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Title 40.
Chapter 9D (New)
Broadband
Telecommunica-
tions service.
§§1-8 -
C.40:9D-1 to
40:9D-8

P.L. 2007, CHAPTER 191, *approved October 18, 2007*
Senate Committee Substitute for
Senate, Nos. 2053 and 2368

1 AN ACT allowing certain local units to provide broadband
2 telecommunications service via wireless community networks
3 and supplementing Title 40 of the Revised Statutes.
4

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

7
8 1. As used in this act:

9 "Broadband telecommunications infrastructure" means
10 information equipment and facilities, information systems, and
11 information technology used for the purpose of providing
12 broadband telecommunications service.

13 "Broadband telecommunications service" means any
14 telecommunications service using broadband telecommunications
15 infrastructure for the purpose of offering high speed, switched,
16 broadband wireline or wireless telecommunications capability that
17 enables users to originate and receive high-quality voice, data,
18 graphics or video telecommunications through the Internet and
19 using any technology.

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

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

35 "Joint meeting of counties" or "joint meeting" means a joint
36 meeting formed by two or more counties under a joint contract

1 entered into pursuant to the provisions of P.L.2007, c.63
2 (C.40A:65-1 et seq.).

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

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

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

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

25 "Telecommunications service" means the offering of
26 telecommunications directly to the public, or to such classes of
27 users as to be effectively available directly to the public, regardless
28 of the facilities used, and regardless of whether a fee is charged for
29 the use of such service.

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

36

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

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

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

45 b. Consistent with federal law, the governing body of a local
46 unit may enter into a contract with a private entity to provide
47 broadband telecommunications service via a wireless community

1 network or to construct, own, use, acquire, deliver, grant, operate,
2 maintain, sell, purchase, lease, or equip broadband
3 telecommunications infrastructure used for the purpose of providing
4 broadband telecommunications service via a wireless community
5 network.

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

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

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

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

45

46 3. If a governing body of a local unit exercises powers under
47 subsections a. or b. of section 2 of this act, whether by contracting

- 1 with a private entity or by establishing a related competitive
2 business segment, then:
- 3 a. the costs of providing broadband telecommunications service
4 via a wireless community network shall not adversely impact the
5 ability of the local unit to offer those services otherwise required by
6 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 unit
14 required by law, where resource constraints arise, the provision of
15 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 shall
18 not be less than the fully allocated cost of providing broadband
19 telecommunications service via a wireless community network, as
20 subject to review and approval of the Local Finance Board, which
21 cost shall include an allocation of the cost of all equipment,
22 vehicles, labor, related fringe benefits and overheads, and
23 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 required
38 to be provided by law, or any revenue received in payment for those
39 services or any interest or other earnings realized from the deposit
40 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

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

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

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

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

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

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

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

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

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

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

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

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

25
26 5. a. The governing body of a local unit exercising powers
27 under subsection a. or subsection b. of section 2 of this act is
28 authorized, pursuant to the provisions of the "Local Bond Law"
29 (N.J.S. 40A:2-1 et seq.), to issue revenue bonds of the local unit, to
30 pay a portion or all of the costs of the broadband
31 telecommunications infrastructure used for the purpose of providing
32 broadband telecommunications service via a wireless community
33 network; provided, however, that the principal of and the interest on
34 such revenue bonds shall be payable solely from revenues derived
35 by the local unit from the provision of broadband
36 telecommunications service via that network and any other revenues
37 related thereto. A local unit is permitted to provide a full faith and
38 credit guarantee on such revenue bonds.

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

45
46 6. The governing body of a local unit exercising powers under
47 subsection a. or subsection b. of section 2 of this act shall not enter

1 into or implement any contract regarding broadband
2 telecommunications infrastructure or broadband
3 telecommunications service without first performing due diligence
4 on the plan required under subsection a. of section 4 of this act.
5 Due diligence shall include, but not be limited to, research that
6 supports formal conclusions that the local unit or private entity, as
7 appropriate, is creditworthy and that the provision of broadband
8 telecommunications service via that network would not proceed in
9 the absence of financing from the local unit or private entity, as
10 appropriate. The conclusions of this analysis shall be reduced to
11 writing and made available to the public before the governing body
12 of the local unit formally considers any financing authorized
13 pursuant to section 5 of this act or enters into a contract with a
14 private entity pursuant to subsection b. of section 2 of this act.
15

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

25 b. Contracts awarded pursuant to this section may be for a term
26 not to exceed seven years, however, a contract awarded pursuant to
27 this section may be extended for an additional term of three years
28 by mutual agreement of the parties to the contract if the ability to
29 extend was set forth in the original request for proposals
30 documentation.

31 c. Notwithstanding the provisions of section 5 of P.L.1999,
32 c.440 (C.40A:11-4.5) to the contrary, after proposals have been
33 evaluated pursuant to subsection d. of that section, the purchasing
34 agent or counsel or administrator may issue an interim report
35 recommending that specific details be negotiated further with one or
36 more of the potential vendors who submitted a proposal for the
37 purpose of modifying the original proposal. After the conclusion of
38 negotiations, and evaluation of all proposals as modified in
39 accordance with this subsection, the purchasing agent or counsel or
40 administrator shall prepare a final report evaluating proposals and
41 recommending the award of a contract or contracts in accordance
42 with the provisions of section 5 of P.L.1999, c.440 (C.40A:11-4.5)
43 that are not contrary to the provisions of this subsection.
44

45 8. Any contract awarded in connection with any project
46 authorized pursuant to the provisions of this act shall provide that
47 not less than the prevailing wage rate shall be paid to workers
48 employed in the performance of such contract. The prevailing wage

1 rate shall be the rate determined by the Commissioner of Labor and
2 Workforce Development pursuant to the provisions of P.L.1963,
3 c.150 (C.34:11-56.25 et seq.).

4

5 9. This act shall take effect immediately.

6

7

8

9

10 Authorizes certain local units to develop broadband
11 telecommunications infrastructure used for providing broadband
12 telecommunications service via wireless community networks.

SENATE, No. 2053

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JUNE 19, 2006

Sponsored by:
Senator JOSEPH V. DORIA, JR.
District 31 (Hudson)

SYNOPSIS

Permits county and municipal sewerage and utilities authorities to provide broadband telecommunications service.

CURRENT VERSION OF TEXT

As introduced.



S2053 DORIA

2

1 AN ACT authorizing county and municipal sewerage and utilities
2 authorities to provide broadband telecommunications service,
3 and amending and supplementing P.L.1946, c.138 and P.L.1957,
4 c.183.

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

8
9 1. Section 3 of P.L.1946, c.138 (C.40:14A-3) is amended to read
10 as follows:

11 3. As used in this act, unless a different meaning clearly appears
12 from the context:

13 (1) "Municipality" shall mean any city of any class, any
14 borough, village, town, township, or any other municipality other
15 than a county or a school district, and except when used in section 4
16 or 21 of this act, any agency thereof or any two or more thereof
17 acting jointly or any joint meeting or other agency of any two or
18 more thereof;

19 (2) "County" shall mean any county of any class;

20 (3) "Governing body" shall mean, in the case of a county, the
21 board of chosen freeholders, or in the case of those counties
22 organized pursuant to the provisions of the "Optional County
23 Charter Law," P.L.1972, c.154 (C.40:41A-1 et seq.), the board of
24 chosen freeholders and the county executive, the county supervisor
25 or the county manager, as appropriate, and, in the case of a
26 municipality, the commission, council, board or body, by whatever
27 name it may be known, having charge of the finances of the
28 municipality;

29 (4) "Person" shall mean any person, association, corporation,
30 nation, State or any agency or subdivision thereof, other than a
31 county or municipality of the State or a sewerage authority;

32 (5) "Sewerage or water reclamation authority" shall mean a
33 public body created pursuant to section 4 of this act;

34 (6) Subject to the exceptions provided in section 4 of this act,
35 "district" shall mean the area within the territorial boundaries of the
36 county, or of the municipality or municipalities, which created or
37 joined in the creation of a sewerage authority;

38 (7) "Local unit" shall mean the county, or any municipality,
39 which created or joined in the creation of a sewerage authority;

40 (8) "Sewerage system" shall mean the plants, structures, on-site
41 waste-water systems, and other real and personal property acquired,
42 constructed, maintained or operated or to be acquired, constructed,
43 maintained or operated by a sewerage authority for the purposes of
44 the sewerage authority, including sewers, conduits, pipe lines,
45 mains, pumping and ventilating stations, sewage treatment or

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.

S2053 DORIA

1 disposal systems, plants and works, connections, and outfalls,
2 compensating reservoirs, and other plants, structures, boats,
3 conveyances, and other real and personal property, and rights
4 therein, and appurtenances necessary or useful and convenient for
5 the collection, treatment, purification or disposal in a sanitary
6 manner of any sewage, liquid or solid wastes, night soil or
7 industrial wastes;

8 (9) "Cost" shall mean, in addition to the usual connotations
9 thereof, the cost of acquisition or construction of all or any part of a
10 sewerage system and of all or any property, rights, easements,
11 privileges, agreements and franchises deemed by the sewerage
12 authority to be necessary or useful and convenient therefor or in
13 connection therewith and the cost of retiring the present value of the
14 unfunded accrued liability due and owing by a sewerage authority,
15 as calculated by the system actuary for a date certain upon the
16 request of a sewerage authority, for early retirement incentive
17 benefits granted by the sewerage authority pursuant to P.L.1991,
18 c.230 and P.L.1993, c.181, including interest or discount on bonds,
19 cost of issuance of bonds, engineering and inspection costs and
20 legal expenses, costs of financial, professional and other estimates
21 and advice, organization, administrative, operating and other
22 expenses of the sewerage authority prior to and during such
23 acquisition or construction, and all such other expenses as may be
24 necessary or incident to the financing, acquisition, construction and
25 completion of said sewerage system or part thereof and the placing
26 of the same in operation, and also such provision or reserves for
27 working capital, operating, maintenance or replacement expenses or
28 for payment or security of principal of or interest on bonds during
29 or after such acquisition or construction as the sewerage authority
30 may determine, and also reimbursements to the sewerage authority
31 or any county, municipality or other person of any moneys
32 theretofore expended for the purposes of the sewerage authority or
33 to any county or municipality of any moneys theretofore expended
34 for in connection with sanitation facilities;

35 (10) "Real property" shall mean lands both within and without
36 the State, and improvements thereof or thereon, or any rights or
37 interests therein;

38 (11) "Construct" and "construction" shall connote and include
39 acts of construction, reconstruction, replacement, extension,
40 improvement and betterment of a sewerage system;

41 (12) "Industrial wastes" shall mean liquid or other wastes
42 resulting from any processes of industry, manufacture, trade or
43 business or from the development of any natural resource;

44 (13) "Sewage" shall mean the water-carried wastes created in and
45 carried, or to be carried, away from, or to be processed by on-site
46 wastewater systems, residences, hotels, apartments, schools,
47 hospitals, industrial establishments, or any other public or private

S2053 DORIA

1 building, together with such surface or ground water and industrial
2 wastes as may be present;

3 (14) "On-site wastewater system" means any of several works,
4 facilities, septic tanks or other devices, used to collect, treat,
5 reclaim, or dispose of wastewater or sewage on or adjacent to the
6 property on which the wastewater or sewage is produced, or to
7 convey such wastewater or sewage from said property to such
8 facilities as the authority may establish for its disposal;

9 (15) "Pollution" means the condition of water resulting from the
10 introduction therein of substances of a kind and in quantities
11 rendering it detrimental or immediately or potentially dangerous to
12 the public health, or unfit for public or commercial use;

13 (16) "Ordinance" means a written act of the governing body of a
14 municipality adopted and otherwise approved and published in the
15 manner or mode of procedure prescribed for ordinances tending to
16 obligate such municipality pecuniarily;

17 (17) "Resolution" means a written act of the governing body of a
18 local unit adopted and otherwise approved in the manner or mode of
19 procedure prescribed for resolutions tending to obligate such local
20 unit pecuniarily;

21 (18) "Bonds" shall mean bonds or other obligations issued
22 pursuant to this act; **[and]**

23 (19) "Compensating reservoir" shall mean the structures,
24 facilities and appurtenances for the impounding, transportation and
25 release of water for the replenishment in periods of drought or at
26 other necessary times of all or a part of waters in or bordering the
27 State diverted into a sewer, sewage treatment or sewage disposal
28 system operated by the sewerage authority;

29 (20) "Broadband telecommunications infrastructure" means any
30 equipment used for the purpose of providing broadband
31 telecommunications service, including, but not limited to, fiber
32 optic, digital subscriber lines, digital wireline or wireless cable
33 transmission, broadband wireless, and broadband satellite mediums;

34 (21) "Broadband telecommunications service" means any
35 telecommunications service that uses broadband
36 telecommunications infrastructure for the purpose of offering high
37 speed, switched, broadband, wireline or wireless
38 telecommunications capability that enables users to originate and
39 receive high-quality voice, data, graphics or video
40 telecommunications through the Internet and using any technology;

41 (22) "Local Finance Board" means the Local Finance Board, in
42 the 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); and

45 (23) "Related competitive business segment" means a
46 structurally separate business unit established by a sewerage
47 authority that offers to install, construct, maintain, repair, renew,
48 relocate, or remove broadband telecommunications infrastructure,

1 or offers to provide or provides broadband telecommunications
2 service.

3 (cf: P.L.2002, c.42, s.4)

4

5 2. (New section) Every sewerage authority is hereby authorized
6 to provide the local units and their inhabitants within the district
7 with broadband telecommunications service by:

8 a. contracting with a private entity to install, construct, maintain,
9 repair, renew, relocate, or remove broadband telecommunications
10 infrastructure and to provide broadband telecommunications
11 service; or

12 b. establishing a related competitive business segment.

13

14 3. (New section) If a sewerage authority offers broadband
15 telecommunications service, whether by contracting with a private
16 entity or by establishing a related competitive business segment,
17 then:

18 a. the costs of providing broadband telecommunications service
19 shall not adversely impact the ability of the sewerage authority to
20 offer the services of the sewerage system to customers in a safe,
21 adequate and proper manner;

22 b. in all instances in which resources are jointly deployed by the
23 sewerage authority to provide broadband telecommunications
24 service and the services of the sewerage system and resource
25 constraints arise, the provision of the services of the sewerage
26 system shall receive a higher priority;

27 c. the price which the sewerage authority charges for broadband
28 telecommunications service shall not be less than the fully allocated
29 cost of providing broadband telecommunications service, as subject
30 to review and approval of the local finance board, which cost shall
31 include an allocation of the cost of all equipment, vehicles, labor,
32 related fringe benefits and overheads, and administration utilized,
33 and all other assets utilized and costs incurred, directly or
34 indirectly, in providing broadband telecommunications service;

35 d. the provision of broadband telecommunications service shall
36 be subject to the provisions of the "Local Authorities Fiscal Control
37 Law," P.L.1983, c.313 (C.40A:5A-1 et seq.) and the "Local Public
38 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.);

39 e. the sewerage authority shall not use the rates of the services
40 of the sewerage system, or any revenue received in payment for
41 those services or any interest or other earnings realized from the
42 deposit or investment of such revenue, to subsidize broadband
43 telecommunications service offered by the sewerage authority, and
44 expenses incurred in conjunction with broadband
45 telecommunications service shall not be borne by customers of the
46 services of the sewerage system;

47 f. the rates of the services of the sewerage system shall be
48 subject to the review and approval of the local finance board to

S2053 DORIA

6

1 determine that there is no subsidization of broadband
2 telecommunications service by the rates of the services of the
3 sewerage system, or by any revenue received in payment for those
4 services or any interest or other earnings realized from the deposit
5 or investment of such revenue; and

6 g. each such sewerage authority shall maintain books and
7 records, and provide accounting entries of its services of the
8 sewerage system to such local unit as may be required by the local
9 finance board, to show that there is strict separation and allocation
10 of the sewerage authority's revenues, costs, assets, risks and
11 functions, between the services of the sewerage system and
12 broadband telecommunications service.

13

14 4. Section 3 of P.L.1957, c.183 (C.40:14B-3) is amended to read
15 as follows:

16 3. As used in this act, unless a different meaning clearly appears
17 from the context:

18 (1) "Municipality" shall mean any city of any class, any
19 borough, village, town, township, or any other municipality other
20 than a county or a school district, and except when used in section
21 4, 5, 6, 11, 12, 13, 42 or 45 of this act, any agency thereof or any
22 two or more thereof acting jointly or any joint meeting or other
23 agency of any two or more thereof;

24 (2) "County" shall mean any county of any class;

25 (3) "Governing body" shall mean, in the case of a county, the
26 board of chosen freeholders, or in the case of those counties
27 organized pursuant to the provisions of the "Optional County
28 Charter Law," P.L.1972, c.154 (C.40:41A-1 et seq.), the board of
29 chosen freeholders and the county executive, the county supervisor
30 or the county manager, as appropriate, and, in the case of a
31 municipality, the commission, council, board or body, by whatever
32 name it may be known, having charge of the finances of the
33 municipality;

34 (4) "Person" shall mean any person, association, corporation,
35 nation, state or any agency or subdivision thereof, other than a
36 county or municipality of the State or a municipal authority;

37 (5) "Municipal or water reclamation authority" shall mean a
38 public body created or organized pursuant to section 4, 5 or 6 of this
39 act and shall include a municipal utilities authority created by one
40 or more municipalities and a county utilities authority created by a
41 county;

42 (6) Subject to the exceptions provided in section 10, 11 or 12 of
43 this act, "district" shall mean the area within the territorial
44 boundaries of the county, or of the municipality or municipalities,
45 which created or joined in or caused the creation or organization of
46 a municipal authority;

S2053 DORIA

1 (7) "Local unit" shall mean the county, or any municipality,
2 which created or joined in or caused the creation or organization of
3 a municipal authority;

4 (8) "Water system" shall mean the plants, structures and other
5 real and personal property acquired, constructed or operated or to be
6 acquired, constructed or operated by a municipal authority or by
7 any person to whom a municipal authority has extended credit for
8 this purpose for the purposes of the municipal authority, including
9 reservoirs, basins, dams, canals, aqueducts, standpipes, conduits,
10 pipelines, mains, pumping stations, water distribution systems,
11 compensating reservoirs, waterworks or sources of water supply,
12 wells, purification or filtration plants or other plants and works,
13 connections, rights of flowage or division, and other plants,
14 structures, boats, conveyances, and other real and personal property,
15 and rights therein, and appurtenances necessary or useful and
16 convenient for the accumulation, supply and redistribution of water;

17 (9) "Sewerage system" shall mean the plants, structures, on-site
18 wastewater systems and other real and personal property acquired,
19 constructed or operated or to be acquired, constructed, maintained
20 or operated by a municipal authority or by any person to whom a
21 municipal authority has extended credit for this purpose for the
22 purposes of the municipal authority, including sewers, conduits,
23 pipelines, mains, pumping and ventilating stations, sewage
24 treatment or disposal systems, plants and works, connections,
25 outfalls, compensating reservoirs, and other plants, structures,
26 boats, conveyances, and other real and personal property, and rights
27 therein, and appurtenances necessary or useful and convenient for
28 the collection, treatment, purification or disposal in a sanitary
29 manner of any sewage, liquid or solid wastes, night soil or
30 industrial wastes;

31 (10) "Utility system" shall mean a water system, solid waste
32 system, sewerage system, or a hydroelectric system or any
33 combination of such systems, acquired, constructed or operated or
34 to be acquired, constructed or operated by a municipal authority or
35 by any person to whom a municipal authority has extended credit
36 for this purpose;

37 (11) "Cost" shall mean, in addition to the usual connotations
38 thereof, the cost of acquisition or construction of all or any part of a
39 utility system and of all or any property, rights, easements,
40 privileges, agreements and franchises deemed by the municipal
41 authority to be necessary or useful and convenient therefor or in
42 connection therewith and the cost of retiring the present value of the
43 unfunded accrued liability due and owing by a municipal authority,
44 as calculated by the system actuary for a date certain upon the
45 request of a municipal authority, for early retirement incentive
46 benefits granted by the municipal authority pursuant to P.L.1991,
47 c.230 and P.L.1993, c.181, including interest or discount on bonds,
48 cost of issuance of bonds, engineering and inspection costs and

1 legal expenses, cost of financial, professional and other estimates
2 and advice, organization, administrative, operating and other
3 expenses of the municipal authority prior to and during such
4 acquisition or construction, and all such other expenses as may be
5 necessary or incident to the financing, acquisition, construction and
6 completion of said utility system or part thereof and the placing of
7 the same in operation, and also such provision or reserves for
8 working capital, operating, maintenance or replacement expenses or
9 for payment or security of principal of or interest on bonds during
10 or after such acquisition or construction as the municipal authority
11 may determine, and also reimbursements to the municipal authority
12 or any county, municipality or other person of any moneys
13 theretofore expended for the purposes of the municipal authority or
14 to any county or municipality of any moneys theretofore expended
15 for or in connection with water supply, solid waste, water
16 distribution, sanitation or hydroelectric facilities;

17 (12) "Real property" shall mean lands both within or without the
18 State, and improvements thereof or thereon, or any rights or
19 interests therein;

20 (13) "Construct" and "construction" shall connote and include
21 acts of construction, reconstruction, replacement, extension,
22 improvement and betterment of a utility system;

23 (14) "Industrial wastes" shall mean liquid or other wastes
24 resulting from any processes of industry, manufacture, trade or
25 business or from the development of any natural resource, and shall
26 include any chemical wastes or hazardous wastes;

27 (15) "Sewage" shall mean the water-carried wastes created in and
28 carried, or to be carried, away from, or to be processed by on-site
29 wastewater systems, residences, hotels, apartments, schools,
30 hospitals, industrial establishments, or any other public or private
31 building, together with such surface or ground water and industrial
32 wastes and leacheate as may be present;

33 (16) "On-site wastewater system" means any of several facilities,
34 septic tanks or other devices, used to collect, treat, reclaim, or
35 dispose of wastewater or sewage on or adjacent to the property on
36 which the wastewater or sewage is produced, or to convey such
37 wastewater or sewage from said property to such facilities as the
38 authority may establish for its disposal;

39 (17) "Pollution" means the condition of water resulting from the
40 introduction therein of substances of a kind and in quantities
41 rendering it detrimental or immediately or potentially dangerous to
42 the public health, or unfit for public or commercial use;

43 (18) "Bonds" shall mean bonds or other obligations issued
44 pursuant to this act;

45 (19) "Service charges" shall mean water service charges, solid
46 waste service charges, sewer service charges, hydroelectric service
47 charges or any combination of such charges, as said terms are

S2053 DORIA

1 defined in section 21 or 22 of this act or in section 7 of this
2 amendatory and supplementary act;

3 (20) "Compensating reservoir" shall mean the structures,
4 facilities and appurtenances for the impounding, transportation and
5 release of water for the replenishment in periods of drought or at
6 other necessary times of all or a part of waters in or bordering the
7 State diverted into a utility system operated by a municipal
8 authority;

9 (21) "Sewage or water reclamation authority" shall mean a public
10 body created pursuant to the "sewerage authorities law," P.L.1946,
11 c.138 (C.40:14A-1 et seq.) or the acts amendatory thereof or
12 supplemental thereto;

13 (22) "County sewer authority" shall mean a sanitary sewer
14 district authority created pursuant to the act entitled "An act relating
15 to the establishment of sewerage districts in first- and second-class
16 counties, the creation of Sanitary Sewer District Authorities by the
17 establishing of such districts, prescribing the powers and duties of
18 any such authority and of other public bodies in connection with the
19 construction of sewers and sewage disposal facilities in any such
20 district, and providing the ways and means for paying the costs of
21 construction and operation thereof," approved April 23, 1946
22 (P.L.1946, c.123), or the acts amendatory thereof or supplemental
23 thereto;

24 (23) "Chemical waste" shall mean a material normally generated
25 by or used in chemical, petrochemical, plastic, pharmaceutical,
26 biochemical or microbiological manufacturing processes or
27 petroleum refining processes, which has been selected for waste
28 disposal and which is known to hydrolyze, ionize or decompose,
29 which is soluble, burns or oxidizes, or which may react with any of
30 the waste materials which are introduced into the landfill, or which
31 is buoyant on water, or which has a viscosity less than that of water
32 or which produces a foul odor. Chemical waste may be either
33 hazardous or nonhazardous;

34 (24) "Effluent" shall mean liquids which are treated in and
35 discharged by sewage treatment plants;

36 (25) "Hazardous wastes" shall mean any waste or combination of
37 waste which poses a present or potential threat to human health,
38 living organisms or the environment. "Hazardous waste" shall
39 include, but not be limited to, waste material that is toxic, corrosive,
40 irritating, sensitizing, radioactive, biologically infectious, explosive
41 or flammable;

42 (26) "Leachate" shall mean a liquid that has been in contact with
43 solid waste and contains dissolved or suspended materials from that
44 solid waste;

45 (27) "Recycling" shall mean the separation, collection,
46 processing or recovery of metals, glass, paper, solid waste and other
47 materials for reuse or for energy production and shall include
48 resource recovery;

1 (28) "Sludge" shall mean any solid, semisolid, or liquid waste
2 generated from a municipal, industrial or other sewage treatment
3 plant, water supply treatment plant, or air pollution control facility,
4 or any other such waste having similar characteristics and effects;
5 "sludge" shall not include effluent;

6 (29) "Solid waste" shall mean garbage, refuse, and other
7 discarded materials resulting from industrial, commercial and
8 agricultural operations, and from domestic and community
9 activities, and shall include all other waste materials including
10 sludge, chemical waste, hazardous wastes and liquids, except for
11 liquids which are treated in public sewage treatment plants and
12 except for solid animal and vegetable wastes collected by swine
13 producers licensed by the State Department of Agriculture to
14 collect, prepare and feed such wastes to swine on their own farms;

15 (30) "Solid waste system" shall mean and include the plants,
16 structures and other real and personal property acquired,
17 constructed or operated or to be acquired, constructed or operated
18 by an authority or by any person to whom a municipal authority has
19 extended credit for this purpose pursuant to the provisions of this
20 act, including transfer stations, incinerators, recycling facilities,
21 including facilities for the generation, transmission and distribution
22 of energy derived from the processing of solid waste, sanitary
23 landfill facilities or other property or plants for the collection,
24 recycling or disposal of solid waste and all vehicles, equipment and
25 other real and personal property and rights thereon and
26 appurtenances necessary or useful and convenient for the collection,
27 recycling, or disposal of solid waste in a sanitary manner;

28 (31) "Hydroelectric system" shall mean the plants, structures and
29 other real and personal property acquired, constructed or operated
30 or to be acquired, constructed or operated by an authority pursuant
31 to the provisions of this act, including all that which is necessary or
32 useful and convenient for the generation, transmission and sale of
33 hydroelectric power at wholesale;

34 (32) "Hydroelectric power" shall mean the production of electric
35 current by the energy of moving water;

36 (33) "Sale of hydroelectric power at wholesale" shall mean any
37 sale of hydroelectric power to any person for purposes of resale of
38 such power;

39 (34) "Broadband telecommunications infrastructure" means any
40 equipment used for the purpose of providing broadband
41 telecommunications service, including, but not limited to, fiber
42 optic, digital subscriber lines, digital wireline or wireless cable
43 transmission, broadband wireless, and broadband satellite mediums;

44 (35) "Broadband telecommunications service" means any
45 telecommunications service that uses broadband
46 telecommunications infrastructure for the purpose of offering high
47 speed, switched, broadband, wireline or wireless
48 telecommunications capability that enables users to originate and

1 receive high-quality voice, data, graphics or video
2 telecommunications through the Internet and using any technology:

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

7 (37) "Related competitive business segment" means a
8 structurally separate business unit established by a municipal
9 authority that offers to install, construct, maintain, repair, renew,
10 relocate, or remove broadband telecommunications infrastructure,
11 or offers to provide or provides broadband telecommunications
12 service.

13 (cf: P.L.2002, c.42, s.5)

14

15 5. (New section) Every authority operating under the "municipal
16 and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et
17 seq.), is hereby authorized to provide the local units and their
18 inhabitants within the district with broadband telecommunications
19 service by:

20 a. contracting with a private entity to install, construct, maintain,
21 repair, renew, relocate, or remove broadband telecommunications
22 infrastructure and to provide broadband telecommunications
23 service; or

24 b. establishing a related competitive business segment.

25

26 6. (New section) If an authority operating under the "municipal
27 and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et
28 seq.), offers broadband telecommunications service, whether by
29 contracting with a private entity or by establishing a related
30 competitive business segment, then:

31 a. the costs of providing broadband telecommunications service
32 shall not adversely impact the ability of the authority to offer the
33 services of the utility system, to customers in a safe, adequate and
34 proper manner;

35 b. in all instances in which resources are jointly deployed by the
36 authority to provide broadband telecommunications service and the
37 services of the utility system and resource constraints arise, the
38 provision of the services of the utility system shall receive a higher
39 priority;

40 c. the price which the authority charges for broadband
41 telecommunications service shall not be less than the fully allocated
42 cost of providing broadband telecommunications service, as subject
43 to review and approval of the local finance board, which cost shall
44 include an allocation of the cost of all equipment, vehicles, labor,
45 related fringe benefits and overheads, and administration utilized,
46 and all other assets utilized and costs incurred, directly or
47 indirectly, in providing broadband telecommunications service;

48 d. the provision of broadband telecommunications service by the

1 authority shall be subject to the provisions of the "Local Authorities
2 Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.) and the
3 "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et
4 seq.);

5 e. the authority shall not use the rates of the services of the
6 utility system, or any revenue received in payment for those
7 services or any interest or other earnings realized from the deposit
8 or investment of such revenue, to subsidize broadband
9 telecommunications service offered by the authority, and expenses
10 incurred in conjunction with broadband telecommunications service
11 shall not be borne by customers of the services of the utility system;

12 f. the rates of the services of the utility system shall be subject
13 to the review and approval of the local finance board to determine
14 that there is no subsidization of broadband telecommunications
15 service by the rates of the services of the utility system, or by any
16 revenue received in payment for those services or any interest or
17 other earnings realized from the deposit or investment of such
18 revenue;

19 g. each such authority shall maintain books and records, and
20 provide accounting entries of its services of the utility system to
21 such local unit as may be required by the local finance board, to
22 show that there is strict separation and allocation of the authority's
23 revenues, costs, assets, risks and functions, between the services of
24 the utility system and broadband telecommunications service.

25

26 7. This act shall take effect immediately.

27

28

29

STATEMENT

30

31 This bill permits a county or municipal sewerage authority and a
32 county or municipal utilities authority ("authority") to provide
33 broadband telecommunications ("broadband") service within the
34 authority's district by: (1) contracting with a private entity to
35 install, construct, maintain, repair, renew, relocate, or remove
36 broadband infrastructure and to provide broadband service; or (2)
37 establishing a related competitive business segment of the authority
38 to install, construct, maintain, repair, renew, relocate, or remove
39 broadband infrastructure and to provide broadband service,
40 provided that the related competitive business segment is
41 structurally separated from the authority.

42 The bill requires that if an authority offers broadband service,
43 whether by contracting with a private entity or by establishing a
44 related competitive business segment: (1) the costs of providing
45 broadband service is not to adversely impact the ability of the
46 authority to offer the services of the utility system (i.e., water, solid
47 waste, sewer, or hydroelectric, or any combination thereof, as
48 applicable), to customers in a safe, adequate and proper manner; (2)

1 in all instances in which resources are jointly deployed by the
2 authority to provide broadband service and the services of the utility
3 system and resource constraints arise, the provision of the services
4 of the utility system are to receive a higher priority; (3) the price
5 which an authority charges for broadband service is not to be less
6 than the fully allocated cost of providing broadband service, as
7 subject to review and approval of the Local Finance Board, in the
8 Division of Local Government Services, in the Department of
9 Community Affairs, which cost is to include an allocation of the
10 cost of all equipment, vehicles, labor, related fringe benefits and
11 overheads, and administration utilized, and all other assets utilized
12 and costs incurred, directly or indirectly, in providing broadband
13 telecommunications service; (4) the provision of broadband service
14 is to be subject to the provisions of the "Local Authorities Fiscal
15 Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.) and the "Local
16 Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.); (5)
17 the authority is not to use the rates of the services of the utility
18 system, or any revenue received in payment for those services or
19 any interest or other earnings realized from the deposit or
20 investment of such revenue, to subsidize broadband service offered
21 by the authority, and expenses incurred in conjunction with
22 broadband service is not to be borne by customers of the services of
23 the utility system; (6) the rates of the services of the utility system
24 are to be subject to the review and approval of the Local Finance
25 Board to determine that there is no subsidization of broadband
26 service by the rates of the services of the utility system, or by any
27 revenue received in payment for those services or any interest or
28 other earnings realized from the deposit or investment of such
29 revenue; and (7) each such authority is to maintain books and
30 records, and provide accounting entries of its services of the utility
31 system to such local unit as may be required by the Local Finance
32 Board, to show that there is strict separation and allocation of the
33 authority's revenues, costs, assets, risks and functions, between the
34 services of the utility system and broadband service.

SENATE, No. 2368

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED DECEMBER 4, 2006

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator SHIRLEY K. TURNER

District 15 (Mercer)

SYNOPSIS

Authorizes counties to develop broadband telecommunications infrastructure used for providing broadband telecommunications service via wireless community networks.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/16/2007)

1 AN ACT allowing counties to provide broadband
2 telecommunications service via wireless community networks
3 and supplementing Title 40 of the Revised Statutes.

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

7
8 1. As used in this act:

9 "Broadband telecommunications infrastructure" means
10 information equipment and facilities, information systems, and
11 information technology used for the purpose of providing
12 broadband telecommunications service.

13 "Broadband telecommunications service" means any
14 telecommunications service that uses broadband
15 telecommunications infrastructure for the purpose of offering high
16 speed, switched, broadband wireline or wireless
17 telecommunications capability that enables users to originate and
18 receive high-quality voice, data, graphics or video
19 telecommunications through the Internet and using any technology.

20 "Governing body" means (1) in the case of the county, the board
21 of chosen freeholders, or the board of chosen freeholders and the
22 county executive, the county supervisor or the county manager, as
23 appropriate, in the case of a county organized pursuant to the
24 provisions of the "Optional County Charter Law," P.L.1972, c.154
25 (C.40:41A-1 et seq.) or, (2) in the case of a joint meeting of
26 counties, the management committee appointed to exercise the
27 powers of the joint meeting or local governing body to which the
28 authority to exercise those powers shall have been delegated under
29 section 5 of P.L.1952, c.72 (C.40:48B-5).

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

33 "Joint meeting of counties" or "joint meeting" means a joint
34 meeting formed by two or more counties under a joint contract
35 entered into pursuant to the provisions of P.L.1952, c.72 (C.40:48B-
36 1 et seq.).

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

41 "Telecommunications service" means the offering of
42 telecommunications directly to the public, or to such classes of
43 users as to be effectively available directly to the public, regardless
44 of the facilities used, and regardless of whether a fee is charged for
45 offering such service.

46 "Wireless community network" means a local shared network
47 consisting of a series of interlinked computers that allow persons
48 with wireless equipped devices within the area served by the

1 network to gain entry to the wider Internet through wireless Internet
2 service connections provided by broadband telecommunications
3 infrastructure at designated access points.

4

5 2. a. Consistent with federal law, the governing body of a
6 county, and the governing body of any joint meeting of counties,
7 are authorized to construct, own and operate broadband
8 telecommunications infrastructure to provide broadband
9 telecommunications service via a wireless community network.

10 b. The governing body of a county, and the governing body of
11 any joint meeting of counties, may enter into a contract or joint
12 venture with private businesses to construct, own, use, acquire,
13 deliver, grant, operate, maintain, sell, purchase, lease, and equip
14 broadband telecommunications infrastructure used for the purpose
15 of providing broadband telecommunications service via a wireless
16 community network. By written contract or lease, such governing
17 body may sell capacity in, or grant other similar rights for private
18 entities to use, broadband telecommunications infrastructure owned
19 or operated by the county or joint meeting, as the case may be, that
20 provides broadband telecommunications service via a wireless
21 community network.

22 c. The governing body of a county or of a joint meeting of
23 counties exercising powers under subsection a. or subsection b. of
24 this section is authorized, pursuant to the provisions of the "Local
25 Bond Law" (N.J.S. 40A:2-1 et seq.), to issue revenue bonds of the
26 county or joint meeting, respectively, to pay a portion or all of the
27 costs of the broadband telecommunications infrastructure used for
28 the purpose of providing broadband telecommunications service via
29 a wireless community network.

30 d. The provision of broadband telecommunications service via a
31 wireless community network pursuant to this act and any broadband
32 telecommunications infrastructure used for such purpose shall not
33 be deemed a public utility or operating any form of public utility
34 service pursuant to Title 48 of the Revised Statutes.

35

36 3. This act shall take effect immediately.

37

38

39

STATEMENT

40

41 This bill authorizes the governing body of a county, or the
42 governing bodies of two or more counties upon the formation of a
43 joint meeting pursuant to the provisions of P.L.1952, c.72
44 (C.40:48B-1 et seq.), to construct, own and operate, as consistent
45 with federal law, broadband telecommunications infrastructure for
46 the purpose of providing broadband telecommunications service via
47 a wireless community network and to enter into contracts or joint
48 ventures with private businesses to assist with the development,

1 operation, or both, of such a network. This bill also authorizes a
2 county or joint meeting of counties to sell capacity in government-
3 owned or operated broadband telecommunications infrastructure
4 and to issue revenue bonds, pursuant to the provisions of the "Local
5 Bond Law" (N.J.S. 40A:2-1 et seq.), to pay a portion or all of the
6 costs of developing broadband telecommunications infrastructure
7 used for the purpose of providing broadband telecommunications
8 service via a wireless community network. The provision of
9 broadband telecommunications service via a wireless community
10 network pursuant to this bill and any broadband
11 telecommunications infrastructure used for such purpose is not to be
12 deemed a public utility or operating any form of public utility
13 service pursuant to Title 48 of the Revised Statutes.

14 The Internet revolution is driving today's economy, and
15 information technology offers economic opportunities, higher living
16 standards, more individual choices, and increased opportunities to
17 participate in government and public life. The past decade has
18 brought considerable advancement in worldwide
19 telecommunications, and to remain competitive in the information-
20 based global economy, government should be allowed to fully
21 utilize cutting-edge telecommunication and Internet strategies.
22 Broadband telecommunications access via wireless community
23 networks is essential to provide the residents of this State with
24 enhanced educational opportunities, better health care, more
25 effective public safety and homeland security, and a stronger
26 economy.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 2053 and 2368**

STATE OF NEW JERSEY

DATED: JUNE 14, 2007

The Senate Economic Growth Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 2053 and 2368.

This bill, as substituted by the committee, allows the governing body of a local unit, such as any county, joint meeting of counties, any municipality, any special district or any public body thereof, to either: 1) construct, own or operate broadband telecommunications infrastructure to provide broadband telecommunications service via a wireless community network or provide broadband telecommunications service via a wireless community network through the establishment of a related competitive business segment; or 2) enter into a contract with a private entity to construct, own and operate such infrastructure used for the purpose of providing such service via a wireless community network and provide broadband telecommunications service via a wireless community network. This service is commonly called wireless Internet service.

Such local unit 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. The bill provides that the local unit or entity contracting with the local unit to provide wireless Internet service is 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 wireless Internet service. The governing body of a municipality within a county of the first class, where the county offers wireless Internet service, may provide that the municipality not participate in the provision of wireless Internet service by that county.

If the local unit provides wireless Internet service or the infrastructure for the service or contracts with a private entity to provide such service or infrastructure, then: 1) the costs of providing the service shall not adversely impact the ability of the local unit to offer those services otherwise required by law; 2) 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 wireless Internet service; 3) in all instances in which resources are deployed by the local unit to provide both wireless Internet service 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; 4) the price which the local unit charges for wireless Internet service shall not be less than the fully allocated cost of providing wireless Internet service, 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 wireless Internet service; 5) the 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.); 6) the provision of wireless Internet service shall be subject to the provisions of the "Local Public Contracts Law," and, where appropriate, the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.); 7) 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 wireless Internet service, and expenses incurred in conjunction with the provision of wireless Internet service shall not be borne by any resident or business not choosing to receive wireless Internet service; 8) 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 wireless Internet service; and 9) 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.

The bill requires that, prior to the local unit's offering or contracting with a private entity to offer wireless Internet service, the local unit shall have developed a plan which sets forth the local unit's or private entity's proposed activities, as appropriate. The plan is to 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 the wireless Internet service and associated infrastructure; 2) the amount of any charges expected to be imposed on subscribers to the wireless Internet service; 3) a projected implementation schedule for the wireless Internet service network and the projected location of the

network's infrastructure; 4) the process by which the service plan for deployment will be evaluated, which process shall include at least one public hearing prior to the decision on the plan; 5) a description as to how the service 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 service and infrastructure; 8) a study that considers other alternatives for the deployment of the service and infrastructure, 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 the infrastructure and related equipment used for such deployment.

The plan is to 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. The Local Finance Board is to 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.

The bill allows the governing body of a local unit offering wireless Internet service or contracting with a private entity, 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 infrastructure used for providing wireless Internet service; 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 wireless Internet service and any other revenues related thereto. A local unit is permitted to provide a full faith and credit guarantee on such revenue bonds.

The bill prohibits the governing body of a local unit offering wireless Internet service or contracting with a private entity from expend any funds authorized under the bill without first performing due diligence on the plan required under section 4 of the bill.

The bill allows a local contracting unit to 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 in the bill, in lieu of public bidding, for the purpose of entering into a contract pursuant to subsection b. of section 2 of the bill concerning the infrastructure used for wireless Internet service. Any contract awarded in connection with any project authorized pursuant to the provisions of the bill is to provide that not less than the prevailing wage rate is to be paid to workers employed in the performance of such contract.

ASSEMBLY, No. 3752

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED DECEMBER 4, 2006

Sponsored by:

Assemblyman JOSEPH J. ROBERTS, JR.

District 5 (Camden and Gloucester)

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

SYNOPSIS

Authorizes counties to develop broadband telecommunications infrastructure used for providing broadband telecommunications service via wireless community networks.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/19/2007)

1 AN ACT allowing counties to provide broadband
2 telecommunications service via wireless community networks
3 and supplementing Title 40 of the Revised Statutes.

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

7
8 1. As used in this act:

9 "Broadband telecommunications infrastructure" means
10 information equipment and facilities, information systems, and
11 information technology used for the purpose of providing
12 broadband telecommunications service.

13 "Broadband telecommunications service" means any
14 telecommunications service that uses broadband
15 telecommunications infrastructure for the purpose of offering high
16 speed, switched, broadband wireline or wireless
17 telecommunications capability that enables users to originate and
18 receive high-quality voice, data, graphics or video
19 telecommunications through the Internet and using any technology.

20 "Governing body" means (1) in the case of the county, the board
21 of chosen freeholders, or the board of chosen freeholders and the
22 county executive, the county supervisor or the county manager, as
23 appropriate, in the case of a county organized pursuant to the
24 provisions of the "Optional County Charter Law," P.L.1972, c.154
25 (C.40:41A-1 et seq.) or, (2) in the case of a joint meeting of
26 counties, the management committee appointed to exercise the
27 powers of the joint meeting or local governing body to which the
28 authority to exercise those powers shall have been delegated under
29 section 5 of P.L.1952, c.72 (C.40:48B-5).

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

33 "Joint meeting of counties" or "joint meeting" means a joint
34 meeting formed by two or more counties under a joint contract
35 entered into pursuant to the provisions of P.L.1952, c.72 (C.40:48B-
36 1 et seq.).

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

41 "Telecommunications service" means the offering of
42 telecommunications directly to the public, or to such classes of
43 users as to be effectively available directly to the public, regardless
44 of the facilities used, and regardless of whether a fee is charged for
45 offering such service.

46 "Wireless community network" means a local shared network
47 consisting of a series of interlinked computers that allow persons
48 with wireless equipped devices within the area served by the

1 network to gain entry to the wider Internet through wireless Internet
2 service connections provided by broadband telecommunications
3 infrastructure at designated access points.

4

5 2. a. Consistent with federal law, the governing body of a
6 county, and the governing body of any joint meeting of counties,
7 are authorized to construct, own and operate broadband
8 telecommunications infrastructure to provide broadband
9 telecommunications service via a wireless community network.

10 b. The governing body of a county, and the governing body of
11 any joint meeting of counties, may enter into a contract or joint
12 venture with private businesses to construct, own, use, acquire,
13 deliver, grant, operate, maintain, sell, purchase, lease, and equip
14 broadband telecommunications infrastructure used for the purpose
15 of providing broadband telecommunications service via a wireless
16 community network. By written contract or lease, such governing
17 body may sell capacity in, or grant other similar rights for private
18 entities to use, broadband telecommunications infrastructure owned
19 or operated by the county or joint meeting, as the case may be, that
20 provides broadband telecommunications service via a wireless
21 community network.

22 c. The governing body of a county or of a joint meeting of
23 counties exercising powers under subsection a. or subsection b. of
24 this section is authorized, pursuant to the provisions of the "Local
25 Bond Law" (N.J.S. 40A:2-1 et seq.), to issue revenue bonds of the
26 county or joint meeting, respectively, to pay a portion or all of the
27 costs of the broadband telecommunications infrastructure used for
28 the purpose of providing broadband telecommunications service via
29 a wireless community network.

30 d. The provision of broadband telecommunications service via a
31 wireless community network pursuant to this act and any broadband
32 telecommunications infrastructure used for such purpose shall not
33 be deemed a public utility or operating any form of public utility
34 service pursuant to Title 48 of the Revised Statutes.

35

36 3. This act shall take effect immediately.

37

38

39

STATEMENT

40

41 This bill authorizes the governing body of a county, or the
42 governing bodies of two or more counties upon the formation of a
43 joint meeting pursuant to the provisions of P.L.1952, c.72
44 (C.40:48B-1 et seq.), to construct, own and operate, as consistent
45 with federal law, broadband telecommunications infrastructure for
46 the purpose of providing broadband telecommunications service via
47 a wireless community network and to enter into contracts or joint
48 ventures with private businesses to assist with the development,

1 operation, or both, of such a network. This bill also authorizes a
2 county or joint meeting of counties to sell capacity in government-
3 owned or operated broadband telecommunications infrastructure
4 and to issue revenue bonds, pursuant to the provisions of the "Local
5 Bond Law" (N.J.S. 40A:2-1 et seq.), to pay a portion or all of the
6 costs of developing broadband telecommunications infrastructure
7 used for the purpose of providing broadband telecommunications
8 service via a wireless community network. The provision of
9 broadband telecommunications service via a wireless community
10 network pursuant to this bill and any broadband
11 telecommunications infrastructure used for such purpose is not to be
12 deemed a public utility or operating any form of public utility
13 service pursuant to Title 48 of the Revised Statutes.

14 The Internet revolution is driving today's economy, and
15 information technology offers economic opportunities, higher living
16 standards, more individual choices, and increased opportunities to
17 participate in government and public life. The past decade has
18 brought considerable advancement in worldwide
19 telecommunications, and to remain competitive in the information-
20 based global economy, government should be allowed to fully
21 utilize cutting-edge telecommunication and Internet strategies.
22 Broadband telecommunications access via wireless community
23 networks is essential to provide the residents of this State with
24 enhanced educational opportunities, better health care, more
25 effective public safety and homeland security, and a stronger
26 economy.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3752

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 18, 2007

The Assembly Telecommunications and Utilities Committee reports favorably and with committee amendments Assembly Bill No. 3752.

As amended, this bill authorizes the governing body of a county, or the governing bodies of two or more counties upon the formation of a joint meeting pursuant to the provisions of P.L.1952, c.72 (C.40:48B-1 et seq.), to construct, own and operate, as consistent with federal law, broadband telecommunications infrastructure for the purpose of providing broadband telecommunications service via a wireless community network and to enter into contracts or joint ventures with private businesses to assist with the development, operation, or both, of such a network. This bill also authorizes a county or joint meeting of counties to sell capacity in government-owned or operated broadband telecommunications infrastructure and to issue revenue bonds, pursuant to the provisions of the "Local Bond Law" (N.J.S. 40A:2-1 et seq.), to pay a portion or all of the costs of developing broadband telecommunications infrastructure used for the purpose of providing broadband telecommunications service via a wireless community network, provided that such bonds are payable solely from the revenues derived by the county or joint meeting of counties, as appropriate, from the provision of broadband service via that network, or revenues related thereto. The provision of broadband telecommunications service via a wireless community network pursuant to this bill and any broadband telecommunications infrastructure used for such purpose is not to be deemed a public utility or operating any form of public utility service pursuant to Title 48 of the Revised Statutes.

The Internet revolution is driving today's economy, and information technology offers economic opportunities, higher living standards, more individual choices, and increased opportunities to participate in government and public life. The past decade has brought considerable advancement in worldwide telecommunications, and to remain competitive in the information-based global economy,

government should be allowed to fully utilize cutting-edge telecommunication and Internet strategies. Broadband telecommunications access via wireless community networks is essential to provide the residents of this State with enhanced educational opportunities, better health care, more effective public safety and homeland security, and a stronger economy.

The committee amended the bill to provide that revenue bonds issued to pay a portion or all of the costs of developing broadband telecommunications infrastructure shall be payable solely from revenues derived by the county or joint meeting of counties, as appropriate, from providing broadband wireless service or related thereto.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 3752

STATE OF NEW JERSEY

DATED: JUNE 18, 2007

The Assembly Budget Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3752.

This substitute allows the governing body of a local unit, such as any county, joint meeting of counties, any municipality, any special district or any public body thereof, to either: 1) construct, own or operate broadband telecommunications infrastructure to provide broadband telecommunications service via a wireless community network or provide broadband telecommunications service via a wireless community network through the establishment of a related competitive business segment; or 2) enter into a contract with a private entity to construct, own and operate such infrastructure used for the purpose of providing such service via a wireless community network and provide broadband telecommunications service via a wireless community network. This service is commonly called wireless Internet service.

Such local unit 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. The bill provides that the local unit or entity contracting with the local unit to provide wireless Internet service is 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 wireless Internet service. The governing body of a municipality within a county of the first class, where the county offers wireless Internet service, may provide that the municipality not participate in the provision of wireless Internet service by that county.

If the local unit provides wireless Internet service or the infrastructure for the service or contracts with a private entity to provide such service or infrastructure, then: 1) the costs of providing the service shall not adversely impact the ability of the local unit to offer those services otherwise required by law; 2) 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 wireless Internet service; 3) in all instances in which resources are deployed by the local unit to provide both wireless Internet service 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; 4) the price which the local unit charges for wireless Internet service shall not be less than the fully allocated cost of providing wireless Internet service, 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 wireless Internet service; 5) the 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.); 6) the provision of wireless Internet service shall be subject to the provisions of the "Local Public Contracts Law," and, where appropriate, the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.); 7) 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 wireless Internet service, and expenses incurred in conjunction with the provision of wireless Internet service shall not be borne by any resident or business not choosing to receive wireless Internet service; 8) 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 wireless Internet service; and 9) 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.

The bill requires that, prior to the local unit's offering or contracting with a private entity to offer wireless Internet service, the local unit shall have developed a plan which sets forth the local unit's or private entity's proposed activities, as appropriate. The plan is to 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 the wireless Internet service and associated infrastructure; 2) the amount of any charges expected to be imposed on subscribers to the wireless Internet service; 3) a projected implementation schedule for the wireless Internet service network and the projected location of the

network's infrastructure; 4) the process by which the service plan for deployment will be evaluated, which process shall include at least one public hearing prior to the decision on the plan; 5) a description as to how the service 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 service and infrastructure; 8) a study that considers other alternatives for the deployment of the service and infrastructure, 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 the infrastructure and related equipment used for such deployment.

The plan is to 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. The Local Finance Board is to 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.

The bill allows the governing body of a local unit offering wireless Internet service or contracting with a private entity, 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 infrastructure used for providing wireless Internet service; 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 wireless Internet service and any other revenues related thereto. A local unit is permitted to provide a full faith and credit guarantee on such revenue bonds.

The bill prohibits the governing body of a local unit offering wireless Internet service or contracting with a private entity from expend any funds authorized under the bill without first performing due diligence on the plan required under section 4 of the bill.

The bill allows a local contracting unit to 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 in the bill, in lieu of public bidding, for the purpose of entering into a contract pursuant to subsection b. of section 2 of the bill concerning the infrastructure used for wireless Internet service. Any contract awarded in connection with any project authorized pursuant to the provisions of the bill is to provide that not less than the prevailing wage rate is to be paid to workers employed in the performance of such contract.

As substituted and reported by the committee, this substitute bill is identical to the Senate committee substitute for Senate Bill Nos. 2053 and 2368.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3752

with Assembly Floor Amendments
(Proposed By Assemblyman ROBERTS)

ADOPTED: MARCH 8, 2007

These Assembly floor amendments clarify that the bill's exclusion of county-sponsored community broadband telecommunications service and related infrastructure from regulation as a public utility or public utility service applies only to the extent that those counties are engaged in the provision of broadband telecommunications service via a wireless community network.