in relevant community languages to
37 members of disadvantaged households.²

38

39 5. In evaluating a proposed broadband project, the broadband
40 office shall:

41 a. consider whether leasing or purchasing established
42 broadband infrastructure, such as unused fiber optic cable, is more
43 advantageous in providing faster broadband service;

44 b. consider whether establishing a government entity or a non-
45 profit corporation is appropriate to provide broadband infrastructure
46 or broadband service to ²**[an underserved]** a critical area²
47 community;

1 c. evaluate the different methods, including P3 agreements
2 with private entities, that other communities in this country have
3 used to provide broadband infrastructure or broadband service to an
4 underserved community;

5 d. determine the most cost effective method in which to
6 establish broadband infrastructure and broadband service, with a
7 cost estimate for a community and a price estimate for paying
8 customers; and

9 e. explore all possible federal, State, and private sources of
10 funding and technical assistance for the establishment of broadband
11 infrastructure and broadband service in ²**[underserved]** critical
12 area² communities and populations of this State.

13

14 6. a. There is established in the ²**[Board of Public Utilities]**
15 New Jersey Economic Development Authority² a separate non-lapsing
16 fund to be known as the “State Broadband Fund” for use by the
17 broadband office to adequately and properly perform its duties and
18 responsibilities in carrying out the requirements of P.L. , c. (C.)
19 (pending before the Legislature as this bill). The ²**[board]** authority²,
20 in consultation with the ²**[authority]** board², shall determine the level
21 of funding and the appropriate administration of the fund. ²**[With**
22 **financial assistance from the authority and any]** The fund may seek
23 and accept any² available funding from federal, State, and private
24 entity sources ²**[, the board]** . The authority² shall provide sufficient
25 funding to the broadband office to enable the broadband office to
26 provide funding for ²**[underserved communities]** critical areas² in the
27 State to pay for broadband service and for the installation or expanded
28 use of broadband infrastructure for communities that lack broadband
29 access, specifically the portion of a communications infrastructure
30 network that physically reaches the residents' or small business's
31 premises within those communities.

32 b. The ²**[board]** authority², in consultation with the ²**[authority]**
33 board², is authorized to seek and accept gifts, donations, grants, or
34 loans from public or private sources, including, but not limited to, any
35 funding provided by the Federal Communications Commission or any
36 funding from a non-profit foundation, specifically for the provision of
37 broadband infrastructure or broadband service, except that the board
38 and authority shall not accept a gift, donation, grant, or loan that is
39 subject to conditions that are inconsistent with any other law of this
40 State.

41

42 7. The ²**[board]** authority², in consultation with the ²**[authority]**
43 board², shall annually prepare a report to the Governor and, pursuant
44 to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature
45 regarding the number, nature, structure, and scope of each broadband
46 project developed pursuant to P.L. , c. (C.) (pending before the

1 Legislature as this bill) and whether the broadband project is
2 developed under a P3 agreement. The report shall include:

- 3 a. a description of the broadband project and its location;
- 4 b. the costs incurred for the broadband project;
- 5 c. the number of jobs created and other economic and societal
6 benefits of the broadband project;
- 7 d. the increase in the use and demand for broadband service as a
8 result of the broadband project;
- 9 e. if applicable, the enhancements to the resiliency and reliability
10 of the broadband service within the State; and
- 11 f. other relevant information as determined by the ²**[board]**
12 authority².

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

22

23 8. The ²**[board]** authority² shall promulgate rules and
24 regulations, pursuant to the “Administrative Procedure Act,”
25 P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary to implement
26 the provisions of P.L. , c. (C.) (pending before the
27 Legislature as this bill). The ²**[board]** authority² may be assisted,
28 as appropriate, by other participating agencies, departments, boards,
29 and authorities, including the authority and the Office of
30 Information Technology, in the promulgation of necessary rules and
31 regulations.

32

33 9. This act shall take effect immediately.